

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** June 10, 2020

**DATE OF REQUEST:** May 22, 2020

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2019-1750-RUL.** Consideration of the adoption of the repeal of Section 7.117 and simultaneous adoption of new Section 7.117 of 30 TAC Chapter 7, Memoranda of Understanding.

This rulemaking implements House Bill (HB) 2230, 84th Texas Legislature, 2015, Regular Session and HB 2771, 86th Texas Legislature, 2019, Regular Session.

The adoption repeals Section 7.117, which adopts by reference the Memorandum of Understanding (MOU) between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) found at 16 TAC Section 3.30, and adopts the full text of the MOU between RRC and TCEQ under new Section 7.117 with changes regarding the transfer of responsibilities relating to certain oil and gas discharges from the RRC to the TCEQ, and the dual authorization of Class II injection wells and Class V injection wells for the disposal of nonhazardous desalination brine and nonhazardous drinking water treatment residuals. The proposed rules were published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1302). (Kathy Humphreys, Laurie Fleet, Diane Goss) (Rule Project No. 2020-016-007-LS)

Erin E. Chancellor  
\_\_\_\_\_  
Deputy Director

Robert Martinez  
\_\_\_\_\_  
Division Director

Gwen Ricco  
\_\_\_\_\_  
Agenda Coordinator

Copy to CCC Secretary? NO  YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** May 22, 2020

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** Erin E. Chancellor, Deputy Director  
Office of Legal Services

**Docket No.:** 2019-1750-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 7, Memoranda of Understanding  
HB 2230 & HB 2771: MOU with RRC  
Rule Project No. 2020-016-007-LS

### **Background and reason(s) for the rulemaking:**

This rulemaking is part of the implementation process for House Bill (HB) 2230, 84th Texas Legislature (Larson), 2015, and HB 2771, 86th Texas Legislature (Lozano), 2019.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The rulemaking repeals 30 Texas Administrative Code (TAC) §7.117, which adopts by reference the Memorandum of Understanding (MOU) between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) found at 16 TAC §3.30, and adopts the full text of the MOU between the RRC and the TCEQ under new 30 TAC §7.117 with changes regarding the transfer of responsibilities relating to certain oil and gas discharges from the RRC to the TCEQ, and the dual authorization of Class II and Class V injection wells.

The MOU describes the transfer of the RRC's responsibilities to the TCEQ relating to the regulation of discharges into surface water in the state of produced water (as defined in 30 TAC §305.541), hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer will occur upon the United States Environmental Protection Agency's (EPA) approval of the TCEQ's request to amend or supplement its Texas Pollutant Discharge Elimination System (TPDES) program.

The MOU also reflects the TCEQ's authority to authorize a Class II disposal well permitted by the RRC as a Class V injection well for the disposal of two waste streams under the TCEQ's jurisdiction, nonhazardous brine from a desalination operation, and nonhazardous drinking water treatment residuals.

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

This rulemaking is required to implement HB 2230, which enacted Texas Water Code (TWC), §27.026, and HB 2771, which amended TWC, §26.131.

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

None.

Re: Docket No. 2019-1750-RUL

**Statutory authority:**

- TWC, §27.026
- TWC, §26.131

**Effect on the:**

**A.) Regulated community:**

HB 2771 – This rulemaking is not expected to affect the regulated community, as this rulemaking adopts the full text of the MOU which describes the transfer of the RRC’s responsibilities to the TCEQ. Upon full implementation of HB 2771, the regulated community will be required to seek authorization for discharges of produced water (as defined in 30 TAC §305.541), hydrostatic test water, and gas plant effluent from the TCEQ rather than the RRC.

HB 2230 – No impacts on the regulated community are expected.

**B.) Public:**

This rulemaking is not expected to affect the public.

**C.) Agency programs:**

HB 2771 – Upon full implementation of HB 2771, the Water Quality Division will review and process permit applications for discharges of produced water, hydrostatic test water, and gas plant effluent into surface water in this state resulting from certain oil and gas activities. Based on information obtained from the RRC, it issued 529 permits for discharges of produced water, hydrostatic test water, and gas plant effluent in Fiscal Year 2018. Additionally, the Office of Compliance and Enforcement will be required to conduct investigations to determine compliance with the wastewater permits described earlier; address violations in follow up investigations; and manage any other agency responses needed for complaints, emergency response, waste management, or other actions within the agency’s authority.

HB 2230 – No impacts on agency programs are expected.

**Stakeholder meetings:**

The TCEQ held stakeholder meetings on September 17, 2019 and December 11, 2019 related to implementation of HB 2771, including discussions of this rulemaking project. The TCEQ will continue to hold quarterly stakeholder meetings regarding implementation of HB 2771 until completion. No stakeholder meetings were held on HB 2230. However, on August 16, 2016, a public hearing was held on Rule Project No. 2016-021-331-WS, which partially implemented HB 2230.

**Public comment:**

The comment period closed on March 30, 2020. Comments were received from the Sierra Club, Lone Star Chapter.

**Significant changes from proposal:**

The effective date was changed to reflect the current adoption date.

Commissioners

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**Potential controversial concerns and legislative interest:**

HB 2771 – State legislators, the regulated community, and environmental organizations may be interested in the implementation of HB 2771.

HB 2230 – None at this time.

**Does 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 rulemaking is necessary to implement HB 2230 and HB 2771. If the rulemaking does not go through, the TCEQ will not be in compliance with state statutes.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: February 28, 2020

Anticipated *Texas Register* adoption publication date: June 26, 2020

Anticipated effective date: July 2, 2020

Six-month *Texas Register* filing deadline: August 28, 2020

**Agency contacts:**

Kathy Humphreys, Rule Project Manager, Environmental Law Division, (512) 239-3417

Diane Goss, Staff Attorney, (512) 239-5731

Laurie Fleet, Water Quality Division, (512) 239-5445

Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

**Attachments:**

HB 2230

HB 2771

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Brody Burks  
Office of General Counsel  
Kathy Humphreys  
Gwen Ricco

AN ACT

relating to the authority of the Texas Commission on Environmental Quality to authorize an injection well used for oil and gas waste disposal to be used for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals.

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

SECTION 1. Subchapter B, Chapter 27, Water Code, is amended by adding Section 27.026 to read as follows:

Sec. 27.026. DUAL AUTHORIZATION OF INJECTION WELLS TO INJECT NONHAZARDOUS BRINE FROM DESALINATION OPERATIONS OR NONHAZARDOUS DRINKING WATER TREATMENT RESIDUALS. (a) The commission may authorize by individual permit, by general permit, or by rule a Class V injection well for the injection of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals into a Class II injection well that is also permitted by the railroad commission under Subchapter C.

(b) The commission and railroad commission by rule shall enter or amend a memorandum of understanding to implement and administer this section.

SECTION 2. This Act takes effect September 1, 2015.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2230 was passed by the House on April 21, 2015, by the following vote: Yeas 142, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2230 was passed by the Senate on May 20, 2015, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

1 AN ACT

2 relating to the authority of the Texas Commission on Environmental  
3 Quality to issue permits for the discharge into water in this state  
4 of produced water, hydrostatic test water, and gas plant effluent  
5 resulting from certain oil and gas activities.

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

7 SECTION 1. Section 26.131, Water Code, as effective until  
8 delegation of authority under the Resource Conservation and  
9 Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) to the  
10 Railroad Commission of Texas, is amended by amending Subsections  
11 (a) and (b) and adding Subsection (d) to read as follows:

12 (a) Except as provided by this section, the ~~[The]~~ Railroad  
13 Commission of Texas is solely responsible for the control and  
14 disposition of waste and the abatement and prevention of pollution  
15 of surface and subsurface water resulting from:

16 (1) activities associated with the exploration,  
17 development, and production of oil or gas or geothermal resources,  
18 including:

19 (A) activities associated with the drilling of  
20 injection water source wells which penetrate the base of useable  
21 quality water;

22 (B) activities associated with the drilling of  
23 cathodic protection holes associated with the cathodic protection  
24 of wells and pipelines subject to the jurisdiction of the Railroad

1 Commission of Texas;

2 (C) activities associated with gasoline plants,  
3 natural gas or natural gas liquids processing plants, pressure  
4 maintenance plants, or repressurizing plants;

5 (D) activities associated with any underground  
6 natural gas storage facility, provided the terms "natural gas" and  
7 "storage facility" shall have the meanings set out in Section  
8 [91.173](#), Natural Resources Code;

9 (E) activities associated with any underground  
10 hydrocarbon storage facility, provided the terms "hydrocarbons"  
11 and "underground hydrocarbon storage facility" shall have the  
12 meanings set out in Section [91.201](#), Natural Resources Code; and

13 (F) activities associated with the storage,  
14 handling, reclamation, gathering, transportation, or distribution  
15 of oil or gas prior to the refining of such oil or prior to the use  
16 of such gas in any manufacturing process or as a residential or  
17 industrial fuel;

18 (2) except to the extent the activities are regulated  
19 by the Texas Department of Health under Chapter [401](#), Health and  
20 Safety Code, activities associated with uranium exploration  
21 consisting of the disturbance of the surface or subsurface for the  
22 purpose of or related to determining the location, quantity, or  
23 quality of uranium ore; and

24 (3) any other activities regulated by the Railroad  
25 Commission of Texas pursuant to Section [91.101](#), Natural Resources  
26 Code.

27 (b) Except as provided by Subsection (d), the ~~[The]~~ Railroad



1 Commission of Texas may issue permits for the discharge of waste  
2 resulting from the [~~these~~] activities described by Subsection (a),  
3 and the discharge of waste into water in this state resulting from  
4 those [~~these~~] activities must [~~shall~~] meet the water quality  
5 standards established by the commission.

6 (d) The commission may issue permits for the discharge into  
7 water in this state of produced water, hydrostatic test water, and  
8 gas plant effluent resulting from the activities described by  
9 Subsection (a) on delegation to the commission of NPDES authority  
10 for those discharges. The discharge of produced water, hydrostatic  
11 test water, and gas plant effluent into water in this state under  
12 this subsection must meet the water quality standards established  
13 by the commission.

14 SECTION 2. Section 26.131, Water Code, as effective on  
15 delegation of authority under the Resource Conservation and  
16 Recovery Act of 1976 (42 U.S.C. 6901 et seq.) to the Railroad  
17 Commission of Texas, is amended to read as follows:

18 Sec. 26.131. DUTIES OF RAILROAD COMMISSION. (a) Except as  
19 provided by this section, the [~~The~~] Railroad Commission of Texas is  
20 solely responsible for the control and disposition of waste and the  
21 abatement and prevention of pollution of surface and subsurface  
22 water resulting from:

23 (1) activities associated with the exploration,  
24 development, and production of oil or gas or geothermal resources,  
25 including:

26 (A) activities associated with the drilling of  
27 injection water source wells which penetrate the base of useable

1 quality water;

2 (B) activities associated with the drilling of  
3 cathodic protection holes associated with the cathodic protection  
4 of wells and pipelines subject to the jurisdiction of the Railroad  
5 Commission of Texas;

6 (C) activities associated with gasoline plants,  
7 natural gas or natural gas liquids processing plants, pressure  
8 maintenance plants, or repressurizing plants;

9 (D) activities associated with any underground  
10 natural gas storage facility, provided the terms "natural gas" and  
11 "storage facility" shall have the meanings set out in Section  
12 [91.173](#), Natural Resources Code;

13 (E) activities associated with any underground  
14 hydrocarbon storage facility, provided the terms "hydrocarbons"  
15 and "underground hydrocarbon storage facility" shall have the  
16 meanings set out in Section [91.201](#), Natural Resources Code; and

17 (F) activities associated with the storage,  
18 handling, reclamation, gathering, transportation, or distribution  
19 of oil or gas prior to the refining of such oil or prior to the use  
20 of such gas in any manufacturing process or as a residential or  
21 industrial fuel;

22 (2) except to the extent the activities are regulated  
23 by the Texas Department of Health under Chapter [401](#), Health and  
24 Safety Code, activities associated with uranium exploration  
25 consisting of the disturbance of the surface or subsurface for the  
26 purpose of or related to determining the location, quantity, or  
27 quality of uranium ore; and

1           (3) any other activities regulated by the Railroad  
2 Commission of Texas pursuant to Section 91.101, Natural Resources  
3 Code.

4           (b) Except as provided by Subsection (c), the [The] Railroad  
5 Commission of Texas may issue permits for the discharge of waste  
6 resulting from the [these] activities described by Subsection (a),  
7 and the discharge of waste into water in this state resulting from  
8 those [these] activities must [shall] meet the water quality  
9 standards established by the commission.

10           (c) The commission may issue permits for the discharge into  
11 water in this state of produced water, hydrostatic test water, and  
12 gas plant effluent resulting from the activities described by  
13 Subsection (a) on delegation to the commission of NPDES authority  
14 for those discharges. The discharge of produced water, hydrostatic  
15 test water, and gas plant effluent into water in this state under  
16 this subsection must meet the water quality standards established  
17 by the commission.

18           SECTION 3. (a) In this section:

19           (1) "Commission" means the Texas Commission on  
20 Environmental Quality.

21           (2) "NPDES" means National Pollutant Discharge  
22 Elimination System.

23           (b) On delegation of NPDES permit authority for discharges  
24 of produced water, hydrostatic test water, and gas plant effluent  
25 to the commission by the United States Environmental Protection  
26 Agency under Section 402(b) of the Federal Water Pollution Control  
27 Act (33 U.S.C. Section 1342(b)), the following are transferred from

1 the Railroad Commission of Texas to the commission:

2 (1) the powers, duties, functions, programs, and  
3 activities of the Railroad Commission of Texas relating to the  
4 regulation of discharges of produced water, hydrostatic test water,  
5 and gas plant effluent into water in this state, other than  
6 discharges resulting from spills or other unplanned releases;

7 (2) any obligations and contracts of the Railroad  
8 Commission of Texas that are directly related to implementing a  
9 power, duty, function, program, or activity transferred under this  
10 Act; and

11 (3) all property and records in the custody of the  
12 Railroad Commission of Texas that are related to a power, duty,  
13 function, program, or activity transferred under this Act.

14 (c) The Railroad Commission of Texas shall continue to carry  
15 out its duties related to the regulation of discharges of produced  
16 water, hydrostatic test water, and gas plant effluent into water in  
17 this state until delegation of NPDES permit authority for  
18 discharges of produced water, hydrostatic test water, and gas plant  
19 effluent to the commission by the United States Environmental  
20 Protection Agency under Section 402(b) of the Federal Water  
21 Pollution Control Act (33 U.S.C. Section 1342(b)).

22 (d) The commission may carry out activities to ensure an  
23 orderly transfer of the powers, duties, functions, programs, and  
24 activities transferred under this Act, including hiring additional  
25 employees and amending the memorandum of understanding by mutual  
26 agreement with the Railroad Commission of Texas.

27 (e) Not later than September 1, 2021, the commission shall

1 submit to the United States Environmental Protection Agency for  
2 approval a request to supplement or amend the Texas Pollutant  
3 Discharge Elimination System program to include delegation of NPDES  
4 permit authority for discharges of produced water, hydrostatic test  
5 water, and gas plant effluent.

6 SECTION 4. The change in law made by this Act to Section  
7 26.131, Water Code, applies to an application for an authorization  
8 to discharge produced water, hydrostatic test water, or gas plant  
9 effluent into water in this state that is pending on or after the  
10 effective date of delegation of National Pollutant Discharge  
11 Elimination System permit authority for discharges of produced  
12 water, hydrostatic test water, and gas plant effluent to the Texas  
13 Commission on Environmental Quality by the United States  
14 Environmental Protection Agency under Section 402(b) of the Federal  
15 Water Pollution Control Act (33 U.S.C. Section 1342(b)). An  
16 application that is granted or denied in a final decision before the  
17 effective date of such delegation is governed by the law as it  
18 existed immediately before the effective date of such delegation,  
19 and that law is continued in effect for that purpose.

20 SECTION 5. This Act takes effect September 1, 2019.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2771 was passed by the House on April 17, 2019, by the following vote: Yeas 94, Nays 47, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2771 on May 23, 2019, by the following vote: Yeas 109, Nays 33, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2771 was passed by the Senate, with amendments, on May 16, 2019, by the following vote: Yeas 24, Nays 7.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §7.117 and simultaneously adopts new §7.117.

The repeal of §7.117 is adopted *without change* to the proposal as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1302) and, therefore, will not be republished. New §7.117 is adopted *with change* to the proposed text as published and, therefore, will be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

This rulemaking implements House Bill (HB) 2230 (84th Texas Legislature, 2015) which enacted Texas Water Code (TWC), §27.026, and HB 2771 (86th Texas Legislature, 2019) which amended TWC, §26.131.

This rulemaking adopts the repeal of §7.117, which adopts by reference the Memorandum of Understanding (MOU) between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) as codified in the RRC Oil and Gas Division rules at 16 TAC §3.30. This rulemaking also adopts the current text of the MOU under new §7.117 and amends the text of the current MOU (in 16 TAC §3.30) to implement HB 2230 and HB 2771.

Historically, the text of the MOU has been codified in the RRC Oil and Gas Division rules at 16 TAC §3.30 and the TCEQ has adopted the MOU by reference at §7.117. The

TCEQ and the RRC have collaborated on changes to the current MOU which are required by HB 2230 and HB 2771. The RRC proposed similar changes to its rule in 16 TAC §3.30 (February 28, 2020, issue of the *Texas Register* (45 TexReg 1290)).

The RRC and the TCEQ agree that both agencies intend that the MOU at 16 TAC §3.30, once amended, and the MOU adopted at §7.117 will include the same substantive explanations of jurisdiction and requirements. The TCEQ acknowledges that there will be some minor stylistic differences. The RRC did not receive any comments on its rule proposal. The TCEQ received comments from the Sierra Club, Lone Star Chapter. As discussed in the Public Comment section of this preamble, the TCEQ did not make any changes to the MOU in response to the comments.

The MOU is the result of collaboration between the TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste. Several statutes cover persons and activities where respective jurisdiction of the RRC and the TCEQ may intersect. The current MOU is a statement of how the TCEQ and the RRC implement the division of jurisdiction. The MOU delineates general agency jurisdictions regarding: solid waste; water quality; oil and gas waste; injection wells; hazardous waste; interagency activities; and radioactive material. Additionally, the current MOU describes coordination of actions and cooperative sharing of information between the two agencies under the subsection



entitled Interagency activities.

In addition to current language, as required by HB 2771, the amended MOU describes the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water (as defined in 30 TAC §305.541), hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibilities will occur upon the United States Environmental Protection Agency's (EPA) approval of the TCEQ's request to amend or supplement its Texas Pollutant Discharge Elimination System (TPDES) program.

Upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program, the TCEQ shall assume authority over the final orders at the RRC that are within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ. The RRC shall retain any enforcement actions pending at the time the TCEQ receives delegation from EPA that are within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ until final resolution of any such enforcement action is reached. An enforcement action considered pending at the time the TCEQ receives delegation from EPA includes any violation within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ cited by the RRC in a Notice of Violation that has not resulted in a final order from the RRC. Compliance monitoring for enforcement actions pending at the time the TCEQ receives

delegation from EPA shall transfer to the TCEQ when the administrative order of the RRC becomes final. The RRC will provide the TCEQ any relevant information in its possession regarding the final enforcement orders that are transferred to the TCEQ. The TCEQ shall assume authority for tracking compliance with any other final RRC order that is within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ that have not been resolved at the time the TCEQ receives delegation from EPA.

The TCEQ and the RRC agree that all pending lawsuits at the Office of the Attorney General (OAG), except for collections-only actions, within the scope of the functions, programs, powers, duties, or activities transferred to the TCEQ are the responsibility of the TCEQ after the transfer. The TCEQ and the RRC will coordinate with the OAG as needed to ensure that these lawsuits are transferred to the TCEQ. The RRC agrees to cooperate with and assist, as necessary, the TCEQ and the OAG with RRC enforcement actions and appeals of RRC decisions.

HB 2230 allows the TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the disposal of nonhazardous brine or drinking water residuals in a Class II well permitted by the RRC. The adopted MOU implements the dual authority granted by HB 2230. The adopted MOU also allows the TCEQ to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous

drinking water treatment residuals (DWTR), under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

### **Section Discussion**

*§7.117, Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality*

The commission repeals §7.117 and simultaneously adopts new §7.117 to incorporate MOU language regarding the division of jurisdiction between the RRC and the TCEQ. The adopted rulemaking incorporates the MOU as it currently exists in 16 TAC §3.30, with the amendments required by HB 2771 and HB 2230. The TCEQ repeals and adopts new §7.117 to ensure the TCEQ has completed all necessary requirements for the delegation package before requesting approval from EPA for delegation of National Pollutant Discharge Elimination System (NPDES) permitting authority for discharges of produced water, hydrostatic test water, and gas plant effluent.

Throughout this rule the reference to Small Business and Environmental Assistance (SBEA) has been replaced with TCEQ External Relations Division.

Adopted new §7.117(a) provides the reason the MOU is needed. Additionally, subsection (a)(4) provides the reference to effective dates of the MOU and subsection (a)(5) provides the reference to the current MOU.

Adopted new §7.117(b) provides the general agency jurisdictions. Additionally, adopted new subsection (b)(1)(B)(i) - (iii) and (2)(B)(i) provides language to reflect the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibilities will occur upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program.

Adopted new §7.117(c) provides the definition of hazardous waste and identifies exemptions from classifications as hazardous waste for certain oil and gas waste.

Adopted new §7.117(d) describes the jurisdiction over waste from specific activities including: drilling, operation, and plugging of wells associated with the exploration, development, or production of oil, gas, or geothermal resources; field treatment of produced fluids; storage of oil; underground hydrocarbon storage; underground natural gas storage; transportation of crude oil or natural gas; reclamation plants; refining of oil; natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants; manufacturing processes; commercial service company facilities and training facilities; and mobile offshore drilling units.

Additionally, adopted new subsection (d)(12)(A) and (C) provides language to reflect

the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibilities will occur upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program.

Adopted new §7.117(e) describes interagency activities including: recycling and pollution prevention; treatment of waste under RRC jurisdiction at facilities authorized by the TCEQ under 30 TAC Chapter 334, Subchapter K; processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ; management of nonhazardous waste under TCEQ jurisdiction at facilities regulated by the RRC; drilling at landfills; coordination of actions and cooperative sharing of information; groundwater; emergency and spill response; and anthropogenic carbon dioxide storage.

Adopted new subsection (e)(1)(A) amends current MOU language to delete the term "solid" as a modifier of the term "waste" to clarify that generators of solid waste and oil and gas waste are encouraged to recycle whenever possible to avoid disposal. Additionally, adopted new subsection (e)(4)(E) amends current MOU language to reflect the TCEQ's authority to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous DWTR, under the jurisdiction of the TCEQ, by injection in a Class II

injection well permitted by the RRC. Additionally, subsection (e)(7)(B)(ii) includes the citation to the Code of Federal Regulations (CFR) for the definition of "underground source of drinking water."

Adopted new §7.117(f) describes the jurisdiction of the TCEQ and the RRC to regulate and license various types of radioactive materials.

Adopted new §7.117(g) reflects the effective date of the MOU and amends current MOU language to reflect the new effective date of July 15, 2020.

### **Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as 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. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the

state.

The adopted MOU is the result of collaboration between the TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU also describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste.

This rulemaking implements HB 2230 which enacted TWC, §27.026, and HB 2771 which amended TWC, §26.131.

The adopted MOU also describes the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibilities will occur upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program. The adopted MOU also reflects the TCEQ's authority to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous DWTR, under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

Therefore, the commission finds that this rulemaking is not a "Major environmental

rule."

Furthermore, the rulemaking 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 state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking does not exceed a standard set by federal law, rather it implements state law. Also, the rulemaking does not exceed an express requirement of state law nor a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but under HB 2230, which enacted TWC, §27.026, and HB 2771, which amended TWC, §26.131. Under Texas Government Code, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the adopted rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact



Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The adopted MOU is the result of collaboration between the TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU also describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste.

This rulemaking implements HB 2230 which enacted TWC, §27.026, and HB 2771 which amended TWC, §26.131.

The specific purpose of this rulemaking is to repeal §7.117 and adopt new §7.117 to incorporate the current MOU codified in 16 TAC §3.30 and the changes required by HB 2771 and HB 2230. HB 2771 relates to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production, and development of oil, natural gas, or geothermal resources. This transfer of responsibility will occur upon EPA's approval of the TCEQ's request to amend or supplement its TPDES program.

HB 2230 describes how the TCEQ may authorize by individual permit, general permit,

or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water residuals, under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

This rulemaking imposes no burdens on private real property because the adopted rulemaking neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in the value of private real property as a result of this rulemaking.

#### **Consistency with the Coastal Management Program**

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

#### **Public Comment**

The comment period closed on March 30, 2020. Comments were received from Sierra Club, Lone Star Chapter (Sierra Club).

*Comment*

Sierra Club stated general support for the MOU.

*Response*

**The TCEQ acknowledges the comment.**

§7.117(b)(2)(B)

*Comment*

Sierra Club commented that the RRC should require that the entities regulated by the RRC comply with the TCEQ's regulations.

*Response*

**The TCEQ did not make any changes in response to this comment. The RRC does not have authority to require an entity to comply with the TCEQ's rules.**

§7.117(b)(2)(B)

*Comment*

Sierra Club recommended that "The TCEQ and the RRC *may consult* as necessary regarding application and interpretation of Texas Surface Water Quality Standards" be replaced with "The TCEQ and the RRC *will consult* as necessary regarding application and interpretation of Texas Surface Water Quality Standards."

***Response***

**The TCEQ did not make any changes in response to this comment. The MOU describes how the RRC and the TCEQ implement the jurisdiction granted to each agency; the MOU does not impose requirements on the RRC or the TCEQ that are not reflective of each agency's statutory jurisdiction. The TCEQ and the RRC work collaboratively on environmental issues, therefore the TCEQ respectfully disagrees with the recommendation to change the existing MOU language.**

§7.117(e)(3)(G)

***Comment***

Sierra Club commented that the type and volume of waste under the RRC's jurisdiction that is disposed of at a TCEQ-regulated facility should be reported to the TCEQ-regulated facility, then the TCEQ-regulated facility should be required to report the type and volume of waste to the TCEQ.

***Response***

**The TCEQ did not make any changes in response to this comment. Generally, the existing regulations achieve the purposes set out in this comment. Transporters of oil and gas waste under the jurisdiction of the RRC notify operators of waste management facilities under the jurisdiction of the TCEQ that waste presented for management or final disposition is oil and gas waste. Additionally, operators of**

**waste management facilities under the jurisdiction of the TCEQ are required to make and maintain records of the types and volumes of waste received and make those records available to the TCEQ upon request and/or report the information to the TCEQ. Because TCEQ-authorized waste management facilities may only accept waste that is authorized for acceptance by the facility permit or other authorization, before waste is accepted, a facility operator must ensure that acceptance of the waste is authorized. As such, transporters delivering waste to TCEQ-authorized waste management facilities for management or final disposition are required to provide documentation, such as bills of lading or manifests, regarding the characteristics and volumes of waste that include identifying waste under the jurisdiction of the RRC as oil and gas waste.**

§7.117(e)(6)(B)

*Comment*

Sierra Club suggested language be added to the MOU requiring: 1) the TCEQ notify the RRC if it receives a complaint or information regarding a violation at a facility regulated by the RRC; and 2) the RRC notify the TCEQ if it receives a complaint or information regarding a violation at a facility regulated by the TCEQ.

*Response*

**The TCEQ did not make any changes in response to this comment. The RRC and the TCEQ have long-standing established protocols and practices regarding the**

**coordination of actions and the cooperative sharing of information between the two agencies. The RRC and the TCEQ have an existing and longstanding policy and practice of active interagency communication and coordination regarding complaints and enforcement. To specifically address the interagency policy following the delegation transfer, the TCEQ will continue to notify the RRC regarding any potential violations of RRC requirements identified by the TCEQ and will continue to provide available information as requested to assist with the RRC's enforcement actions. The RRC will continue to notify the TCEQ regarding any potential violations of the TCEQ requirements identified by the RRC and will continue to provide available information as requested to assist with the TCEQ's enforcement actions. The TCEQ will continue to refer to the RRC, as appropriate, those complaints under the jurisdiction of the RRC. The RRC will continue to refer to the TCEQ, as appropriate, those complaints under the jurisdiction of the TCEQ. Additionally, the TCEQ and the RRC will continue to coordinate investigations and responses to complaints and possible enforcement actions that may involve both agencies' jurisdictions.**

**Moreover, the MOU articulates in §7.117(e)(6)(B) a notification procedure when employees of either agency receive a complaint or discover a violation in the course of their official duties.**

§7.117(e)(6)(B)

*Comment*

Sierra Club commented that further discussion about enforcement, including OAG enforcement, is warranted.

*Response*

**The TCEQ did not make any changes in response to this comment. The Background and Summary of the Factual Basis for the Adopted Rules section of this preamble describes the coordination of action and sharing of information between the two agencies regarding enforcement actions that are within the scope of the functions, programs, powers, duties, or activities to be transferred to the TCEQ in accordance with HB 2771.**

**[\$7.117]**

**Statutory Authority**

The repeal of this section is adopted under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.104, which establishes the authority of the commission to enter the memoranda of understanding (MOU) with any other state agency and adopt by rule the MOU; TWC, §5.105, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §26.011, which establishes that the commission shall establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.121, which establishes the authority of the commission to issue discharge permits; TWC, §26.131, which establishes the duties of the Railroad Commission of Texas (RRC); TWC, §27.011, which establishes the commission's authority to issue permits for injection wells; TWC, §27.019, which establishes the commission's authority to adopt rules under TWC, Chapter 27; TWC, §27.026, which establishes the authority of the RRC and the TCEQ to enter a memorandum of understanding by rule to implement House Bill (HB) 2230 (84th Texas Legislature, 2015); TWC, §27.049, which establishes the authority of the RRC and the TCEQ to comply with TWC, Chapter 27 to enter a memorandum of understanding by rule and amend or enter a new memorandum of understanding by



rule; Texas Health and Safety Code (THSC), §361.011, which establishes the TCEQ's jurisdiction over municipal solid waste; THSC, §361.016, which establishes the authority of the commission to enter the MOU with any other state agency and adopt by rule the MOU; THSC, §361.017, which establishes the TCEQ's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §401.001, which establishes the TCEQ's jurisdiction over regulation and licensing of radioactive materials and substances; and THSC, §401.069, which establishes the authority for the TCEQ to enter the MOU with state agencies by rule.

The repeal of this section implements HB 2230, which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019), which amended TWC, §26.131.

**[§7.117. Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality.]**

[The Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality, concerning cooperation and the division of jurisdiction between the agencies regarding wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil, is adopted by reference as adopted in Texas Railroad Commission rule 16 TAC §3.30 (concerning Memorandum of Understanding between the Railroad Commission of Texas and the

Texas Commission on Environmental Quality) effective May 1, 2012. If a copy of this document cannot be obtained from the internet, a copy can be requested from the Texas Commission on Environmental Quality, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.]

**§7.117**

**Statutory Authority**

The new section is adopted under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.104, which establishes the authority of the commission to enter a memoranda of understanding (MOU) with any other state agency and adopt by rule the MOU; TWC, §5.105, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §26.011, which establishes that the commission shall establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.121, which establishes the authority of the commission to issue discharge permits; TWC, §26.131, which establishes the duties of the Railroad Commission of Texas (RRC); TWC, §27.011, which establishes the commission's authority to issue permits for injection wells; TWC, §27.019, which establishes the commission's authority to adopt rules under TWC, Chapter 27; TWC, §27.026, which establishes the authority of the RRC and the TCEQ to enter a memorandum of understanding by rule to implement House Bill (HB) 2230 (84th Texas Legislature, 2015); TWC, §27.049, which establishes the authority of the RRC and the TCEQ to comply with TWC, Chapter 27 to enter a memorandum of understanding by rule and to amend or enter a new memorandum of understanding by rule; Texas

Health and Safety Code (THSC), §361.011, which establishes the TCEQ's jurisdiction over municipal solid waste; THSC, §361.016, which establishes the authority of the commission to enter the MOU with any other state agency and adopt by rule the MOU; THSC, §361.017, which establishes the TCEQ's jurisdiction over industrial solid waste and municipal hazardous waste; THSC, §401.001, which establishes the TCEQ's jurisdiction over regulation and licensing of radioactive materials and substances; and THSC, §401.069, which establishes the authority for the TCEQ to enter the MOU with state agencies by rule.

The new section implements HB 2230, which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019), which amended TWC, §26.131.

**§7.117. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).**

(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.

(1) Section 10 of House Bill 1407, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, provides as follows: On or before January 1, 1982, the Texas Department of Water

Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary.

(2) Texas Health and Safety Code, §401.414, relating to Memoranda of Understanding, requires the Railroad Commission of Texas and the Texas Commission on Environmental Quality to adopt a memorandum of understanding (MOU) defining the agencies' respective duties under Texas Health and Safety Code, Chapter 401, relating to radioactive materials and other sources of radiation. Texas Health and Safety Code, §401.415, relating to oil and gas naturally occurring radioactive material (NORM) waste, provides that the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste, and in so doing shall consult with the Texas Natural Resource Conservation Commission (now TCEQ) and the Department of Health (now Department of State Health Services) regarding protection of the public health and the environment.

(3) Texas Water Code, Chapters 26 and 27, provide that the Railroad Commission and TCEQ collaborate on matters related to discharges, surface water quality, groundwater protection, underground injection control and geologic storage of

carbon dioxide. Texas Water Code, §27.049, relating to Memorandum of Understanding, requires the RRC and TCEO to adopt a new MOU or amend the existing MOU to reflect the agencies' respective duties under Texas Water Code, Chapter 27, Subchapter C-1 (relating to Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide).

(4) The original MOU between the agencies adopted pursuant to HB 1407 (67th Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987, May 31, 1998, August 30, 2010, and again on May 1, 2012, to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air Control Board, and portions of the Texas Department of Health) jurisdiction over industrial and hazardous wastes.

(5) The agencies have determined that the revised MOU that became effective on May 1, 2012, should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility.

(b) General agency jurisdictions.

(1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas Natural Resource Conservation Commission).

(A) Solid waste. Under Texas Health and Safety Code, Chapter 361, §§361.001 - 361.754, the TCEQ has jurisdiction over solid waste. The TCEQ's jurisdiction encompasses hazardous and nonhazardous, industrial and municipal, solid wastes.

(B) Water quality.

(i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except for discharges regulated by the RRC. Upon delegation from the United States Environmental Protection Agency to the TCEQ of authority to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ has sole authority to issue permits for those discharges. For the purposes of TCEQ's implementation of Texas Water Code, §26.131, "produced water" is defined as all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent, that is discharged into water in the state, including waste streams regulated by 40 CFR Part 435.

(ii) Discharge permits existing on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. RRC permits issued prior to TCEQ delegation of NPDES authority shall remain effective until revoked or expired. Amendment or renewal of such permits on or after the effective date of delegation shall be pursuant to TCEQ's TPDES authority. The TPDES permit will supersede and replace the RRC permit. For facilities that have both an RRC permit and an EPA permit, TCEQ will issue the TPDES permit upon amendment or renewal of the RRC or EPA permit, whichever occurs first.

(iii) Discharge applications pending on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. TCEQ shall assume authority for discharge applications pending at the time TCEQ receives delegation from EPA. The RRC will provide TCEQ the permit application and any other relevant information necessary to administratively and technically review and process the applications. TCEQ will review and process these pending applications in accordance with TPDES requirements.

(iv) Storm water. TCEQ has jurisdiction over stormwater discharges that are required to be permitted pursuant to Title 40 Code of Federal



Regulations (CFR) Part 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES permit. These storm water permits may also include authorizations for certain minor types of non-storm water discharges.

(I) Storm water associated with industrial activities.

The TCEQ regulates storm water discharges associated with certain industrial activities under individual TPDES permits and under the TPDES Multi-Sector General Permit, except for discharges associated with industrial activities under the jurisdiction of the RRC.

(II) Storm water associated with construction

activities. The TCEQ regulates storm water discharges associated with construction activities, except for discharges from construction activities under the jurisdiction of the RRC.

(III) Municipal storm water discharges. The TCEQ has jurisdiction over discharges from regulated municipal storm sewer systems (MS4s).

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the TCEQ, and a portion of a site

is regulated by the EPA and RRC, storm water authorization must be obtained from the TCEQ for the portion(s) of the site regulated by the TCEQ, and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site. Discharge of storm water from a facility that stores both refined products intended for off-site use and crude oil in aboveground tanks is regulated by the TCEQ.

(v) State water quality certification. Under the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for activities that require a federal license or permit and that may result in a discharge to waters of the United States, except for those activities regulated by the RRC.

(vi) Commercial brine extraction and evaporation. Under Texas Water Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater and that are not regulated by the RRC.

(C) Injection wells. Under the Texas Water Code, Chapter 27, the TCEQ has jurisdiction to regulate and authorize the drilling, construction, operation, and closure of injection wells unless the activity is subject to the jurisdiction of the RRC. Injection wells under TCEQ's jurisdiction are identified in §331.11 of this title (relating to Classification of Injection Wells) and include:

(i) Class I injection wells for the disposal of hazardous, radioactive, industrial or municipal waste that inject fluids below the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water;

(ii) Class III injection wells for the extraction of minerals including solution mining of sodium sulfate, sulfur, potash, phosphate, copper, uranium and the mining of sulfur by the Frasch process;

(iii) Class IV injection wells for the disposal of hazardous or radioactive waste which inject fluids into or above formations that contain an underground source of drinking water; and

(iv) Class V injection wells that are not under the jurisdiction of the RRC, such as aquifer remediation wells, aquifer recharge wells, aquifer storage wells, large capacity septic systems, storm water drainage wells, salt water intrusion barrier wells, and closed loop geothermal wells.

(2) Railroad Commission of Texas (RRC).

(A) Oil and gas waste.

(i) Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, including storage, handling, reclamation, gathering, transportation, or distribution of crude oil or natural gas by pipeline, prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel, are under the jurisdiction of the RRC, except as noted in clause (ii) of this subparagraph. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (relating to exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 TAC §3.8(a)(30) (relating to Water Protection) and at §335.1 of this title (relating to Definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.

(ii) Hazardous wastes arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEO until the RRC is authorized by EPA to administer RCRA. When

the RRC is authorized by EPA to administer RCRA, jurisdiction over such hazardous wastes will transfer from the TCEO to the RRC.

(B) Water quality.

(i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities, except that on delegation to the TCEO of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEO has sole authority to issue permits for those discharges. Discharges regulated by the RRC into or adjacent to water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEO, the RRC has the responsibility for enforcing any violation of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEO that are not water quality standards. The TCEO and the RRC may consult as necessary regarding application and interpretation of Texas Surface Water Quality Standards.

(ii) Storm water. When required by federal law,

authorization for storm water discharges that are under the jurisdiction of the RRC must be obtained through application for a National Pollutant Discharge Elimination System (NPDES) permit with the EPA and authorization from the RRC, as applicable.

(I) Storm water associated with industrial activities.

Where required by federal law, discharges of storm water associated with facilities and activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under 16 TAC §3.8 (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water to help ensure protection of surface water quality during storm events.

(II) Storm water associated with construction

activities. Where required by federal law, discharges of storm water associated with construction activities under the RRC's jurisdiction must be authorized by the EPA and

the RRC, as applicable. Activities under RRC jurisdiction include construction of a facility that, when completed, would be associated with the exploration, development, or production of oil or gas or geothermal resources, such as a well site; treatment or storage facility; underground hydrocarbon or natural gas storage facility; reclamation plant; gas processing facility; compressor station; terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility; a carbon dioxide geologic storage facility under the jurisdiction of the RRC; and a gathering, transmission, or distribution pipeline that will transport crude oil or natural gas, including natural gas liquids, prior to refining of such oil or the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The RRC also has jurisdiction over storm water from land disturbance associated with a site survey that is conducted prior to construction of a facility that would be regulated by the RRC. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under 16 TAC §3.8 (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to

implement and maintain BMPs to minimize discharges of pollutants, including sediment, in storm water during construction activities to help ensure protection of surface water quality during storm events.

(III) Municipal storm water discharges. Storm water discharges from facilities regulated by the RRC located within an MS4 are not regulated by the TCEQ. However, a municipality may regulate storm water discharges from RRC sites into their MS4.

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the RRC and the EPA, and a portion of a site is regulated by the TCEQ, storm water authorization must be obtained from the EPA and the RRC, as applicable, for the portion(s) of the site under RRC jurisdiction and from the TCEQ for the TCEQ regulated portion(s) of the site. Discharge of storm water from a terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility is under the jurisdiction of the RRC.

(iii) State water quality certification. The RRC performs state water quality certifications, as authorized by the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341) for activities that require a federal license or permit and that



may result in any discharge to waters of the United States for those activities regulated by the RRC.

(C) Injection wells. The RRC has jurisdiction over the drilling, construction, operation, and closure of the following injection wells.

(i) Disposal wells. The RRC has jurisdiction under Texas Water Code, Chapter 27, over injection wells used to dispose of oil and gas waste. Texas Water Code, Chapter 27, defines "oil and gas waste" to mean "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material." The term "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources" includes waste associated with transportation of crude oil or natural gas by pipeline pursuant to Texas Natural Resources Code, §91.101.

(ii) Enhanced recovery wells. The RRC has jurisdiction over wells into which fluids are injected for enhanced recovery of oil or natural gas.

(iii) Brine mining. Under Texas Water Code, §27.036, the RRC has jurisdiction over brine mining and may issue permits for injection wells.

(iv) Geologic storage of carbon dioxide. Under Texas Water Code, §27.011 and §27.041, and subject to the review of the legislature based on the recommendations made in the preliminary report described by Section 10, Senate Bill No. 1387, Acts of the 81st Legislature, Regular Session (2009), the RRC has jurisdiction over geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir and over a well used for such injection purposes regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and converted.

(v) Hydrocarbon storage. The RRC has jurisdiction over wells into which fluids are injected for storage of hydrocarbons that are liquid at standard temperature and pressure.

(vi) Geothermal energy. Under Texas Natural Resources Code, Chapter 141, the RRC has jurisdiction over injection wells for the exploration, development, and production of geothermal energy and associated resources.

(vii) In-situ ~~in-situ~~ tar sands. Under Texas Water Code, §27.035, the RRC has jurisdiction over the *in situ* ~~in-situ~~ recovery of tar sands and may issue permits for injection wells used for the *in situ* ~~in-situ~~ recovery of tar sands.

(c) Definition of hazardous waste.

(1) Under the Texas Health and Safety Code, §361.003(12), a "hazardous waste" subject to the jurisdiction of the TCEQ is defined as "solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901, et seq.)." Similarly, under Texas Natural Resources Code, §91.601(1), "oil and gas hazardous waste" subject to the jurisdiction of the RRC is defined as an "oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.)."

(2) Federal regulations adopted under authority of the federal Solid Waste Disposal Act, as amended by RCRA, exempt from regulation as hazardous waste certain oil and gas wastes. Under 40 Code of Federal Regulations (CFR) §261.4(b)(5), "drilling fluids, produced waters, and other wastes associated with the exploration,

development, or production of crude oil, natural gas or geothermal energy" are described as wastes that are exempt from federal hazardous waste regulations.

(3) A partial list of wastes associated with oil, gas, and geothermal exploration, development, and production that are considered exempt from hazardous waste regulation under RCRA can be found in EPA's "Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes," 53 FedReg 25,446 (July 6, 1988). A further explanation of the exemption can be found in the "Clarification of the Regulatory Determination for Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy," 58 FedReg 15, 284 (March 22, 1993). The exemption codified at 40 CFR §261.4(b)(5) and discussed in the Regulatory Determination has been, and may continue to be, clarified in subsequent guidance issued by the EPA.

(d) Jurisdiction over waste from specific activities.

(1) Drilling, operation, and plugging of wells associated with the exploration, development, or production of oil, gas, or geothermal resources. Wells associated with the exploration, development, or production of oil, gas, or geothermal resources include exploratory wells, cathodic protection holes, core holes, oil wells, gas wells, geothermal resource wells, fluid injection wells used for secondary or enhanced recovery of oil or gas, oil and gas waste disposal wells, and injection water source

wells. Several types of waste materials can be generated during the drilling, operation, and plugging of these wells. These waste materials include drilling fluids (including water-based and oil-based fluids), cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals (including scale inhibitors, emulsion breakers, paraffin inhibitors, and surfactants), waste cement, filters (including used oil filters), domestic sewage (including waterborne human waste and waste from activities such as bathing and food preparation), and trash (including inert waste, barrels, dope cans, oily rags, mud sacks, and garbage). Generally, these wastes, whether disposed of by discharge, landfill, land farm, evaporation, or injection, are subject to the jurisdiction of the RRC. Wastes from oil, gas, and geothermal exploration activities subject to regulation by the RRC when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized by the TCEQ under Chapter 330 of this title (relating to Municipal Solid Waste) are, as defined in §330.3(148) of this title (relating to Definitions), "special wastes."

(2) Field treatment of produced fluids. Oil, gas, and water produced from oil, gas, or geothermal resource wells may be treated in the field in facilities such as separators, skimmers, heater treaters, dehydrators, and sweetening units. Waste that results from the field treatment of oil and gas include waste hydrocarbons (including used oil), produced water, hydrogen sulfide scavengers, dehydration wastes, treating

and cleaning chemicals, filters (including used oil filters), asbestos insulation, domestic sewage, and trash are subject to the jurisdiction of the RRC.

(3) Storage of oil.

(A) Tank bottoms and other wastes from the storage of crude oil (whether foreign or domestic) before it enters the refinery are under the jurisdiction of the RRC. In addition, waste resulting from storage of crude oil at refineries is subject to the jurisdiction of the TCEQ.

(B) Wastes generated from storage tanks that are part of the refinery and wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the TCEQ.

(4) Underground hydrocarbon storage. The disposal of wastes, including saltwater, resulting from the construction, creation, operation, maintenance, closure, or abandonment of an "underground hydrocarbon storage facility" is subject to the jurisdiction of the RRC, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" have the meanings set out in Texas Natural Resources Code, §91.201.

(5) Underground natural gas storage. The disposal of wastes resulting from the construction, operation, or abandonment of an "underground natural gas storage facility" is subject to the jurisdiction of the RRC, provided that the terms "natural gas" and "storage facility" have the meanings set out in Texas Natural Resources Code, §91.173.

(6) Transportation of crude oil or natural gas.

(A) Jurisdiction over pipeline-related activities. The RRC has jurisdiction over matters related to pipeline safety for pipelines in Texas, as referenced in 16 TAC §8.1 (relating to General Applicability and Standards) pursuant to Chapter 121 of the Texas Utilities Code and Chapter 117 of the Texas Natural Resources Code. The RRC has jurisdiction over spill response and remediation of releases from pipelines transporting crude oil, natural gas, and condensate that originate from exploration and production facilities to the refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC is responsible for water quality certification issues related to construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC has jurisdiction over

waste generated by construction and operation of pipelines transporting carbon dioxide.

(B) Crude oil and natural gas are transported by railcars, tank trucks, barges, tankers, and pipelines. The RRC has jurisdiction over waste from the transportation of crude oil by pipeline, regardless of the crude oil source (foreign or domestic) prior to arrival at a refinery. The RRC also has jurisdiction over waste from the transportation by pipeline of natural gas, including natural gas liquids, prior to the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The transportation wastes subject to the jurisdiction of the RRC include wastes from pipeline compressor or pressure stations and wastes from pipeline hydrostatic pressure tests and other pipeline operations. These wastes include waste hydrocarbons (including used oil), treating and cleaning chemicals, filters (including used oil filters), scraper trap sludge, trash, domestic sewage, wastes contaminated with polychlorinated biphenyls (PCBs) (including transformers, capacitors, ballasts, and soils), soils contaminated with mercury from leaking mercury meters, asbestos insulation, transite pipe, and hydrostatic test waters.

(C) The TCEO has jurisdiction over waste from transportation of refined products by pipeline.



(D) The TCEQ also has jurisdiction over wastes associated with transportation of crude oil and natural gas, including natural gas liquids, by railcar, tank truck, barge, or tanker.

(7) Reclamation plants.

(A) The RRC has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. Waste management activities of reclamation plants for other wastes are subject to the jurisdiction of the TCEQ.

(B) The RRC has jurisdiction over the conservation and prevention of waste of crude oil and therefore must approve all movements of crude oil-containing materials to reclamation plants. The applicable statute and regulations consist primarily of reporting requirements for accounting purposes.

(8) Refining of oil.

(A) The management of wastes resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and American Petroleum Institute (API) separator sludges, is subject to the jurisdiction of

the TCEO. The processing of light ends from the distillation and cracking of crude oil or crude oil products is considered to be a refining operation. The term "refining" does not include the processing of natural gas or natural gas liquids.

(B) The RRC has jurisdiction over refining activities for the conservation and the prevention of waste of crude oil. The RRC requires that all crude oil streams into or out of a refinery be reported for accounting purposes. In addition, the RRC requires that materials recycled and used as a fuel, such as still bottoms or waste crude oil, be reported.

(9) Natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants. Wastes resulting from activities associated with these facilities include produced water, cooling tower water, sulfur bead, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, wastes contaminated with PCBs (including transformers, capacitors, ballasts, and soils), treating and cleaning chemicals, filters, trash, domestic sewage, and dehydration materials. These wastes are subject to the jurisdiction of the RRC under Texas Natural Resources Code, §1.101. Disposal of waste from activities associated with natural gas or natural gas liquids processing plants (including gas fractionation facilities), and pressure maintenance or repressurizing plants by injection is subject to the jurisdiction of the RRC under Texas Water Code, Chapter 27. However, until delegation

of authority under RCRA to the RRC, the TCEO shall have jurisdiction over wastes resulting from these activities that are not exempt from federal hazardous waste regulation under RCRA and that are considered hazardous under applicable federal rules.

(10) Manufacturing processes.

(A) Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, or from the manufacture of carbon black, are industrial wastes subject to the jurisdiction of the TCEO. The term "manufacturing process" does not include the processing (including fractionation) of natural gas or natural gas liquids at natural gas or natural gas liquids processing plants.

(B) The RRC has jurisdiction under Texas Natural Resources Code, Chapter 87, to regulate the use of natural gas in the production of carbon black.

(C) Biofuels. The TCEO has jurisdiction over wastes associated with the manufacturing of biofuels and biodiesel. TCEO Regulatory Guidance Document RG-462 contains additional information regarding biodiesel manufacturing in the state of Texas.

(11) Commercial service company facilities and training facilities.

(A) The TCEQ has jurisdiction over wastes generated at facilities, other than actual exploration, development, or production sites (field sites), where oil and gas industry workers are trained. In addition, the TCEQ has jurisdiction over wastes generated at facilities where materials, processes, and equipment associated with oil and gas industry operations are researched, developed, designed, and manufactured. However, wastes generated from tests of materials, processes, and equipment at field sites are under the jurisdiction of the RRC.

(B) The TCEQ also has jurisdiction over waste generated at commercial service company facilities operated by persons providing equipment, materials, or services (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) to the oil and gas industry. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; drum, tank, and truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and acidizing fluids.

(C) The term "commercial service company facility" does not include a station facility such as a warehouse, pipeyard, or equipment storage facility

belonging to an oil and gas operator and used solely for the support of that operator's own activities associated with the exploration, development, or production activities.

(D) Notwithstanding subparagraphs (A) - (C) of this paragraph, the RRC has jurisdiction over disposal of oil and gas wastes, such as waste drilling fluids and NORM-contaminated pipe scale, in volumes greater than the incidental volumes usually received at such facilities, that are managed at commercial service company facilities.

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to 16 TAC §3.8(f) (relating to Water Protection).

(12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or mineral resources.

(A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the Texas General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is being used in connection with activities associated with the exploration, development, or production of oil or gas or geothermal resources, except that upon delegation to the TCEO of NPDES authority for discharges into surface water

in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEO shall assume RRC's authority under this subsection.

(B) The TCEQ and, where applicable, the EPA, the U.S. Coast Guard, or the GLO, have jurisdiction over discharges from an MODU when the unit is being serviced at a maintenance facility.

(C) Where applicable, the EPA, the U.S. Coast Guard, or the GLO has jurisdiction over discharges from an MODU during transportation from shore to exploration, development or production site, transportation between sites, and transportation to a maintenance facility.

(e) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TCEO and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of wastes. Questions regarding source reduction and recycling may be directed to the TCEO External Relations Division, or to the RRC. The TCEO may require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste

under the jurisdiction of the RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ at a facility regulated by the RRC.

(B) The TCEQ External Relations Division and the RRC will coordinate as necessary to maintain a working relationship to enhance the efforts to share information and use resources more efficiently. The TCEQ External Relations Division will make the proper TCEQ personnel aware of the services offered by the RRC, share information with the RRC to maximize services to oil and gas operators, and advise oil and gas operators of RRC services. The RRC will make the proper RRC personnel aware of the services offered by the TCEQ External Relations Division, share information with the TCEQ External Relations Division to maximize services to industrial operators, and advise industrial operators of the TCEQ External Relations Division services.

(2) Treatment of wastes under RRC jurisdiction at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil).

(A) Soils contaminated with constituents that are physically and chemically similar to those normally found in soils at leaking underground petroleum storage tanks from generators under the jurisdiction of the RRC are eligible for

treatment at TCEQ regulated soil treatment facilities once alternatives for recycling and source reduction have been explored. For the purpose of this provision, soils containing petroleum substance(s) as defined in §334.481 of this title (relating to Definitions) are considered to be similar, but drilling muds, acids, or other chemicals used in oil and gas activities are not considered similar. Generators under the jurisdiction of the RRC must meet the same requirements as generators under the jurisdiction of the TCEQ when sending their petroleum contaminated soils to soil treatment facilities under TCEQ jurisdiction. Those requirements are in §334.496 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste), except subsection (c) which is not applicable, and §334.497 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators). RRC generators with questions on these requirements should contact the TCEQ.

(B) Generators under RRC jurisdiction should also be aware that TCEQ regulated soil treatment facilities are required by §334.499 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities) to maintain documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site.

(C) The RRC must specifically authorize management of contaminated soils under its jurisdiction at facilities authorized by the TCEQ under



Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil). The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations.

(D) All waste, including treated waste, subject to the jurisdiction of the RRC and managed at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title will remain subject to the jurisdiction of the RRC. Such materials will be subject to RRC regulations regarding final reuse, recycling, or disposal.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title.

(3) Processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ.

(A) As provided in this paragraph, waste materials subject to the jurisdiction of the RRC may be managed at solid waste facilities under the jurisdiction of the TCEQ once alternatives for recycling and source reduction have been explored. The RRC must specifically authorize management of wastes under its jurisdiction at

facilities regulated by the TCEQ. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations. In addition, except as provided in subparagraph (B) of this paragraph, the concurrence of the TCEQ is required to manage "special waste" under the jurisdiction of the RRC at a facility regulated by the TCEQ. The TCEQ's concurrence may be subject to specified conditions.

(B) A facility under the jurisdiction of the TCEQ may accept, without further individual concurrence, waste under the jurisdiction of the RRC if that facility is permitted or otherwise authorized to accept that particular type of waste. The phrase "that type of waste" does not specifically refer to waste under the jurisdiction of the RRC, but rather to the waste's physical and chemical characteristics. Management and disposal of waste under the jurisdiction of the RRC is subject to TCEQ's rules governing both special waste and industrial waste.

(C) If the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization, individual written concurrences from the TCEQ shall be required to manage wastes under the jurisdiction of the RRC at TCEQ regulated facilities. Recommendations for the management of special wastes associated with the exploration, development, or production of oil, gas, or geothermal resources are found in TCEQ Regulatory Guidance document RG-3. (This is required only if the TCEQ regulated facility receiving the waste

does not have approval to accept the waste included in its permit or other authorization provided by the TCEQ.) To obtain an individual concurrence, the waste generator must provide to the TCEQ sufficient information to allow the concurrence determination to be made, including the identity of the proposed waste management facility, the process generating the waste, the quantity of waste, and the physical and chemical nature of the waste involved (using process knowledge and/or laboratory analysis as defined in Chapter 335, Subchapter R of this title (relating to Waste Classification)). In obtaining TCEQ approval, generators may use their existing knowledge about the process or materials entering it to characterize their wastes. Material Safety Data Sheets, manufacturer's literature, and other documentation generated in conjunction with a particular process may be used. Process knowledge must be documented and submitted with the request for approval.

(D) Domestic septage collected from portable toilets at facilities subject to RRC jurisdiction that is not mixed with other waste materials may be managed at a facility permitted by the TCEQ for disposal, incineration, or land application for beneficial use of such domestic septage waste without specific authorization from the TCEQ or the RRC. Waste sludge subject to the jurisdiction of the RRC may not be applied to the land at a facility permitted by the TCEQ for the beneficial use of sewage sludge or water treatment sludge.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities under the jurisdiction of the TCEQ. If a receiving facility requires a TCEQ waste code for waste under the jurisdiction of the RRC, a code consisting of the following may be provided:

(i) the sequence number "RRCT";

(ii) the appropriate form code, as specified in Chapter 335, Subchapter R, §335.521, Appendix 3 of this title (relating to Appendices); and

(iii) the waste classification code "H" if the waste is a hazardous oil and gas waste, or "R" if the waste is a nonhazardous oil and gas waste.

(F) If a facility requests or requires a TCEQ waste generator registration number for wastes under the jurisdiction of the RRC, the registration number "XXXRC" may be provided.

(G) Wastes that are under the jurisdiction of the RRC need not be reported to the TCEQ.

(4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated by the RRC.

(A) Once alternatives for recycling and source reduction have been explored, and with prior authorization from the RRC, the following nonhazardous wastes subject to the jurisdiction of the TCEQ may be disposed of, other than by injection into a Class II well, at a facility regulated by the RRC; bioremediated at a facility regulated by the RRC (prior to reuse, recycling, or disposal); or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous wastes that are chemically and physically similar to oil and gas wastes, but excluding soils, media, debris, sorbent pads, and other clean-up materials that are contaminated with refined petroleum products.

(B) To obtain an individual authorization from the RRC, the waste generator must provide the following information, in writing, to the RRC: the identity of the proposed waste management facility, the quantity of waste involved, a hazardous waste determination that addresses the process generating the waste and the physical and chemical nature of the waste, and any other information that the RRC may require. As appropriate, the RRC shall reevaluate any authorization issued pursuant to this paragraph.

(C) Once alternatives for recycling and source reduction have been explored, and subject to the RRC's individual authorization, the following wastes under the jurisdiction of the TCEQ are authorized without further TCEQ approval to be

disposed of at a facility regulated by the RRC, bioremediated at a facility regulated by the RRC, or reclaimed at a crude oil reclamation facility regulated by the RRC; nonhazardous bottoms from tanks used only for crude oil storage; unused and/or reconditioned drilling and completion/workover wastes from commercial service company facilities; used and/or unused drilling and completion/workover wastes generated at facilities where workers in the oil and gas exploration, development, and production industry are trained; used and/or unused drilling and completion/workover wastes generated at facilities where materials, processes, and equipment associated with oil and gas exploration, development, and production operations are researched, developed, designed, and manufactured; unless other provisions are made in the underground injection well permit used and/or unused drilling and completion wastes (but not workover wastes) generated in connection with the drilling and completion of Class I, III, and V injection wells; wastes (such as contaminated soils, media, debris, sorbent pads, and other cleanup materials) associated with spills of crude oil and natural gas liquids if such wastes are under the jurisdiction of the TCEQ; and sludges from washout pits at commercial service company facilities.

(D) Under Texas Water Code, §27.0511(g), a TCEQ permit is required for injection of industrial or municipal waste as an injection fluid for enhanced recovery purposes. However, under Texas Water Code, §27.0511(h), the RRC may authorize a person to use nonhazardous brine from a desalination operation or

nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without obtaining a permit from the TCEO. The use or disposal of radioactive material under this subparagraph is subject to the applicable requirements of Texas Health and Safety Code, Chapter 401.

(E) Under Texas Water Code, §27.026, by individual permit, general permit, or rule, the TCEO may designate a Class II disposal well that has an RRC permit as a Class V disposal well authorized to dispose by injection nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals under the jurisdiction of the TCEO. The operator of a permitted Class II disposal well seeking a Class V authorization must apply to TCEO and obtain a Class V authorization prior to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals. A permitted Class II disposal well that has obtained a Class V authorization from TCEO under Texas Water Code, §27.026, remains subject to the regulatory requirements of both the RRC and the TCEO. Nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals to be disposed by injection in a permitted Class II disposal well authorized by TCEO as a Class V injection well remain subject to the requirements of the Texas Health and Safety Code, the Texas Water Code, and the TCEO's rules. The RRC and the TCEO may impose additional requirements or conditions to address the dual injection activity under Texas Water Code, §27.026.

(5) Drilling in landfills. The TCEO will notify the Oil and Gas Division of the RRC and the landfill owner at the time a drilling application is submitted if an operator proposes to drill a well through a landfill regulated by the TCEO. The RRC and the TCEO will cooperate and coordinate with one another in advising the appropriate parties of measures necessary to reduce the potential for the landfill contents to cause groundwater contamination as a result of landfill disturbance associated with drilling operations. The TCEO requires prior written approval before drilling of any test borings through previously deposited municipal solid waste under §330.15 of this title (relating to General Prohibitions), and before borings or other penetration of the final cover of a closed municipal solid waste landfill under §330.955 of this title (relating to Miscellaneous). The installation of landfill gas recovery wells for the recovery and beneficial reuse of landfill gas is under the jurisdiction of the TCEO in accordance with Chapter 330, Subchapter I of this title (relating to Landfill Gas Management). Modification of an active or a closed solid waste management unit, corrective action management unit, hazardous waste landfill cell, or industrial waste landfill cell by drilling or penetrating into or through deposited waste may require prior written approval from TCEO. Such approval may require a new authorization from TCEO or modification or amendment of an existing TCEO authorization.

(6) Coordination of actions and cooperative sharing of information.



(A) In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the TCEO at a facility permitted by the RRC, the TCEO is responsible for enforcement actions against the generator or transporter, and the RRC is responsible for enforcement actions against the disposal facility. In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the RRC at a facility permitted by the TCEO, the RRC is responsible for enforcement actions against the generator or transporter, and the TCEO is responsible for enforcement actions against the disposal facility.

(B) The TCEO and the RRC agree to cooperate with one another by sharing information. Employees of either agency who receive a complaint or discover, in the course of their official duties, information that indicates a violation of a statute, regulation, order, or permit pertaining to wastes under the jurisdiction of the other agency, will notify the other agency. In addition, to facilitate enforcement actions, each agency will share information in its possession with the other agency if requested by the other agency to do so.

(C) The TCEO and the RRC agree to work together at allocating respective responsibilities. To the extent that jurisdiction is indeterminate or has yet to be determined, the TCEO and the RRC agree to share information and take appropriate investigative steps to assess jurisdiction.

(D) For items not covered by statute or rule, the TCEQ and the RRC will collaborate to determine respective responsibilities for each issue, project, or project type.

(E) The staff of the RRC and the TCEQ shall coordinate as necessary to attempt to resolve any disputes regarding interpretation of this MOU and disputes regarding definitions and terms of art.

(7) Groundwater.

(A) Notice of groundwater contamination. Under Texas Water Code, §26.408, effective September 1, 2003, the RRC must submit a written notice to the TCEQ of any documented cases of groundwater contamination that may affect a drinking water well.

(B) Groundwater protection letters. The RRC provides letters of recommendation concerning groundwater protection.

(i) For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the RRC provides geologic interpretation identifying fresh water zones, base of usable-quality water (generally less than 3,000 mg/L total dissolved solids, but may include higher

levels of total dissolved solids if identified as currently being used or identified by the Texas Water Development Board as a source of water for desalination), and include protection depths recommended by the RRC. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water.

(ii) For recommendations related to injection, the RRC provides geologic interpretation of the base of the underground source of drinking water. The term "underground source of drinking water" is defined in 40 Code of Federal Regulations §146.3 (*Federal Register*, Volume 46, June 24, 1980).

(8) Emergency and spill response.

(A) The TCEQ and the RRC are members of the state's Emergency Management Council. The TCEQ is the state's primary agency for emergency support during response to hazardous materials and oil spill incidents. The TCEQ is responsible for state-level coordination of assets and services, and will identify and coordinate staffing requirements appropriate to the incident to include investigative assignments for the primary and support agencies.

(B) Contaminated soil and other wastes that result from a spill must be managed in accordance with the governing statutes and regulations adopted

by the agency responsible for the activity that resulted in the spill. Coordination of issues of spill notification, prevention, and response shall be addressed in the State of Texas Oil and Hazardous Substance Spill Contingency Plan and may be addressed further in a separate Memorandum of Understanding among these agencies and other appropriate state agencies.

(C) The agency (TCEO or RRC) that has jurisdiction over the activity that resulted in the spill incident will be responsible for measures necessary to monitor, document, and remediate the incident.

(i) The TCEO has jurisdiction over certain inland oil spills, all hazardous-substance spills, and spills of other substances that may cause pollution.

(ii) The RRC has jurisdiction over spills or discharges from activities associated with the exploration, development, or production of crude oil, gas, and geothermal resources, and discharges from brine mining or surface mining.

(D) If TCEO or RRC field personnel receive spill notifications or reports documenting improperly managed waste or contaminated environmental media resulting from a spill or discharge that is under the jurisdiction of the other agency, they shall refer the issue to the other agency. The agency that has jurisdiction over the activity that resulted in the improperly managed waste, spill, discharge, or

contaminated environmental media will be responsible for measures necessary to monitor, document, and remediate the incident.

(9) Anthropogenic carbon dioxide storage. In determining the proper permitting agency in regard to a particular permit application for a carbon dioxide geologic storage project, the TCEQ and the RRC will coordinate by any appropriate means to review proposed locations, geologic settings, reservoir data, and other jurisdictional criteria specified in Texas Water Code, §27.041.

(f) Radioactive material.

(1) Radioactive substances. Under the Texas Health and Safety Code, §401.011, the TCEQ has jurisdiction to regulate and license:

(A) the disposal of radioactive substances;

(B) the processing or storage of low-level radioactive waste or NORM waste from other persons, except oil and gas NORM waste;

(C) the recovery or processing of source material;

(D) the processing of by-product material as defined by Texas Health and Safety Code, §401.003(3)(B); and

(E) sites for the disposal of low-level radioactive waste, by-product material, or NORM waste.

(2) NORM waste.

(A) Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of NORM waste that constitutes, is contained in, or has contaminated oil and gas waste. This waste material is called "oil and gas NORM waste." Oil and gas NORM waste may be generated in connection with the exploration, development, or production of oil or gas.

(B) Under Texas Health and Safety Code, §401.412, the TCEQ has jurisdiction over the disposal of NORM that is not oil and gas NORM waste.

(C) The term "disposal" does not include receipt, possession, use, processing, transfer, transport, storage, or commercial distribution of radioactive materials, including NORM. These non-disposal activities are under the jurisdiction of the Texas Department of State Health Services under Texas Health and Safety Code, §401.011(a).

(3) Drinking water residuals. A person licensed for the commercial disposal of NORM waste from public water systems may dispose of NORM waste only by injection into a Class I injection well permitted under Chapter 331 of this title (relating to Underground Injection Control) that is specifically permitted for the disposal of NORM waste.

(4) Management of radioactive tracer material.

(A) Radioactive tracer material is subject to the definition of low-level radioactive waste under Texas Health and Safety Code, §401.004, and must be handled and disposed of in accordance with the rules of the TCEQ and the Department of State Health Services.

(B) Exemption. Under Texas Health and Safety Code, §401.106, the TCEQ may grant an exemption by rule from a licensing requirement if the TCEQ finds that the exemption will not constitute a significant risk to the public health and safety and the environment.

(5) Coordination with the Texas Radiation Advisory Board. The RRC and the TCEQ will consider recommendations and advice provided by the Texas Radiation Advisory Board that concern either agency's policies or programs related to the

development, use, or regulation of a source of radiation. Both agencies will provide written response to the recommendations or advice provided by the advisory board.

(6) Uranium exploration and mining.

(A) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium exploration activities.

(B) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium mining, except for in situ recovery processes.

(C) Under Texas Water Code, §27.0513, the TCEQ has jurisdiction over injection wells used for uranium mining.

(D) Under Texas Health and Safety Code, §401.2625, the TCEQ has jurisdiction over the licensing of source material recovery and processing or for storage, processing, or disposal of by-product material.

(g) Effective date. This Memorandum of Understanding, as of its July 15, 2020 May 11, 2020, effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated May 1, 2012.



## 7 TAC §109.7

The Texas State Securities Board proposes an amendment to §109.7, concerning Secondary Trading Exemption under the Texas Securities Act, §5.O. The proposal would update the "manual exemption" contained in §5.O of the Act. Included in §5.O is the requirement that certain information about the issuer appear in either a recognized securities manual or on a form (133.5 or 133.6) filed with the Securities Commissioner. The definition of "recognized securities manual" in subsection (e) would be amended to remove S&P Capital IQ Standard Corporations Descriptions. S&P ceased publication of its manual as of May 2, 2016. At this time, all the time-sensitive information appearing in this publication has become outdated and would no longer serve to meet the requirements of §5.O.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be that registered dealers relying upon the securities exemption contained in §5.O for secondary market sales will have been apprised of the manuals recognized by the Board for purposes of the exemption. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applica-

tions; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-5.O.

§109.7. *Secondary Trading Exemption under the Texas Securities Act, §5.O.*

(a) - (d) (No change.)

(e) The term "recognized securities manual" as used in the Texas Securities Act, §5.O(9)(c), is limited to [the S&P Capital IQ Standard Corporation Descriptions,] Best Insurance Reports Life-Health, any Mergent's Manual, and the OTC Markets Group Inc. website ([www.otcmartets.com](http://www.otcmartets.com)) for a company that is currently or has recently been quoted on the OTCQX or OTCQB markets. This designation encompasses both print and electronic data and includes periodic supplements to these publications. The information provided in the recognized securities manual must contain the information specified in subsection (d) of this section. All information provided must be current. The time for determining whether the entries are current is at the date of the particular sale, not the date the manual listings are published. If a listing is not continually updated, the exemption would not be available once the published balance sheet becomes more than 18 months old.

(f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000608

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: March 29, 2020

For further information, please call: (512) 305-8303



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 3. OIL AND GAS DIVISION

##### 16 TAC §3.30

The Railroad Commission of Texas proposes amendments to §3.30, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ). The amendments are proposed to implement changes made by House Bill 2230 and House Bill 2771 from the 84th and 86th Texas Legislative Sessions, respectively. The proposed amendments also update the definition of underground source of drinking water.

The memorandum of understanding (MOU) between the TCEQ and the RRC was last amended in May 2012. Proposed amendments in subsection (a)(4) and subsection (g) update the applicable dates of MOU amendments. The proposed effective date of May 11, 2020, in subsection (g) may change depending on the date of RRC adoption of the proposed amendments.

House Bill 2230 (84th Legislature, 2015) enacted Texas Water Code, Section 27.026, to allow dual authorization of Class II and Class V injection wells for the disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water treatment residuals (DWTR), under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC. House Bill 2230 allows the TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the disposal of such brine or DWTR in a Class II well permitted by the RRC. Proposed new subsection (e)(4)(E) implements the dual authority granted by House Bill 2230.

House Bill 2771 (86th Legislature, 2019) amended Texas Water Code, Section 26.131, to transfer to TCEQ the RRC's responsibilities relating to regulation of discharges into surface water in the state, as defined in 30 TAC §307.3(70) (relating to Definitions and Abbreviations), of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources. House Bill 2771 authorizes the transfer of responsibilities from the RRC to the TCEQ after TCEQ receives approval from the United States Environmental Protection Agency (EPA) to supplement or amend TCEQ's Texas Pollutant Discharge Elimination System (TPDES) program to include authority over these discharges. House Bill 2771 also establishes September 1, 2021, as the deadline for TCEQ to submit its request to the EPA to supplement or amend the TPDES program to include delegation of National Pollutant Discharge Elimination System (NPDES) permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent.

Amendments proposed to implement House Bill 2771 are found in subsection (b)(1)(B), (b)(2)(B), and (d)(12)(A). The definition of "produced water" proposed in subsection (b)(1)(B)(i) is based on TCEQ's proposed definition of that term as published in the January 10, 2020, issue of the *Texas Register* in proposed amendments to 30 TAC §305.541.

Amendments proposed in subsection (e)(1) correct references to the TCEQ Small Business and Environmental Assistance (SBEA) Division, which is now the TCEQ External Relations Division.

Finally, proposed amendments in §3.30(e)(7)(B)(ii) update the definition of "underground source of drinking water" to reference the definition in 40 Code of Federal Regulations §146.3.

The RRC notes that the proposed amendments to the MOU merely clarify the respective jurisdictions of the RRC and TCEQ and the amendments do not have a direct fiscal impact. However, the statutory changes that prompted the proposed amendments modify the authority of each agency, and the fiscal effect of these modifications is described in the following paragraphs.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years after TCEQ receives approval to supplement or amend its TPDES program and assumes responsibility for discharges of produced water, hydrostatic test water, and gas plant effluent and the amendments as proposed are in full effect, the RRC's Oil and Gas Regulation and Cleanup Fund would have revenue decreases of \$225,000 from revenue currently collected by the RRC for processing applications that will be now be processed by the TCEQ under House Bill 2771. Also, transferring responsibilities from the RRC to TCEQ would result in a decrease of RRC salary and operating expenses of \$188,178 each year. There will be no fiscal effect on local government.

Ms. Savage has determined that for the first five years the proposed amendments are in full effect, the primary public benefit will be a better understanding of the responsibilities of the RRC and the TCEQ, as well as compliance with applicable state law.

Ms. Savage has determined that for each year of the first five years that the amendments will be in full effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed amendments. The proposed amendments update the MOU between the RRC and the TCEQ, and do not impose any new requirements on the regulated industry.

The RRC has determined that the proposed amendments to §3.30 will not have an adverse economic effect on rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed amendments. Therefore, the RRC has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The RRC has also determined that the proposed amendments will not affect a local economy. Therefore, the RRC has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The RRC has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rules would be in full effect, the proposed amendments would not: create or eliminate a government program; require an increase or decrease in future legislative appropriations; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. As noted above, the proposed amendments to the MOU merely clarify the respective jurisdictions of the RRC and TCEQ and the amendments do not have a direct fiscal impact. However, the statutory changes from House Bill 2771 create positions at the TCEQ and eliminate approximately 2.5 FTEs at the RRC. Also pursuant to House Bill 2771, application processing fees currently collected by the RRC will be collected by the TCEQ.

The proposed rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. In accordance with the Coastal Coordination Act implementation rules, 31 TAC §505.22, the RRC reviewed the proposed rules and has determined that the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule include protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs) and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule include policies for discharges of wastewater from oil and gas exploration and production.

The proposed rulemaking is consistent with the above goals and policies by requiring wastewater discharges from oil and gas exploration and production facilities to comply with federal effluent limitation guidelines to protect water resources.

Promulgation and enforcement of the rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies and the rule does not create or have a direct or significant adverse effect on any CNRAs.

Written comments on the consistency of this rulemaking with CMP goals may be submitted according to the comment procedure addressed below.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The RRC will accept comments until 12:00 noon on Monday, March 30, 2020. The RRC finds that this comment period is reasonable because the proposal and an online comment form will be available on the RRC's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The RRC cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of RRC rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules). Once received, all comments are posted on the RRC's website at <https://rrc.texas.gov/general-counsel/rules/proposed-rules>. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The RRC has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The RRC proposes the amendments to 16 TAC §3.30 under: (1) Texas Water Code §26.131, which transfers the responsibilities relating to regulation of discharges of produced water, hydrostatic test water and gas plant effluent into surface water in the state from the RRC to the TCEQ; (2) Texas Water Code Chapter 27, which authorizes the RRC to adopt and enforce rules relating to injection wells and, specifically, Texas Water Code §27.026, as amended by House Bill 2230, which requires the RRC and TCEQ by rule to amend the MOU to implement the statutory changes related to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals (DWTR); (3) Texas Natural Resources Code, §81.052, which authorizes the RRC to adopt all necessary rules for governing persons and their operations under the jurisdiction of the RRC; and (4) Texas Natural Resources Code, §85.201, which authorizes the RRC to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas.

Statutory authority: Water Code §§26.131 and 27.026, and Natural Resources Code §§81.052 and 85.201.

Cross reference to statute: Water Code Chapters 26 and 27; Natural Resources Code Chapters 81 and 85.

§3.30. *Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).*

(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.

(1) - (3) (No change.)

(4) The original MOU between the agencies adopted pursuant to House Bill 1407 (67th Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987, May 31, 1998, August 30, 2010, and again on May 1, 2012 [~~August 30, 2010~~], to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air Control Board, and portions of the Texas Department of Health) jurisdiction over industrial and hazardous wastes.

(5) The agencies have determined that the revised MOU that became effective on May 1, 2012 [~~August 30, 2010~~], should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility.

(b) General agency jurisdictions.

(1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas Natural Resource Conservation Commission).

(A) (No change.)

(B) Water quality.

(i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except for discharges regulated by the RRC. Upon delegation from the United States Environmental Protection Agency to the TCEQ of authority to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code §26.131(a), the TCEQ has sole authority to issue permits for those discharges. For the purposes of TCEQ's implementation of Texas Water Code, §26.131, "produced water" is defined as all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent, that is discharged into water in the state, including waste streams regulated by 40 CFR Part 435.

(ii) Discharge permits existing on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. RRC permits issued prior to TCEQ delegation of NPDES authority shall remain effective until revoked or expired. Amendment or renewal of such permits on or after the effective date of delegation shall be pursuant to TCEQ's TPDES authority. The TPDES permit will supersede and replace the RRC permit. For facilities that have both an RRC permit and an EPA permit, TCEQ will issue the TPDES permit upon amendment or renewal of the RRC or EPA permit, whichever occurs first.

(iii) Discharge applications pending on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. TCEQ shall assume authority for discharge applications pending at the time TCEQ receives delegation from EPA. The RRC will provide TCEQ the permit application and any other relevant information necessary to administratively and technically review and process the applications. TCEQ will review and process these pending applications in accordance with TPDES requirements.

(iv) [(ii)] Storm water. TCEQ has jurisdiction over storm water discharges that are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES permit.

These storm water permits may also include authorizations for certain minor types of non-storm water discharges.

(I) Storm water associated with industrial activities. The TCEQ regulates storm water discharges associated with certain industrial activities under individual TPDES permits and under the TPDES Multi-Sector General Permit, except for discharges associated with industrial activities under the jurisdiction of the RRC.

(II) Storm water associated with construction activities. The TCEQ regulates storm water discharges associated with construction activities, except for discharges from construction activities under the jurisdiction of the RRC.

(III) Municipal storm water discharges. The TCEQ has jurisdiction over discharges from regulated municipal storm sewer systems (MS4s).

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the TCEQ, and a portion of a site is regulated by the EPA and RRC, storm water authorization must be obtained from the TCEQ for the portion(s) of the site regulated by the TCEQ, and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site. Discharge of storm water from a facility that stores both refined products intended for off-site use and crude oil in aboveground tanks is regulated by the TCEQ.

(v) ~~[(iii)]~~ State water quality certification. Under the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for activities that require a federal license or permit and that may result in a discharge to waters of the United States, except for those activities regulated by the RRC.

(vi) ~~[(iv)]~~ Commercial brine extraction and evaporation. Under Texas Water Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater and that are not regulated by the RRC.

(C) (No change.)

(2) Railroad Commission of Texas (RRC).

(A) (No change.)

(B) Water quality.

(i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities, except that on delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code §26.131(a), the TCEQ has sole authority to issue permits for those discharges. Discharges regulated by the RRC into or adjacent to water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water quality standards. The TCEQ and the RRC may consult as necessary regarding application and interpretation of Texas Surface Water Quality Standards.

(ii) - (iii) (No change.)

(C) (No change.)

(c) (No change.)

(d) Jurisdiction over waste from specific activities.

(1) - (11) (No change.)

(12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or mineral resources.

(A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the Texas General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is being used in connection with activities associated with the exploration, development, or production of oil or gas or geothermal resources, except that upon delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ shall assume RRC's authority under this subsection.

(B) - (C) (No change.)

(e) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TCEQ and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of ~~[solid]~~ wastes. Questions regarding source reduction and recycling may be directed to the TCEQ External Relations ~~[Small Business and Environmental Assistance (SBEA)]~~ Division, or to the RRC. The TCEQ may require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ at a facility regulated by the RRC.

(B) The TCEQ External Relations ~~[SBEA]~~ Division and the RRC will coordinate as necessary to maintain a working relationship to enhance the efforts to share information and use resources more efficiently. The TCEQ External Relations ~~[SBEA]~~ Division will make the proper TCEQ personnel aware of the services offered by the RRC, share information with the RRC to maximize services to oil and gas operators, and advise oil and gas operators of RRC services. The RRC will make the proper RRC personnel aware of the services offered by the TCEQ External Relations ~~[SBEA]~~ Division, share information with the TCEQ External Relations ~~[SBEA]~~ Division to maximize services to industrial operators, and advise industrial operators of the TCEQ External Relations ~~[SBEA]~~ Division services.

(2) - (3) (No change.)

(4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated by the RRC.

(A) - (D) (No change.)

(E) Under Texas Water Code, §27.026, by individual permit, general permit, or rule, the TCEQ may designate a Class II disposal well that has an RRC permit as a Class V disposal well authorized to dispose by injection nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals under the jurisdiction of the TCEQ. The operator of a permitted Class II disposal well seeking a Class V authorization must apply to TCEQ and obtain a Class V authorization prior to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals. A permitted Class II disposal well that has obtained a

Class V authorization from TCEQ under Texas Water Code, §27.026, remains subject to the regulatory requirements of both the RRC and the TCEQ. Nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals to be disposed by injection in a permitted Class II disposal well authorized by TCEQ as a Class V injection well remain subject to the requirements of the Texas Health and Safety Code, the Texas Water Code, and the TCEQ's rules. The RRC and the TCEQ may impose additional requirements or conditions to address the dual injection activity under Texas Water Code, §27.026.

(5) - (6) (No change.)

(7) Groundwater.

(A) (No change.)

(B) Groundwater protection letters. The RRC provides letters of recommendation concerning groundwater protection.

(i) (No change.)

(ii) For recommendations related to injection [in a non-producing zone], the RRC provides geologic interpretation of the base of the underground source of drinking water. The term "underground source of drinking water" [Underground source of drinking water] is defined in 40 Code of Federal Regulations §146.3 (Federal Register, Volume 46, June 24, 1980) [as an aquifer or its portions which supplies drinking water for human consumption; or in which the groundwater contains fewer than 10,000 milligrams per liter total dissolved solids; and which is not an exempted aquifer].

(8) - (9) (No change.)

(f) (No change.)

(g) Effective date. This Memorandum of Understanding, as of its May 11, 2020 [May 1, 2012], effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated May 1, 2012 [August 30, 2010].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2020.

TRD-202000573

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: March 29, 2020

For further information, please call: (512) 475-1295



## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

#### SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

## DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

### 16 TAC §25.227

The Public Utility Commission of Texas (commission) proposes the repeal of 16 Texas Administrative Code (TAC) §25.227, relating to Electric Utility Service for Public Retail Customers. The proposed repeal will implement amendments to the Public Utility Regulatory Act (PURA) enacted in House Bill (HB) 2263 during the 86th Legislative Session. HB 2263 removed provisions in PURA which authorized the commissioner of the General Land Office to make electricity sales directly to public retail customers.

#### *Growth Impact Statement*

The agency provides the following governmental growth impact statement for the proposed rule repeal, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule repeal is in effect, the following statements will apply:

(1) the proposed rule repeal will not create a government program and will not eliminate a government program, but will eliminate provisions in the commission's rules related to a program eliminated by HB 2263;

(2) implementation of the proposed rule repeal will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule repeal will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule repeal will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule repeal will not create a new regulation;

(6) the proposed rule will repeal an existing regulation;

(7) the proposed rule repeal will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule repeal will not affect this state's economy.

#### *Fiscal Impact on Small and Micro-Businesses and Rural Communities*

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

#### *Takings Impact Analysis*

The commission has determined that the proposed rule repeal will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

#### *Fiscal Impact on State and Local Government*

Paula Mueller, Rules Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

#### *Public Benefits*



- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, Executive Director, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

*§539.140. Schedule of Administrative Penalties.*

(a) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1303.355(c) of the Act.

(b) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) 22 TAC ~~§539.91(b)~~ [§539.137(b)];
- (2) §1303.352(a)(1);
- (3) §1303.352(a)(7);
- (4) 22 TAC §539.64;
- (5) 22 TAC §539.65;
- (6) 22 TAC §539.66; and
- (7) 22 TAC §539.82.

(c) An administrative penalty range of \$500 - \$5,000 per violation per day may be assessed for the following violations of the Texas Occupations and Administrative Codes:

- (1) §1303.052
- (2) §1303.101;
- (3) §1303.151;
- (4) §1303.153;
- (5) §1303.352(a)(2) - (6);
- (6) §1303.202(a);
- (7) §1303.202(b);
- (8) §1303.052; and
- (9) 22 TAC §539.81.

(d) The Commission may assess an additional administrative penalty of up to two times that assessed under subsections (b) and (c) of this section if the residential service company has a history of previous violations.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000606  
 Chelsea Buchholtz  
 Executive Director  
 Texas Real Estate Commission  
 Earliest possible date of adoption: March 29, 2020  
 For further information, please call: (512) 936-3284

## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 7. MEMORANDA OF UNDERSTANDING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §7.117 and adopt new §7.117.

#### Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking would implement House Bill (HB) 2230 (84th Texas Legislature, 2015) which enacted Texas Water Code (TWC), §27.026, and HB 2771 (86th Texas Legislature, 2019) which amended TWC, §26.131.

This rulemaking proposes to repeal §7.117, which adopts by reference the Memorandum of Understanding (MOU) between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) as codified in the RRC Oil and Gas Division rules at 16 TAC §3.30. This rulemaking would also adopt the current text of the MOU under new §7.117 and amend the text of the current MOU (in 16 TAC §3.30) to implement HB 2230 and HB 2771.

Historically, the text of the MOU has been codified in the RRC Oil and Gas Division rules at 16 TAC §3.30 and the TCEQ has adopted the MOU by reference at §7.117. The TCEQ and the RRC have collaborated on proposed changes to the current MOU which are required by HB 2230 and HB 2771. The TCEQ understands that the RRC intends to conduct simultaneous rulemaking to amend the MOU at 16 TAC §3.30.

The RRC and the TCEQ agree that both agencies intend that the MOU at 16 TAC §3.30, once amended, and the MOU proposed at §7.117 would include the same substantive explanations of jurisdiction and requirements. The TCEQ acknowledges that there will be some minor stylistic differences.

The MOU is the result of collaboration between TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The

current MOU describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste. Several statutes cover persons and activities where respective jurisdiction of the RRC and the TCEQ may intersect. The current MOU is a statement of how the TCEQ and RRC implement the division of jurisdiction. The MOU delineates general agency jurisdictions regarding: solid waste; water quality; oil and gas waste; injection wells; hazardous waste; interagency activities, and radioactive material.

In addition to current language, as required by HB 2771, the amended MOU would describe the transfer of RRC's responsibilities to TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources. This transfer of responsibilities would occur upon the United States Environmental Protection Agency (EPA) approval of TCEQ's request to amend or supplement its Texas Pollutant Discharge Elimination System (TPDES) program.

HB 2230 allows the TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the disposal of nonhazardous brine or drinking water residuals in a Class II well permitted by the RRC. The proposed MOU would implement the dual authority granted by HB 2230. The proposed MOU would allow the TCEQ to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water treatment residuals (DWTR), under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

#### Section Discussion

##### *§7.117, Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality*

The commission proposes to repeal the current language in §7.117 and simultaneously proposes to adopt new MOU language regarding the division of jurisdiction between the RRC and the TCEQ. The proposed rulemaking would incorporate the MOU as it currently exists in 16 TAC §3.30, with the amendments required by HB 2771 and HB 2230. The TCEQ is proposing to repeal and adopt new language to ensure TCEQ has completed all necessary requirements for the delegation package before requesting approval from the EPA for delegation of National Pollutant Discharge Elimination System (NPDES) permit authority for discharge of produced water, hydrostatic test water, and gas plant effluent.

Throughout this rule the reference to Small Business and Environmental Assistance (SBEA) has been replaced with TCEQ External Relations Division.

Proposed new subsection (a) would provide for the reason the MOU is needed. Additionally, subsection (a)(4) would amend the reference to effective dates of the MOU and subsection (a)(5) would amend the reference to the current MOU.

Proposed new subsection (b) would provide for the general agency jurisdictions. Additionally, proposed new subsection (b)(1)(B)(i) - (iii) and (2)(B)(i) would amend current language to reflect the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and develop-

ment of oil, natural gas, or geothermal resources. This transfer of responsibilities would occur upon the EPA approval of the TCEQ's request to amend or supplement its TPDES program.

Proposed new subsection (c) would provide the definition of hazardous waste and identify exemptions from classifications as hazardous waste for certain oil and gas waste.

Proposed new subsection (d) would describe the jurisdiction over waste from specific activities including: drilling, operation, and plugging of wells associated with the exploration, development or production of oil, gas, or geothermal resources; field treatment of produced fluids; storage of oil; underground hydrocarbon storage; underground natural gas storage; transportation of crude oil or natural gas; reclamation plants; refining of oil; natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants; manufacturing processes; commercial service company facilities and training facilities; and mobile offshore drilling units.

Additionally, proposed new subsection (d)(12)(A) and (C) would amend current language to reflect the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water resulting from the exploration, production and development of oil, natural gas, or geothermal resources. This transfer of responsibilities would occur upon the EPA approval of the TCEQ's request to amend or supplement its TPDES program.

Proposed new subsection (e) would describe interagency activities including: recycling and pollution prevention; treatment of waste under RRC jurisdiction at facilities authorized by the TCEQ under 30 TAC Chapter 334, Subchapter K; processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ; management of nonhazardous waste under TCEQ jurisdiction at facilities regulated by the RRC; drilling at landfills; coordination of actions and cooperative sharing of information; groundwater; emergency and spill response; and anthropogenic carbon dioxide storage.

Proposed new subsection (e)(1)(A) would amend current MOU language to delete the term "solid" as a modifier of the term "waste" to clarify that generators of solid waste and oil and gas waste are encouraged to recycle whenever possible to avoid disposal. Additionally, proposed new subsection (e)(4)(E) would amend current MOU language to reflect the TCEQ's authority to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous DWTR, under the jurisdiction of the TCEQ, by injection in a Class II injection well permitted by the RRC. Additionally, subsection (e)(7)(B)(ii) would add the citation to the Code of Federal Regulations for the definition of "underground source of drinking water."

Proposed new subsection (f) would describe the jurisdiction of TCEQ and RRC to regulate and license various types of radioactive materials.

Proposed new subsection (g) reflects the effective date of the MOU and would amend current language to reflect the new effective date.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period after the proposed rulemaking is in effect, fiscal implications are anticipated for the agency and other state governmental entities as a result of ad-

ministration or enforcement of the proposed rule. After TCEQ receives approval to assume responsibility for discharges of produced water, hydrostatic test water, and gas plant effluent, the Legislative Budget Board estimated a revenue decrease to the RRC's Oil and Gas Regulation Account of \$225,000 each year from the revenue that was collected through the processing of applications.

With the implementation of the program at TCEQ, oil and gas facilities that discharge produced water, hydrostatic test water, or gas plant effluent would become subject to TCEQ's state authority to issue discharge permits and would become subject to TCEQ's existing authority to collect application fees and annual water quality fees. TCEQ has identified 529 facilities would be subject to this program. The application fee for these state permits range from \$1,250 for minor facilities to \$2,050 for major facilities. However, for the purpose of this analysis, all are considered minor facilities. These permits last five years. The total estimated revenue in permit application fees is \$661,250 on a five-year cycle.

The annual water quality fee for these permits varies depending on the discharge flow and the pollutant concentrations. For general permits, the fee is \$100 per year. The average annual water quality fee for an industrial wastewater permit is \$8,435. The agency estimates the total revenue from these facilities for the water quality fees would be \$336,290 per year.

The General Appropriations Act (86th Texas Legislature, 2019) authorized funding to cover the costs upon delegation of the program as detailed in HB 2771. Article IX, Section 18.28, reduces the employees at the RRC by 2.5 full-time employees for a decrease in salary and operating expenses of \$188,178 per year. The rider authorizes nine new employees at TCEQ to implement the program and conduct investigations to determine compliance with wastewater permits. The rider authorizes funding up to \$431,406. The agency estimates the costs would continue annually in future years.

The agency does not expect any significant fiscal implications from the adoption of the proposed rulemaking to implement HB 2330.

No fiscal implications are anticipated for units of local government.

This rulemaking addresses necessary changes in order to implement HB 2230 and HB 2771.

#### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be a better understanding of the responsibilities of TCEQ and the RRC and compliance with state law. The proposed rulemaking is not anticipated to result in additional significant fiscal implications for businesses or individuals.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect

rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create a government program but does transfer of duties as authorized by state law. This transfer will affect the future legislative appropriations to each agency; however, there will be a decrease in costs to the RRC and an increase to the TCEQ. As authorized in the General Appropriations Act, the proposed rulemaking does require the creation of new employee positions at TCEQ and reduces employee positions at RRC. The proposed rulemaking will increase fees paid to the TCEQ and reduce fees paid to RRC. The proposed rulemaking does not expand existing regulation, nor does it increase the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking 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 that statute. "Major environmental rule" is defined as 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. This rulemaking does not adversely affect in a material way the economy, a section 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 MOU is the result of collaboration between TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU also describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste.

This rulemaking would implement HB 2230 (84th Texas Legislature, 2015) which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019) which amended TWC, §26.131.

The proposed MOU would also describe the transfer of RRC's responsibilities to TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, pro-



duction and development of oil, natural gas, or geothermal resources. This transfer of responsibilities would occur upon the EPA's approval of TCEQ's request to amend or supplement its TPDES program. The proposed MOU would also reflect the TCEQ's authority to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of non-hazardous brine from a desalination operation, or nonhazardous DWTR, under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking 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 state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking does not exceed a standard set by federal law, rather it implements state law. Also, the rulemaking does not exceed an express requirement of state law nor a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but under HB 2230, which enacted TWC, §27.026, and HB 2771, which amended TWC, §26.131. Under Texas Government Code, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

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 performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The proposed MOU is the result of collaboration between TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU also describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste.

This rulemaking would implement HB 2230 (84th Texas Legislature, 2015) which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019) which amended TWC, §26.131.

The specific purpose of this rulemaking is to repeal §7.117 and adopt new §7.117 incorporating the current MOU codified in 16 TAC §3.30 and the changes required by HB 2771 and HB 2230. HB 2771 relates to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources. This transfer of responsibility will occur upon the EPA's approval of TCEQ's request to amend or supplement its TPDES program.

HB 2230 describes how the TCEQ may authorize by individual permit, general permit, or rule, a Class V injection well for the

disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water residuals, under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

This rulemaking will impose no burdens on private real property because the proposed rulemaking neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in the value of private real property as a result of this rulemaking.

#### 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 March 23, 2020, at 10:00 a.m., 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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments on this rule may be submitted to Patricia Durón, 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: <https://www6.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 2020-016-007-LS. The comment period closes on March 30, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Kathy Humphreys, Environmental Law Division, (512) 239-3417.

#### 30 TAC §7.117

##### Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding; TWC, §5.105, which establishes

the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §26.011, which establishes that the commission shall establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.121, which establishes the authority of the commission to issue discharge permits; TWC, §26.131 which establishes the duties of the Railroad Commission of Texas (RRC); TWC, §27.011, which establishes the commission's authority to issue permits for injection wells; TWC, §27.019, which establishes the commission's authority to adopt rules under TWC, Chapter 27; TWC, §27.026, which establishes the authority of the RRC and the TCEQ to enter an MOU by rule to implement House Bill (HB) 2230; TWC, §27.049, which establishes the authority of the RRC and the TCEQ to comply with TWC, Chapter 27 by entering MOU by amending or entering new MOU by rule; Texas Health and Safety Code (THSC), §401.001, which establishes the TCEQ's jurisdiction over regulation and licensing of radioactive materials and substances; and THSC, §401.069, which establishes the authority for the TCEQ to enter Memoranda of Understanding with state agencies by rule.

This rulemaking would implement HB 2230 (84th Texas Legislature, 2015), which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019), which amended TWC, §26.131.

§7.117. *Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality.* The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000597

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 29, 2020

For further information, please call: (512) 239-6087



### 30 TAC §7.117

#### Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §26.011, which establishes that the commission shall establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.121, which establishes the authority of the commission to issue discharge permits; TWC, §26.131, which establishes the duties of the Railroad Commission of Texas (RRC); TWC, §27.011, which establishes the commission's authority to issue permits for injection wells; TWC, §27.019, which establishes the commission's authority to adopt rules under TWC, Chapter 27; TWC, §27.026,

which establishes the authority of the RRC and the TCEQ to enter an MOU by rule to implement House Bill (HB) 2230; TWC, §27.049, which establishes the authority of the RRC and the TCEQ to comply with TWC, Chapter 27 by entering MOU by amending or entering new MOU by rule; Texas Health and Safety Code (THSC), §401.001, which establishes the TCEQ's jurisdiction over regulation and licensing of radioactive materials and substances; and THSC, §401.069, which establishes the authority for the TCEQ to enter Memoranda of Understanding with state agencies by rule.

This rulemaking would implement HB 2230 (84th Texas Legislature, 2015), which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019), which amended TWC, §26.131.

§7.117. *Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).*

(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.

(1) Section 10 of House Bill 1407, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, provides as follows: On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary.

(2) Texas Health and Safety Code, §401.414, relating to Memoranda of Understanding, requires the Railroad Commission of Texas and the Texas Commission on Environmental Quality to adopt a memorandum of understanding (MOU) defining the agencies' respective duties under Texas Health and Safety Code, Chapter 401, relating to radioactive materials and other sources of radiation. Texas Health and Safety Code, §401.415, relating to oil and gas naturally occurring radioactive material (NORM) waste, provides that the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste, and in so doing shall consult with the Texas Natural Resource Conservation Commission (now TCEQ) and the Department of Health (now Department of State Health Services) regarding protection of the public health and the environment.

(3) Texas Water Code, Chapters 26 and 27, provide that the Railroad Commission and TCEQ collaborate on matters related to discharges, surface water quality, groundwater protection, underground injection control and geologic storage of carbon dioxide. Texas Water Code, §27.049, relating to Memorandum of Understanding, requires the RRC and TCEQ to adopt a new MOU or amend the existing MOU to reflect the agencies' respective duties under Texas Water Code, Chapter 27, Subchapter C-1 (relating to Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide).

(4) The original MOU between the agencies adopted pursuant to HB 1407 (67th Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987, May 31, 1998, August 30, 2010, and again on May 1, 2012, to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air Con-

trol Board, and portions of the Texas Department of Health) jurisdiction over industrial and hazardous wastes.

(5) The agencies have determined that the revised MOU that became effective on May 1, 2012, should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility.

(b) General agency jurisdictions.

(1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas Natural Resource Conservation Commission).

(A) Solid waste. Under Texas Health and Safety Code, Chapter 361, §§361.001 - 361.754, the TCEQ has jurisdiction over solid waste. The TCEQ's jurisdiction encompasses hazardous and non-hazardous, industrial and municipal, solid wastes.

(B) Water quality.

(i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except for discharges regulated by the RRC. Upon delegation from the United States Environmental Protection Agency to the TCEQ of authority to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ has sole authority to issue permits for those discharges. For the purposes of TCEQ's implementation of Texas Water Code, §26.131, "produced water" is defined as all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent, that is discharged into water in the state, including waste streams regulated by 40 CFR Part 435.

(ii) Discharge permits existing on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. RRC permits issued prior to TCEQ delegation of NPDES authority shall remain effective until revoked or expired. Amendment or renewal of such permits on or after the effective date of delegation shall be pursuant to TCEQ's TPDES authority. The TPDES permit will supersede and replace the RRC permit. For facilities that have both an RRC permit and an EPA permit, TCEQ will issue the TPDES permit upon amendment or renewal of the RRC or EPA permit, whichever occurs first.

(iii) Discharge applications pending on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. TCEQ shall assume authority for discharge applications pending at the time TCEQ receives delegation from EPA. The RRC will provide TCEQ the permit application and any other relevant information necessary to administratively and technically review and process the applications. TCEQ will review and process these pending applications in accordance with TPDES requirements.

(iv) Storm water. TCEQ has jurisdiction over stormwater discharges that are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES permit. These storm water permits may also include authorizations for certain minor types of non-storm water discharges.

(I) Storm water associated with industrial activities. The TCEQ regulates storm water discharges associated with cer-

tain industrial activities under individual TPDES permits and under the TPDES Multi-Sector General Permit, except for discharges associated with industrial activities under the jurisdiction of the RRC.

(II) Storm water associated with construction activities. The TCEQ regulates storm water discharges associated with construction activities, except for discharges from construction activities under the jurisdiction of the RRC.

(III) Municipal storm water discharges. The TCEQ has jurisdiction over discharges from regulated municipal storm sewer systems (MS4s).

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the TCEQ, and a portion of a site is regulated by the EPA and RRC, storm water authorization must be obtained from the TCEQ for the portion(s) of the site regulated by the TCEQ, and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site. Discharge of storm water from a facility that stores both refined products intended for off-site use and crude oil in aboveground tanks is regulated by the TCEQ.

(v) State water quality certification. Under the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for activities that require a federal license or permit and that may result in a discharge to waters of the United States, except for those activities regulated by the RRC.

(vi) Commercial brine extraction and evaporation. Under Texas Water Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater and that are not regulated by the RRC.

(C) Injection wells. Under the Texas Water Code, Chapter 27, the TCEQ has jurisdiction to regulate and authorize the drilling, construction, operation, and closure of injection wells unless the activity is subject to the jurisdiction of the RRC. Injection wells under TCEQ's jurisdiction are identified in §331.11 of this title (relating to Classification of Injection Wells) and include:

(i) Class I injection wells for the disposal of hazardous, radioactive, industrial or municipal waste that inject fluids below the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water;

(ii) Class III injection wells for the extraction of minerals including solution mining of sodium sulfate, sulfur, potash, phosphate, copper, uranium and the mining of sulfur by the Frasch process;

(iii) Class IV injection wells for the disposal of hazardous or radioactive waste which inject fluids into or above formations that contain an underground source of drinking water; and

(iv) Class V injection wells that are not under the jurisdiction of the RRC, such as aquifer remediation wells, aquifer recharge wells, aquifer storage wells, large capacity septic systems, storm water drainage wells, salt water intrusion barrier wells, and closed loop geothermal wells.

(2) Railroad Commission of Texas (RRC).

(A) Oil and gas waste.

(i) Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and non-hazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, includ-

ing storage, handling, reclamation, gathering, transportation, or distribution of crude oil or natural gas by pipeline, prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel, are under the jurisdiction of the RRC, except as noted in clause (ii) of this subparagraph. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (relating to exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 TAC §3.8(a)(30) (relating to Water Protection) and at §335.1 of this title (relating to Definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.

(ii) Hazardous wastes arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer RCRA. When the RRC is authorized by EPA to administer RCRA, jurisdiction over such hazardous wastes will transfer from the TCEQ to the RRC.

(B) Water quality.

(i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities, except that on delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ has sole authority to issue permits for those discharges. Discharges regulated by the RRC into or adjacent to water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water quality standards. The TCEQ and the RRC may consult as necessary regarding application and interpretation of Texas Surface Water Quality Standards.

(ii) Storm water. When required by federal law, authorization for storm water discharges that are under the jurisdiction of the RRC must be obtained through application for a National Pollutant Discharge Elimination System (NPDES) permit with the EPA and authorization from the RRC, as applicable.

(I) Storm water associated with industrial activities. Where required by federal law, discharges of storm water associated with facilities and activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Under 33 U.S.C. §1342(1)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under 16 TAC §3.8 (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollu-

ants, including sediment, in storm water to help ensure protection of surface water quality during storm events.

(II) Storm water associated with construction activities. Where required by federal law, discharges of storm water associated with construction activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Activities under RRC jurisdiction include construction of a facility that, when completed, would be associated with the exploration, development, or production of oil or gas or geothermal resources, such as a well site; treatment or storage facility; underground hydrocarbon or natural gas storage facility; reclamation plant; gas processing facility; compressor station; terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility; a carbon dioxide geologic storage facility under the jurisdiction of the RRC; and a gathering, transmission, or distribution pipeline that will transport crude oil or natural gas, including natural gas liquids, prior to refining of such oil or the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The RRC also has jurisdiction over storm water from land disturbance associated with a site survey that is conducted prior to construction of a facility that would be regulated by the RRC. Under 33 U.S.C. §1342(1)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under 16 TAC §3.8 (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain BMPs to minimize discharges of pollutants, including sediment, in storm water during construction activities to help ensure protection of surface water quality during storm events.

(III) Municipal storm water discharges. Storm water discharges from facilities regulated by the RRC located within an MS4 are not regulated by the TCEQ. However, a municipality may regulate storm water discharges from RRC sites into their MS4.

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the RRC and the EPA, and a portion of a site is regulated by the TCEQ, storm water authorization must be obtained from the EPA and the RRC, as applicable, for the portion(s) of the site under RRC jurisdiction and from the TCEQ for the TCEQ regulated portion(s) of the site. Discharge of storm water from a terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility is under the jurisdiction of the RRC.

(iii) State water quality certification. The RRC performs state water quality certifications, as authorized by the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341) for activities that require a federal license or permit and that may result in any discharge to waters of the United States for those activities regulated by the RRC.

(C) Injection wells. The RRC has jurisdiction over the drilling, construction, operation, and closure of the following injection wells.

(i) Disposal wells. The RRC has jurisdiction under Texas Water Code, Chapter 27, over injection wells used to dispose of oil and gas waste. Texas Water Code, Chapter 27, defines "oil and gas waste" to mean "waste arising out of or incidental to drilling for or

producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material." The term "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources" includes waste associated with transportation of crude oil or natural gas by pipeline pursuant to Texas Natural Resources Code, §91.101.

(ii) Enhanced recovery wells. The RRC has jurisdiction over wells into which fluids are injected for enhanced recovery of oil or natural gas.

(iii) Brine mining. Under Texas Water Code, §27.036, the RRC has jurisdiction over brine mining and may issue permits for injection wells.

(iv) Geologic storage of carbon dioxide. Under Texas Water Code, §27.011 and §27.041, and subject to the review of the legislature based on the recommendations made in the preliminary report described by Section 10, Senate Bill No. 1387, Acts of the 81st Legislature, Regular Session (2009), the RRC has jurisdiction over geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir and over a well used for such injection purposes regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and converted.

(v) Hydrocarbon storage. The RRC has jurisdiction over wells into which fluids are injected for storage of hydrocarbons that are liquid at standard temperature and pressure.

(vi) Geothermal energy. Under Texas Natural Resources Code, Chapter 141, the RRC has jurisdiction over injection wells for the exploration, development, and production of geothermal energy and associated resources.

(vii) In-situ tar sands. Under Texas Water Code, §27.035, the RRC has jurisdiction over the in situ recovery of tar sands and may issue permits for injection wells used for the in situ recovery of tar sands.

(c) Definition of hazardous waste.

(1) Under the Texas Health and Safety Code, §361.003(12), a "hazardous waste" subject to the jurisdiction of the TCEQ is defined as "solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901, et seq.)." Similarly, under Texas Natural Resources Code, §91.601(1), "oil and gas hazardous waste" subject to the jurisdiction of the RRC is defined as an "oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.)."

(2) Federal regulations adopted under authority of the federal Solid Waste Disposal Act, as amended by RCRA, exempt from regulation as hazardous waste certain oil and gas wastes. Under 40 Code of Federal Regulations (CFR) §261.4(b)(5), "drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy" are described as wastes that are exempt from federal hazardous waste regulations.

(3) A partial list of wastes associated with oil, gas, and geothermal exploration, development, and production that are considered exempt from hazardous waste regulation under RCRA can be found in EPA's "Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes," 53 FedReg 25,446 (July 6, 1988). A further explanation of the exemption can be found in the "Clarification of the Regulatory Determination for Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy," 58 FedReg 15,284 (March 22, 1993). The exemption codified at 40 CFR §261.4(b)(5) and discussed in the Regulatory Determination has been, and may continue to be, clarified in subsequent guidance issued by the EPA.

(d) Jurisdiction over waste from specific activities.

(1) Drilling, operation, and plugging of wells associated with the exploration, development, or production of oil, gas, or geothermal resources. Wells associated with the exploration, development, or production of oil, gas, or geothermal resources include exploratory wells, cathodic protection holes, core holes, oil wells, gas wells, geothermal resource wells, fluid injection wells used for secondary or enhanced recovery of oil or gas, oil and gas waste disposal wells, and injection water source wells. Several types of waste materials can be generated during the drilling, operation, and plugging of these wells. These waste materials include drilling fluids (including water-based and oil-based fluids), cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals (including scale inhibitors, emulsion breakers, paraffin inhibitors, and surfactants), waste cement, filters (including used oil filters), domestic sewage (including waterborne human waste and waste from activities such as bathing and food preparation), and trash (including inert waste, barrels, dope cans, oily rags, mud sacks, and garbage). Generally, these wastes, whether disposed of by discharge, landfill, land farm, evaporation, or injection, are subject to the jurisdiction of the RRC. Wastes from oil, gas, and geothermal exploration activities subject to regulation by the RRC when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized by the TCEQ under Chapter 330 of this title (relating to Municipal Solid Waste) are, as defined in §330.3(148) of this title (relating to Definitions), "special wastes."

(2) Field treatment of produced fluids. Oil, gas, and water produced from oil, gas, or geothermal resource wells may be treated in the field in facilities such as separators, skimmers, heater treaters, dehydrators, and sweetening units. Waste that results from the field treatment of oil and gas include waste hydrocarbons (including used oil), produced water, hydrogen sulfide scavengers, dehydration wastes, treating and cleaning chemicals, filters (including used oil filters), asbestos insulation, domestic sewage, and trash are subject to the jurisdiction of the RRC.

(3) Storage of oil.

(A) Tank bottoms and other wastes from the storage of crude oil (whether foreign or domestic) before it enters the refinery are under the jurisdiction of the RRC. In addition, waste resulting from storage of crude oil at refineries is subject to the jurisdiction of the TCEQ.

(B) Wastes generated from storage tanks that are part of the refinery and wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the TCEQ.

(4) Underground hydrocarbon storage. The disposal of wastes, including saltwater, resulting from the construction, creation, operation, maintenance, closure, or abandonment of an "underground hydrocarbon storage facility" is subject to the jurisdiction of the RRC,

provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" have the meanings set out in Texas Natural Resources Code, §91.201.

(5) Underground natural gas storage. The disposal of wastes resulting from the construction, operation, or abandonment of an "underground natural gas storage facility" is subject to the jurisdiction of the RRC, provided that the terms "natural gas" and "storage facility" have the meanings set out in Texas Natural Resources Code, §91.173.

(6) Transportation of crude oil or natural gas.

(A) Jurisdiction over pipeline-related activities. The RRC has jurisdiction over matters related to pipeline safety for pipelines in Texas, as referenced in 16 TAC §8.1 (relating to General Applicability and Standards) pursuant to Chapter 121 of the Texas Utilities Code and Chapter 117 of the Texas Natural Resources Code. The RRC has jurisdiction over spill response and remediation of releases from pipelines transporting crude oil, natural gas, and condensate that originate from exploration and production facilities to the refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC is responsible for water quality certification issues related to construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines transporting carbon dioxide.

(B) Crude oil and natural gas are transported by railcars, tank trucks, barges, tankers, and pipelines. The RRC has jurisdiction over waste from the transportation of crude oil by pipeline, regardless of the crude oil source (foreign or domestic) prior to arrival at a refinery. The RRC also has jurisdiction over waste from the transportation by pipeline of natural gas, including natural gas liquids, prior to the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The transportation wastes subject to the jurisdiction of the RRC include wastes from pipeline compressor or pressure stations and wastes from pipeline hydrostatic pressure tests and other pipeline operations. These wastes include waste hydrocarbons (including used oil), treating and cleaning chemicals, filters (including used oil filters), scraper trap sludge, trash, domestic sewage, wastes contaminated with polychlorinated biphenyls (PCBs) (including transformers, capacitors, ballasts, and soils), soils contaminated with mercury from leaking mercury meters, asbestos insulation, transite pipe, and hydrostatic test waters.

(C) The TCEQ has jurisdiction over waste from transportation of refined products by pipeline.

(D) The TCEQ also has jurisdiction over wastes associated with transportation of crude oil and natural gas, including natural gas liquids, by railcar, tank truck, barge, or tanker.

(7) Reclamation plants.

(A) The RRC has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. Waste management activities of reclamation plants for other wastes are subject to the jurisdiction of the TCEQ.

(B) The RRC has jurisdiction over the conservation and prevention of waste of crude oil and therefore must approve all movements of crude oil-containing materials to reclamation plants. The ap-

licable statute and regulations consist primarily of reporting requirements for accounting purposes.

(8) Refining of oil.

(A) The management of wastes resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and American Petroleum Institute (API) separator sludges, is subject to the jurisdiction of the TCEQ. The processing of light ends from the distillation and cracking of crude oil or crude oil products is considered to be a refining operation. The term "refining" does not include the processing of natural gas or natural gas liquids.

(B) The RRC has jurisdiction over refining activities for the conservation and the prevention of waste of crude oil. The RRC requires that all crude oil streams into or out of a refinery be reported for accounting purposes. In addition, the RRC requires that materials recycled and used as a fuel, such as still bottoms or waste crude oil, be reported.

(9) Natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants. Wastes resulting from activities associated with these facilities include produced water, cooling tower water, sulfur bead, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, wastes contaminated with PCBs (including transformers, capacitors, ballasts, and soils), treating and cleaning chemicals, filters, trash, domestic sewage, and dehydration materials. These wastes are subject to the jurisdiction of the RRC under Texas Natural Resources Code, §1.101. Disposal of waste from activities associated with natural gas or natural gas liquids processing plants (including gas fractionation facilities), and pressure maintenance or repressurizing plants by injection is subject to the jurisdiction of the RRC under Texas Water Code, Chapter 27. However, until delegation of authority under RCRA to the RRC, the TCEQ shall have jurisdiction over wastes resulting from these activities that are not exempt from federal hazardous waste regulation under RCRA and that are considered hazardous under applicable federal rules.

(10) Manufacturing processes.

(A) Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, or from the manufacture of carbon black, are industrial wastes subject to the jurisdiction of the TCEQ. The term "manufacturing process" does not include the processing (including fractionation) of natural gas or natural gas liquids at natural gas or natural gas liquids processing plants.

(B) The RRC has jurisdiction under Texas Natural Resources Code, Chapter 87, to regulate the use of natural gas in the production of carbon black.

(C) Biofuels. The TCEQ has jurisdiction over wastes associated with the manufacturing of biofuels and biodiesel. TCEQ Regulatory Guidance Document RG-462 contains additional information regarding biodiesel manufacturing in the state of Texas.

(11) Commercial service company facilities and training facilities.

(A) The TCEQ has jurisdiction over wastes generated at facilities, other than actual exploration, development, or production sites (field sites), where oil and gas industry workers are trained. In addition, the TCEQ has jurisdiction over wastes generated at facilities where materials, processes, and equipment associated with oil and gas industry operations are researched, developed, designed, and manufactured. However, wastes generated from tests of materials, processes, and equipment at field sites are under the jurisdiction of the RRC.

(B) The TCEQ also has jurisdiction over waste generated at commercial service company facilities operated by persons providing equipment, materials, or services (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) to the oil and gas industry. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; drum, tank, and truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and acidizing fluids.

(C) The term "commercial service company facility" does not include a station facility such as a warehouse, pipeyard, or equipment storage facility belonging to an oil and gas operator and used solely for the support of that operator's own activities associated with the exploration, development, or production activities.

(D) Notwithstanding subparagraphs (A) - (C) of this paragraph, the RRC has jurisdiction over disposal of oil and gas wastes, such as waste drilling fluids and NORM-contaminated pipe scale, in volumes greater than the incidental volumes usually received at such facilities, that are managed at commercial service company facilities.

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to 16 TAC §3.8(f) (relating to Water Protection).

(12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or mineral resources.

(A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the Texas General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is being used in connection with activities associated with the exploration, development, or production of oil or gas or geothermal resources, except that upon delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ shall assume RRC's authority under this subsection.

(B) The TCEQ and, where applicable, the EPA, the U.S. Coast Guard, or the GLO, have jurisdiction over discharges from an MODU when the unit is being serviced at a maintenance facility.

(C) Where applicable, the EPA, the U.S. Coast Guard, or the GLO has jurisdiction over discharges from an MODU during transportation from shore to exploration, development or production site, transportation between sites, and transportation to a maintenance facility.

(e) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TCEQ and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of wastes. Questions regarding source reduction and recycling may be directed to the TCEQ External Relations Division, or to the RRC. The TCEQ may require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ at a facility regulated by the RRC.

(B) The TCEQ External Relations Division and the RRC will coordinate as necessary to maintain a working relationship

to enhance the efforts to share information and use resources more efficiently. The TCEQ External Relations Division will make the proper TCEQ personnel aware of the services offered by the RRC, share information with the RRC to maximize services to oil and gas operators, and advise oil and gas operators of RRC services. The RRC will make the proper RRC personnel aware of the services offered by the TCEQ External Relations Division, share information with the TCEQ External Relations Division to maximize services to industrial operators, and advise industrial operators of the TCEQ External Relations Division services.

(2) Treatment of wastes under RRC jurisdiction at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil).

(A) Soils contaminated with constituents that are physically and chemically similar to those normally found in soils at leaking underground petroleum storage tanks from generators under the jurisdiction of the RRC are eligible for treatment at TCEQ regulated soil treatment facilities once alternatives for recycling and source reduction have been explored. For the purpose of this provision, soils containing petroleum substance(s) as defined in §334.481 of this title (relating to Definitions) are considered to be similar, but drilling muds, acids, or other chemicals used in oil and gas activities are not considered similar. Generators under the jurisdiction of the RRC must meet the same requirements as generators under the jurisdiction of the TCEQ when sending their petroleum contaminated soils to soil treatment facilities under TCEQ jurisdiction. Those requirements are in §334.496 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste), except subsection (c) which is not applicable, and §334.497 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators). RRC generators with questions on these requirements should contact the TCEQ.

(B) Generators under RRC jurisdiction should also be aware that TCEQ regulated soil treatment facilities are required by §334.499 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities) to maintain documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site.

(C) The RRC must specifically authorize management of contaminated soils under its jurisdiction at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil). The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations.

(D) All waste, including treated waste, subject to the jurisdiction of the RRC and managed at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title will remain subject to the jurisdiction of the RRC. Such materials will be subject to RRC regulations regarding final reuse, recycling, or disposal.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title.

(3) Processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ.

(A) As provided in this paragraph, waste materials subject to the jurisdiction of the RRC may be managed at solid waste facilities under the jurisdiction of the TCEQ once alternatives for recycling

and source reduction have been explored. The RRC must specifically authorize management of wastes under its jurisdiction at facilities regulated by the TCEQ. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations. In addition, except as provided in subparagraph (B) of this paragraph, the concurrence of the TCEQ is required to manage "special waste" under the jurisdiction of the RRC at a facility regulated by the TCEQ. The TCEQ's concurrence may be subject to specified conditions.

(B) A facility under the jurisdiction of the TCEQ may accept, without further individual concurrence, waste under the jurisdiction of the RRC if that facility is permitted or otherwise authorized to accept that particular type of waste. The phrase "that type of waste" does not specifically refer to waste under the jurisdiction of the RRC, but rather to the waste's physical and chemical characteristics. Management and disposal of waste under the jurisdiction of the RRC is subject to TCEQ's rules governing both special waste and industrial waste.

(C) If the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization, individual written concurrences from the TCEQ shall be required to manage wastes under the jurisdiction of the RRC at TCEQ regulated facilities. Recommendations for the management of special wastes associated with the exploration, development, or production of oil, gas, or geothermal resources are found in TCEQ Regulatory Guidance document RG-3. (This is required only if the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization provided by the TCEQ.) To obtain an individual concurrence, the waste generator must provide to the TCEQ sufficient information to allow the concurrence determination to be made, including the identity of the proposed waste management facility, the process generating the waste, the quantity of waste, and the physical and chemical nature of the waste involved (using process knowledge and/or laboratory analysis as defined in Chapter 335, Subchapter R of this title (relating to Waste Classification)). In obtaining TCEQ approval, generators may use their existing knowledge about the process or materials entering it to characterize their wastes. Material Safety Data Sheets, manufacturer's literature, and other documentation generated in conjunction with a particular process may be used. Process knowledge must be documented and submitted with the request for approval.

(D) Domestic septage collected from portable toilets at facilities subject to RRC jurisdiction that is not mixed with other waste materials may be managed at a facility permitted by the TCEQ for disposal, incineration, or land application for beneficial use of such domestic septage waste without specific authorization from the TCEQ or the RRC. Waste sludge subject to the jurisdiction of the RRC may not be applied to the land at a facility permitted by the TCEQ for the beneficial use of sewage sludge or water treatment sludge.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities under the jurisdiction of the TCEQ. If a receiving facility requires a TCEQ waste code for waste under the jurisdiction of the RRC, a code consisting of the following may be provided:

(i) the sequence number "RRCT";

(ii) the appropriate form code, as specified in Chapter 335, Subchapter R, §335.521, Appendix 3 of this title (relating to Appendices); and

(iii) the waste classification code "H" if the waste is a hazardous oil and gas waste, or "R" if the waste is a nonhazardous oil and gas waste.

(F) If a facility requests or requires a TCEQ waste generator registration number for wastes under the jurisdiction of the RRC, the registration number "XXXRC" may be provided.

(G) Wastes that are under the jurisdiction of the RRC need not be reported to the TCEQ.

(4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated by the RRC.

(A) Once alternatives for recycling and source reduction have been explored, and with prior authorization from the RRC, the following nonhazardous wastes subject to the jurisdiction of the TCEQ may be disposed of, other than by injection into a Class II well, at a facility regulated by the RRC; bioremediated at a facility regulated by the RRC (prior to reuse, recycling, or disposal); or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous wastes that are chemically and physically similar to oil and gas wastes, but excluding soils, media, debris, sorbent pads, and other clean-up materials that are contaminated with refined petroleum products.

(B) To obtain an individual authorization from the RRC, the waste generator must provide the following information, in writing, to the RRC: the identity of the proposed waste management facility, the quantity of waste involved, a hazardous waste determination that addresses the process generating the waste and the physical and chemical nature of the waste, and any other information that the RRC may require. As appropriate, the RRC shall reevaluate any authorization issued pursuant to this paragraph.

(C) Once alternatives for recycling and source reduction have been explored, and subject to the RRC's individual authorization, the following wastes under the jurisdiction of the TCEQ are authorized without further TCEQ approval to be disposed of at a facility regulated by the RRC, bioremediated at a facility regulated by the RRC, or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous bottoms from tanks used only for crude oil storage; unused and/or reconditioned drilling and completion/workover wastes from commercial service company facilities; used and/or unused drilling and completion/workover wastes generated at facilities where workers in the oil and gas exploration, development, and production industry are trained; used and/or unused drilling and completion/workover wastes generated at facilities where materials, processes, and equipment associated with oil and gas exploration, development, and production operations are researched, developed, designed, and manufactured; unless other provisions are made in the underground injection well permit used and/or unused drilling and completion wastes (but not workover wastes) generated in connection with the drilling and completion of Class I, III, and V injection wells; wastes (such as contaminated soils, media, debris, sorbent pads, and other cleanup materials) associated with spills of crude oil and natural gas liquids if such wastes are under the jurisdiction of the TCEQ; and sludges from washout pits at commercial service company facilities.

(D) Under Texas Water Code, §27.0511(g), a TCEQ permit is required for injection of industrial or municipal waste as an injection fluid for enhanced recovery purposes. However, under Texas Water Code, §27.0511(h), the RRC may authorize a person to use nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without obtaining a permit from the TCEQ. The use or disposal of radioactive material under this subparagraph is subject to the applicable requirements of Texas Health and Safety Code, Chapter 401.

(E) Under Texas Water Code, §27.026, by individual permit, general permit, or rule, the TCEQ may designate a Class II disposal well that has an RRC permit as a Class V disposal well autho-



rized to dispose by injection nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals under the jurisdiction of the TCEQ. The operator of a permitted Class II disposal well seeking a Class V authorization must apply to TCEQ and obtain a Class V authorization prior to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals. A permitted Class II disposal well that has obtained a Class V authorization from TCEQ under Texas Water Code, §27.026, remains subject to the regulatory requirements of both the RRC and the TCEQ. Nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals to be disposed by injection in a permitted Class II disposal well authorized by TCEQ as a Class V injection well remain subject to the requirements of the Texas Health and Safety Code, the Texas Water Code, and the TCEQ's rules. The RRC and the TCEQ may impose additional requirements or conditions to address the dual injection activity under Texas Water Code, §27.026.

(5) Drilling in landfills. The TCEQ will notify the Oil and Gas Division of the RRC and the landfill owner at the time a drilling application is submitted if an operator proposes to drill a well through a landfill regulated by the TCEQ. The RRC and the TCEQ will cooperate and coordinate with one another in advising the appropriate parties of measures necessary to reduce the potential for the landfill contents to cause groundwater contamination as a result of landfill disturbance associated with drilling operations. The TCEQ requires prior written approval before drilling of any test borings through previously deposited municipal solid waste under §330.15 of this title (relating to General Prohibitions), and before borings or other penetration of the final cover of a closed municipal solid waste landfill under §330.955 of this title (relating to Miscellaneous). The installation of landfill gas recovery wells for the recovery and beneficial reuse of landfill gas is under the jurisdiction of the TCEQ in accordance with Chapter 330, Subchapter I of this title (relating to Landfill Gas Management). Modification of an active or a closed solid waste management unit, corrective action management unit, hazardous waste landfill cell, or industrial waste landfill cell by drilling or penetrating into or through deposited waste may require prior written approval from TCEQ. Such approval may require a new authorization from TCEQ or modification or amendment of an existing TCEQ authorization.

(6) Coordination of actions and cooperative sharing of information.

(A) In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the TCEQ at a facility permitted by the RRC, the TCEQ is responsible for enforcement actions against the generator or transporter, and the RRC is responsible for enforcement actions against the disposal facility. In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the RRC at a facility permitted by the TCEQ, the RRC is responsible for enforcement actions against the generator or transporter, and the TCEQ is responsible for enforcement actions against the disposal facility.

(B) The TCEQ and the RRC agree to cooperate with one another by sharing information. Employees of either agency who receive a complaint or discover, in the course of their official duties, information that indicates a violation of a statute, regulation, order, or permit pertaining to wastes under the jurisdiction of the other agency, will notify the other agency. In addition, to facilitate enforcement actions, each agency will share information in its possession with the other agency if requested by the other agency to do so.

(C) The TCEQ and the RRC agree to work together at allocating respective responsibilities. To the extent that jurisdiction is indeterminate or has yet to be determined, the TCEQ and the RRC

agree to share information and take appropriate investigative steps to assess jurisdiction.

(D) For items not covered by statute or rule, the TCEQ and the RRC will collaborate to determine respective responsibilities for each issue, project, or project type.

(E) The staff of the RRC and the TCEQ shall coordinate as necessary to attempt to resolve any disputes regarding interpretation of this MOU and disputes regarding definitions and terms of art.

(7) Groundwater.

(A) Notice of groundwater contamination. Under Texas Water Code, §26.408, effective September 1, 2003, the RRC must submit a written notice to the TCEQ of any documented cases of groundwater contamination that may affect a drinking water well.

(B) Groundwater protection letters. The RRC provides letters of recommendation concerning groundwater protection.

(i) For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the RRC provides geologic interpretation identifying fresh water zones, base of usable-quality water (generally less than 3,000 mg/L total dissolved solids, but may include higher levels of total dissolved solids if identified as currently being used or identified by the Texas Water Development Board as a source of water for desalination), and include protection depths recommended by the RRC. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water.

(ii) For recommendations related to injection, the RRC provides geologic interpretation of the base of the underground source of drinking water. The term "underground source of drinking water" is defined in 40 Code of Federal Regulations §146.3 (*Federal Register*, Volume 46, June 24, 1980).

(8) Emergency and spill response.

(A) The TCEQ and the RRC are members of the state's Emergency Management Council. The TCEQ is the state's primary agency for emergency support during response to hazardous materials and oil spill incidents. The TCEQ is responsible for state-level coordination of assets and services, and will identify and coordinate staffing requirements appropriate to the incident to include investigative assignments for the primary and support agencies.

(B) Contaminated soil and other wastes that result from a spill must be managed in accordance with the governing statutes and regulations adopted by the agency responsible for the activity that resulted in the spill. Coordination of issues of spill notification, prevention, and response shall be addressed in the State of Texas Oil and Hazardous Substance Spill Contingency Plan and may be addressed further in a separate Memorandum of Understanding among these agencies and other appropriate state agencies.

(C) The agency (TCEQ or RRC) that has jurisdiction over the activity that resulted in the spill incident will be responsible for measures necessary to monitor, document, and remediate the incident.

(i) The TCEQ has jurisdiction over certain inland oil spills, all hazardous-substance spills, and spills of other substances that may cause pollution.

(ii) The RRC has jurisdiction over spills or discharges from activities associated with the exploration, development, or production of crude oil, gas, and geothermal resources, and discharges from brine mining or surface mining.

(D) If TCEQ or RRC field personnel receive spill notifications or reports documenting improperly managed waste or contaminated environmental media resulting from a spill or discharge that is under the jurisdiction of the other agency, they shall refer the issue to the other agency. The agency that has jurisdiction over the activity that resulted in the improperly managed waste, spill, discharge, or contaminated environmental media will be responsible for measures necessary to monitor, document, and remediate the incident.

(9) Anthropogenic carbon dioxide storage. In determining the proper permitting agency in regard to a particular permit application for a carbon dioxide geologic storage project, the TCEQ and the RRC will coordinate by any appropriate means to review proposed locations, geologic settings, reservoir data, and other jurisdictional criteria specified in Texas Water Code, §27.041.

(f) Radioactive material.

(1) Radioactive substances. Under the Texas Health and Safety Code, §401.011, the TCEQ has jurisdiction to regulate and license:

(A) the disposal of radioactive substances;

(B) the processing or storage of low-level radioactive waste or NORM waste from other persons, except oil and gas NORM waste;

(C) the recovery or processing of source material;

(D) the processing of by-product material as defined by Texas Health and Safety Code, §401.003(3)(B); and

(E) sites for the disposal of low-level radioactive waste, by-product material, or NORM waste.

(2) NORM waste.

(A) Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of NORM waste that constitutes, is contained in, or has contaminated oil and gas waste. This waste material is called "oil and gas NORM waste." Oil and gas NORM waste may be generated in connection with the exploration, development, or production of oil or gas.

(B) Under Texas Health and Safety Code, §401.412, the TCEQ has jurisdiction over the disposal of NORM that is not oil and gas NORM waste.

(C) The term "disposal" does not include receipt, possession, use, processing, transfer, transport, storage, or commercial distribution of radioactive materials, including NORM. These non-disposal activities are under the jurisdiction of the Texas Department of State Health Services under Texas Health and Safety Code, §401.011(a).

(3) Drinking water residuals. A person licensed for the commercial disposal of NORM waste from public water systems may dispose of NORM waste only by injection into a Class I injection well permitted under Chapter 331 of this title (relating to Underground Injection Control) that is specifically permitted for the disposal of NORM waste.

(4) Management of radioactive tracer material.

(A) Radioactive tracer material is subject to the definition of low-level radioactive waste under Texas Health and Safety Code, §401.004, and must be handled and disposed of in accordance with the rules of the TCEQ and the Department of State Health Services.

(B) Exemption. Under Texas Health and Safety Code, §401.106, the TCEQ may grant an exemption by rule from a licensing requirement if the TCEQ finds that the exemption will not constitute a significant risk to the public health and safety and the environment.

(5) Coordination with the Texas Radiation Advisory Board. The RRC and the TCEQ will consider recommendations and advice provided by the Texas Radiation Advisory Board that concern either agency's policies or programs related to the development, use, or regulation of a source of radiation. Both agencies will provide written response to the recommendations or advice provided by the advisory board.

(6) Uranium exploration and mining.

(A) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium exploration activities.

(B) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium mining, except for in situ recovery processes.

(C) Under Texas Water Code, §27.0513, the TCEQ has jurisdiction over injection wells used for uranium mining.

(D) Under Texas Health and Safety Code, §401.2625, the TCEQ has jurisdiction over the licensing of source material recovery and processing or for storage, processing, or disposal of by-product material.

(g) Effective date. This Memorandum of Understanding, as of its May 11, 2020, effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated May 1, 2012.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000597

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 29, 2020

For further information, please call: (512) 239-6087

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**CHAPTER 342. REGULATION OF CERTAIN  
AGGREGATE PRODUCTION OPERATIONS  
SUBCHAPTER B. REGISTRATION AND FEES  
30 TAC §342.26**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §342.26.

Background and Summary of the Factual Basis for the Proposed Rule

House Bill 907 (HB 907 or bill) 86th Texas Legislature, 2019, amends Texas Water Code (TWC), Chapter 28A, relating to Aggregate Production Operations (APOs) by requiring the TCEQ to investigate APOs every two years during the first six years in which the APO is registered, and at least once every three years thereafter. The TCEQ may also conduct unannounced periodic inspections at APOs that were issued notices of violations during

# Texas Commission on Environmental Quality



## ORDER REPEALING AND ADOPTING NEW RULE

**Docket No. 2019-1750-RUL**

**Rule Project No. 2020-016-007-LS**

On June 10, 2020, the Texas Commission on Environmental Quality (Commission) adopted the repeal of and new § 7.117 in 30 Texas Administrative Code Chapter 7, Memoranda of Understanding. The proposed repeal and new rule were published for comment in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1302).

IT IS THEREFORE ORDERED BY THE COMMISSION that the existing rule is repealed, and the new rule is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rule necessary to comply with *Texas Register* requirements. The repealed and adopted rule and the preamble to the repealed and adopted rule are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

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

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed