

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§331.2, 331.5, 331.7, 331.47, 331.121, and 331.163. The commission also proposes new §331.17 and §331.18.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission's practice of permitting pre-injection units and other surface units as part of nonhazardous noncommercial underground injection control (UIC) permits has varied over time, due to the different scope of applications submitted by applicants, and due to different interpretations of statutes and the provisions of Chapter 331. Generally, it has been the applicants' option whether to include pre-injection facility information in their UIC permit applications. About half of the UIC permits issued by the commission for on-site disposal of nonhazardous waste include specifications for pre-injection units. This rulemaking is intended to provide the option of including pre-injection units in a registration under the authority of Texas Water Code (TWC), Chapter 27, and to provide a consistent set of standards and guidance to permit applicants, agency staff, and the general public on application requirements for pre-injection units, whether they are to be authorized by permit or registration. This rulemaking also proposes to change the terms "pre-injection facilities" and "surface facilities," which are considered to be terms of art, to "pre-injection units." These changes are proposed for consistency with other agency definitions wherein "facility" usually refers to a property along with structures and other appurtenances, and "unit" usually refers to the individual types of equipment used for the management of waste, such as tanks, pumps, and surface impoundments.

The commission gave preliminary consideration to this issue at a commissioners' work session on October 20, 2000 and directed staff to conduct additional research on the issue and develop recommendations. Staff returned to the commissioners' work session on January 17, 2001 and presented a list of options relating to the regulation of pre-injection units associated with on-site nonhazardous waste disposal by Class I injection wells and any permitted Class V injection wells. The commission directed staff to require applicants for UIC permits to include design information for pre-injection units with the permit application, and to review the design information to ensure it is adequate to protect groundwater. Applicants were to be informed that inclusion of nonhazardous pre-injection units as part of their UIC permit was optional. Applicants who choose not to include nonhazardous pre-injection units in their UIC permits would be subject to a registration process for those units. Applicants also were to be informed that sufficient design information must be included in permit or registration applications so that staff could conduct a thorough technical review and determine whether the pre-injection units are protective of human health and the environment.

TWC, Chapter 27 provides authority to the commission to regulate injection wells and to prevent underground injection which may pollute fresh water. Existing commission UIC rules require permits for "all injection wells and activities." The rules currently define the term "Activity" to include "the construction or operation of an injection well or pre-injection facilities." The term "Pre-injection facilities" is also defined in existing rules to include the "on-site above-ground appurtenances, structures, equipment, and other fixtures that are or will be used for storage, processing, or in conjunction with an injection operation." These definitions have provided the basis for inclusion of pre-injection facilities in UIC permits in the past. The commission proposes to amend the definition of

“Activity” in §331.2, Definitions, and to amend §331.7(a), to delete the use of the term “and activities.” These proposed amendments would clarify the use of the term “activity” and effectively separate and distinguish the regulation of the injection well itself from the regulation of pre-injection units. Thus, if the applicant chooses not to include nonhazardous noncommercial pre-injection units in their UIC permit, then the permit will only regulate the injection operation “from the wellhead down.”

On-site processing, storage, and disposal of industrial nonhazardous noncommercial solid waste is exempt from solid waste permitting under Texas Health and Safety Code (THSC), §361.090. Also, the United States Environmental Protection Agency (EPA) does not currently require the states to regulate pre-injection units for nonhazardous noncommercial injection wells under either the Resource Conservation and Recovery Act or UIC regulations. However, THSC, §361.090(d) provides that the commission may adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection. This proposal would provide rules to control the collection, handling, storage, and processing of industrial nonhazardous solid waste, prior to its disposal in accordance with an underground injection control permit authorized by TWC, Chapter 27.

In a related rulemaking, proposed changes to 30 TAC Chapter 39, Public Notice, will appear in the forthcoming issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §331.2(2), Definitions, to clarify the definition of “Activity” by changing the definition from “The construction or operation of an injection well or of pre-injection facilities, including the processing, storage, and disposal of waste” to the following: “The construction or operation of an injection well for disposal of waste, or of pre-injection units for processing or storage of waste.” The primary effect of this proposed revision is to change the word “facilities” to “units” and to make the distinction that injection wells are used for disposal of waste, while the pre-injection units are used for processing and storage.

Section 331.2(44) is proposed to be amended to delete the phrase “surface storage or” from the definition of “Injection operations,” to reflect that surface storage units are not considered to be part of the injection operations. The commission intends that this proposed change will help clarify that surface storage units are considered to be pre-injection units and not part of the injection well itself.

Section 331.2(45) is proposed to be amended to add the following sentence to the definition of “Injection well,” in order to more fully define this term: “Components of an injection well annulus monitoring system are considered to be a part of the injection well.”

Section 331.2(56)(C) is proposed to be amended to revise the definition of “Pond monitor wells” by changing the phrase “surface facility” to “pre-injection units.”

Section 331.2(70), the definition of “Pre-injection facilities,” is proposed to be amended to further delineate and specify the types of above ground appurtenances, structures, equipment, and other fixtures associated with pre-injection operations. Specifically, the word “facilities” is proposed to be changed to “units,” and “Pre-injection units” is proposed to be defined to include “injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well.” The commission also proposes to add the phrase “of waste to be injected.” These revisions are proposed to further reinforce the differences between the pre-injection units and the injection well. This greater degree of specificity is also necessary to distinguish between the injection well and those nonhazardous pre-injection units which may be authorized by registration.

Section 331.5, Prevention of Pollution, is proposed to be amended to add prohibitions relating to pre-injection units which are required to be authorized under §331.7(d). The proposed language would require that these units be designed, constructed, operated, maintained, monitored, and closed so as not to cause: 1) the discharge or imminent threat of discharge of waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the commission; 2) the creation and maintenance of a nuisance; or 3) the endangerment of the public health and welfare.

The commission proposes to amend §331.7, Permit Required, to improve the procedures for technical review of pre-injection units for nonhazardous, noncommercial injection wells. As noted earlier in this preamble, §331.7(a) is proposed to be amended to delete the phrase “and activities.” This proposed amendment will make clear that certain activities, as that term is defined in §331.2(2), are in fact associated with pre-injection units and may be eligible for the option of registration.

Proposed §331.7(d) is a new subsection that specifies that pre-injection units must either be authorized by a permit issued by the commission or registered in accordance with proposed new §331.17. The commission notes that it is the applicant's option whether to include nonhazardous noncommercial pre-injection units in their UIC permit or to register those units under the authority of TWC, Chapter 27.

An applicant may also elect to include nonhazardous noncommercial pre-injection units in a wastewater permit, if desired by the applicant and if determined by the commission to be appropriate.

Additionally, proposed §331.7(d) clarifies that the option of registering does not apply to pre-injection units associated with Class I injection wells that dispose of by-product material, as that term is defined in THSC, §401.003 and in agency rules in 30 TAC §336.2, concerning definitions. By-product material is excluded from the definition of solid waste in 40 Code of Federal Regulations §261.4(a)(4) and 30 TAC §335.1 under the definition of "solid waste." All surface impoundments and other pre-injection units associated with by-product waste disposal wells must continue to be authorized by permit.

Proposed new §331.17, Pre-Injection Units Registration, outlines the procedures for submitting an application for registration of UIC pre-injection units. Registration of pre-injection units and submittal of plans, specifications, and details of those units will enable agency staff to conduct a technical review of the pre-injection units associated with an on-site nonhazardous waste injection well to determine if the design of these units meets the requirements of TWC, Chapter 27; THSC, §361.090; and the technical standards specified in 30 TAC Chapter 317. At a minimum, this review would include checking the application for proper engineering seals as required by the Engineering Practice Act, reviewing the application to determine if the nonhazardous waste management units will be protective

of human health and the environment, and determining if there is sufficient information to draft appropriate UIC registration or permit provisions. Proposed new §331.17(a) provides that nonhazardous noncommercial pre-injection units which are not authorized by permit, must be registered in accordance with the applicable requirements of this chapter. Proposed new §331.17(b) provides that no registration shall be allowed where a pre-injection unit causes or allows the release of fluid that would result in the pollution of underground sources of drinking water, fresh water, or surface water. Proposed new §331.17(c) sets forth registration procedures for owners or operators of nonhazardous noncommercial pre-injection units not otherwise authorized under this chapter. The proposal would require the owner or operator to submit an application for registration to the executive director, in accordance with the applicable requirements of this subchapter, and for any new pre-injection unit, obtain approval from the executive director before operating the pre-injection unit. For any existing pre-injection unit, the owner or operator would be required to submit the application on or before the date the injection well permit renewal application is submitted. Proposed new §331.17(d) specifies the minimum design criteria for UIC pre-injection units. Proposed new §331.17(e) also requires that corrective action for pre-injection units, not otherwise authorized by permit, shall be performed under §331.44 concerning corrective action standards.

Proposed new §331.18, Registration Application Processing, Notice, Comment, Motion to Overturn, outlines the procedures for processing an application for registration of UIC pre-injection units.

Registrations for pre-injection units are subject to public notice. The proposed rules provide that the chief clerk of the commission shall mail notice of the registration to landowners named on the application map. There will be a 30-day comment period during which interested persons may file

written comments on the proposed registration. The executive director will consider the written comments before deciding whether to issue the registration. The proposed rules further provide an opportunity to file a motion to overturn the executive director's decision to issue or deny a registration; however, persons filing written comments or motions for reconsideration are not entitled to a public meeting or a contested case hearing on a UIC pre-injection unit registration. Affected persons may request a contested case hearing on the related UIC permit application in accordance with the procedural rules given in 30 TAC Chapter 55. Proposed new §331.18(a) sets forth the purpose and scope of this section. Proposed new §331.18(b) specifies the necessary components of a registration application and provides the mailed notice requirements for registration of UIC pre-injection units. The commission notes that the registration application maps required under proposed §331.18(b)(5) do not require identification of any mineral rights owners. Proposed new §331.18(c) provides for administrative processing and completeness of a registration application. Proposed new §331.18(d) provides for notice of the receipt and declaration of technical completeness of the registration application. Proposed new §331.18(e) includes requirements for public notice of the registration. Proposed new §331.18(f) includes application processing procedures and requirements. Proposed new §331.18(g) addresses major amendments of registrations. Major amendments include substantive changes to engineering plans and specifications. Proposed new §331.18(h) addresses minor amendments of registrations. Routine maintenance and replacement of existing units with equivalent units do not require amendment of the registration. Proposed new §331.18(i) provides a 30-day public comment period on registrations. Proposed new §331.18(j) provides the executive director delegation for authority to approve pre-injection unit registrations. Proposed new §331.18(k) provides that

registrations are subject to a motion to overturn process on the executive director's final approval of an application.

Additional requirements pertaining to pre-injection units are proposed in §331.47, Pond Lining. This section is proposed to be divided into two subsections. Subsection (a) is proposed to be amended to: add an exception phrase for subsection (b); change the term "surface facilities" to "pre-injection units"; and insert the word "surface" before "impoundment" for consistency with the definition of "surface impoundment" under §335.1. Also, the word "and" is proposed to be changed to "or" to explain the distinction that technical requirements may be approved by the executive director or may be specified in the permit. Proposed new subsection (b) applies to noncommercial injection wells which dispose of nonhazardous Class 1 industrial waste and provides that all surface impoundments associated with these wells must conform to any applicable requirements of Chapter 317.

Section 331.121(a)(2)(K) is proposed to be amended to add engineering drawings for pre-injection units to the information to be included in the technical report for a Class I injection well permit application.

Section 331.121(a)(2)(Q) is proposed to be added to require that the technical report include the authorization status of the pre-injection units. Section 331.121(a)(2)(R) is proposed to be added to require that the technical report include information demonstrating compliance with the applicable design criteria of Chapter 317, for pre-injection units associated with Class I nonhazardous, noncommercial injection wells.

Finally, the well construction standards for Class I salt cavern solid waste disposal wells given in §331.163, Well Construction Standards, are proposed to be amended. Specifically, the term “Surface facilities” found in §331.163(g) and (g)(3) is proposed to be changed to “Pre-injection units” for consistency with the proposed definition of “Pre-injection unit” in §331.2(70).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for units of state and local government due to administration and enforcement of the proposed rules. The proposed rulemaking would provide units of government the option of either permitting or registering pre-injection units for Class I nonhazardous, noncommercial injection wells and permitted Class V injection wells for the disposal of nonhazardous waste. Units of government that do not operate these types of injection wells would not be affected by the proposed rules.

Pre-injection units are the on-site above ground structures, appurtenances, equipment, and other fixtures, including injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the injection well, that are or will be used for storage or processing of waste to be injected into the disposal well.

Previously, applicants for UIC permits at noncommercial facilities which dispose of nonhazardous waste on-site by means of a Class I or permitted Class V injection well were given the option to include pre-injection units in their permits. Adoption of these rules would provide applicants the option of

either registering or permitting their pre-injection units. The proposed rules will only affect applicants seeking new UIC permits or those with pre-injection units which are not in the permit and who are applying for permit renewals (required every ten years).

The permit and registration processes are similar. Both require technical documentation demonstrating that the pre-injection units meet technical and environmental standards. Additionally, both afford the public a comment period to submit written comments to the commission concerning the UIC application. However, there is no public meeting or contested case hearing provision for registration applications, and the commission would be required to conduct a mailing to adjacent landowners during a registration proceeding. The commission anticipates that those sites opting to register their pre-injection units would realize public notice cost savings due to implementation of the proposed rules, in an amount that cannot be determined at this time. The technical demonstration related costs would be similar for owners and operators either registering or permitting their pre-injection units.

Units of state and local government do not normally operate injection wells affected by the proposed rules. Additionally, there are no known active injection wells operated by units of government that would be affected by the proposed rules. Therefore, the commission anticipates no significant fiscal implications for any unit of state or local government due to implementation of the proposed rules.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be increased environmental protection by requiring all affected UIC applications to have pre-injection units permitted or registered. This requirement is intended to ensure these types of operations meet required technical and environmental requirements.

Previously, applicants for UIC permits at noncommercial facilities which dispose of nonhazardous waste on-site by means of a Class I or permitted Class V injection well were given the option to include pre-injection units in their permits. Adoption of these rules would provide applicants the option of either registering or permitting their pre-injection units. The proposed rules will only affect applicants seeking new UIC permits or applicants who do not have pre-injection units in their permit and who are applying for permit renewals (required every ten years).

The commission currently receives approximately 20 applications per year for UIC permits that would be affected by the proposed rules. The majority of these applications are from large industrial businesses. Of the existing injection wells affected by the proposed rules, the majority already incorporate pre-injection units into UIC permits. For these affected sites, the owner/operator would have a choice of registering the units or keeping them in their existing UIC permit during the renewal process. The commission anticipates the proposed rules could potentially result in cost savings for those sites that decide to register pre-injection sites in lieu of keeping them in their existing permit.

The commission estimates that pre-injection units are not included in the UIC permits for approximately 40 injection wells affected by the proposed rules. The proposed rules would provide the owners or operators of these sites the option of obtaining a permit or registering their pre-injection units during the next permit renewal. The commission estimates the permit renewal for most of these sites will occur within the next five years. Although there may be additional costs to these sites that are currently operating pre-injection units without a permit, the commission does not anticipate that the fiscal implications will be significant. The majority of technical data required would normally be produced for the permit renewal, plus there would be potential costs savings for those sites that decide to register their pre-injection units.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses as a result of implementation of the proposed rules. This rulemaking is intended to provide applicants for UIC permits at noncommercial facilities which dispose of nonhazardous waste on-site by means of a Class I or permitted Class V injection wells the option to register or permit pre-injection units.

Previously, applicants for UIC permits at noncommercial facilities which dispose of nonhazardous waste on-site by means of a Class I or permitted Class V injection well were given the option to include pre-injection units in their permits. Adoption of these rules would provide applicants the option of either registering or permitting their pre-injection units. The proposed rules will only affect applicants

seeking new UIC permits or applicants who do not have pre-injection units in their permit and who are applying for permit renewals (required every ten years).

The commission currently receives approximately 20 applications per year for UIC permits that would be affected by the proposed rules, some of which are submitted by small or micro-businesses. Of the existing injection wells affected by the proposed rules, the majority already incorporate pre-injection units into UIC permits. For sites that do not include their pre-injection units in the UIC permit, the owner/operator would have a choice of registering the units or incorporating them into a UIC permit during the renewal process. The commission anticipates the proposed rules may result in cost savings for those small and micro-businesses that decide to register their pre-injection units in lieu of obtaining a permit. The commission estimates that of the approximately 40 injection wells where pre-injection units are not included in the UIC permit, none are owned or operated by small or micro-businesses. Therefore, the commission does not anticipate significant additional costs for any small or micro-businesses due to implementation of the proposed rules.

LOCAL EMPLOYMENT IMPACT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the proposed rules are not subject to §2001.0225 because they do not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the rules is to protect the environment and reduce risks to human health. The proposed rules clarify commission rules for pre-injection units at Class I nonhazardous, noncommercial injection wells so that pre-injection units will be regulated in a more consistent manner. The rules substantially advance their purpose by clarifying the definitions of injection well and pre-injection units; adding registration as an alternative to including pre-injection units in the injection well permit; and explicitly stating the design standards that will apply to all covered pre-injection units. In addition, the requirement to include pre-injection units in a permit or registration is synchronized with renewal of the injection well permit. However, because the proposed rules do not require more from an applicant than is required by current rules, the proposed rules do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed rules are not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the proposal specifies technical standards for pre-injection units at Class I nonhazardous, noncommercial injection wells.

In addition, the proposed rules do not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that the proposal does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) propose to adopt a rule solely under the general powers of the agency.

The proposal does not exceed a standard set by federal law because there are no such corresponding federal standards for pre-injection units at Class I nonhazardous, noncommercial injection wells.

Further, the proposal does not exceed an express requirement of state law because TWC, Chapter 27 does not establish express requirements for pre-injection units at Class I nonhazardous, noncommercial injection wells. The proposal does not exceed the requirements of the delegation agreement because the delegation agreement does not establish express requirements for pre-injection units. This proposal is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of the Texas Injection Well Act, TWC, §§27.002, 27.003, 27.011, 27.019(a), and 27.051(3).

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment indicates that the Texas Government Code, Chapter 2007 does not apply to these proposed rules because the proposed rules are an action that is taken in response to a real and substantial threat to public health and safety; they are designed to significantly advance the health and safety purpose and they do not impose a

greater burden than is necessary to achieve the health and safety purpose. Texas Government Code, §2007.003(b)(13), provides that an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose and that does not impose a greater burden than is necessary to achieve the health and safety purpose is exempt from Chapter 2007.

The real and substantial threat to public health and safety in this rulemaking involves activities that may pollute fresh water. The Texas Injection Well Act, TWC, §27.003 states that it is the policy of the state to “prevent underground injection that may pollute fresh water” and “to require the use of all reasonable methods to implement this policy.” Section 27.051(3) requires that the commission make a finding, before it issues a permit, “that, with proper safeguards both ground and surface fresh water can be adequately protected from pollution.” Section 27.002(4) defines “pollution” as “the alteration of the physical, chemical, or biological quality of or the contamination of, water that makes it harmful, detrimental, or injurious to humans....”

The proposed rules would minimize this threat by requiring that Class I noncommercial, nonhazardous pre-injection units meet the design criteria for sewerage systems, while offering to applicants the option of using a registration process to authorize such pre-injection units.

The proposed rules significantly advance the health and safety purpose by setting a uniform design standard which is protective of human health and safety for certain pre-injection units. The design

standards protect health and safety by requiring the management of waste in such a manner as to prevent their excursion into fresh waters in the state.

The proposed rules do not impose a greater burden than is necessary to achieve the health and safety purpose because the proposed design standards for Class I noncommercial, nonhazardous pre-injection units represent the engineering practice necessary to prevent the pollution of fresh water. Further, the proposed rules allow applicants to use, as an option, a registration process to comply with the proposal. The option of using a registration process is expected to provide, in some instances, a less burdensome method of administering the design standards than the existing rules, which require that Class I noncommercial, nonhazardous pre-injection units be included in the injection well permit.

The proposed rules are not subject to Texas Government Code, Chapter 2007 because they are exempt under the provisions of §2007.003(b)(13).

Nevertheless, the commission further evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to clarify commission rules for pre-injection units at Class I nonhazardous, noncommercial injection wells so that pre-injection units will be regulated in a more consistent manner. The proposed rules substantially advance this purpose by clarifying the definitions of injection well and pre-injection units; adding registration as an alternative to including pre-injection units in the injection well permit; and explicitly stating the design standards that will apply to all covered pre-injection units. In addition, the requirement to include pre-injection units

in a permit or registration is synchronized with renewal of the injection well permit. The proposed rules do not require more from an applicant than is required by existing rules, which require that pre-injection units be included in the injection well permit. Since the proposed rules do not require more than would be required by existing rules, they do not burden an owner of real property in a manner which would be a statutory or constitutional taking. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-055-331-WS. Comments must be received by 5:00 p.m., August 12, 2002. For further information, please contact Ray Austin, Regulation Development Section, at (512) 239-6814.

SUBCHAPTER A: GENERAL PROVISIONS

§§331.2, 331.5, 331.7, 331.17, 331.18

STATUTORY AUTHORITY

The amendments and new sections are proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. The amendments and new sections are also proposed under THSC, §361.017 and §361.024, which provide the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. The amendments and new sections are also proposed under THSC, §401.051, which provides the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

The amendments and new sections implement TWC, Chapter 27.

§331.2. Definitions.

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Activity** - The construction or operation of an injection well for disposal of waste,
or of pre-injection units for [facilities, including the] processing [,] or storage [, and disposal] of waste.

(3) - (43) (No change.)

(44) **Injection operations** - The [surface storage or] subsurface emplacement of fluids
occurring in connection with an injection well or wells, other than that occurring solely for construction
or initial testing.

(45) **Injection well** - A well into which fluids are being injected. Components of an
injection well annulus monitoring system are considered to be a part of the injection well.

(46) - (55) (No change.)

(56) **Monitor well** - Any well used for the sampling or measurement of any chemical
or physical property of subsurface strata or their contained fluids.

(A) - (B) (No change.)

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other pre-injection units [surface facilities].

(57) - (69) (No change.)

(70) **Pre-injection units [facilities]** - The on-site above-ground appurtenances, structures, equipment, and other fixtures including the injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well that are or will be used for storage or [,] processing of waste to be injected, or in conjunction with an injection operation.

(71) - (101) (No change.)

§331.5. Prevention of Pollution.

(a) - (b) (No change.)

(c) Pre-injection units which are required to be authorized by permit or registration under §331.7(d) of this title (relating to Permit Required), must be designed, constructed, operated, maintained, monitored, and closed so as not to cause:

(1) the discharge or imminent threat of discharge of waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

§331.7. Permit Required.

(a) Except as provided in §331.9 of this title (relating to Injection Authorized by Rule), all injection wells [and activities] must be authorized by permit.

(b) - (c) (No change.)

(d) Pre-injection units for Class I nonhazardous, noncommercial injection wells and Class V injection wells permitted for the disposal of nonhazardous waste must be either authorized by a permit issued by the commission or registered in accordance with §331.17 of this title (relating to Pre-Injection Units Registration). The option of registration provided by this subsection shall not apply to pre-injection units for Class I injection wells used for the disposal of by-product material, as that term is defined in Chapter 336 of this title (relating to Radioactive Substance Rules).

§331.17. Pre-Injection Units Registration.

(a) Pre-injection units not otherwise authorized under this chapter must be registered in accordance with the requirements of this section.

(b) No registration shall be approved, and registrations may be denied or revoked, if the executive director determines that:

(1) a pre-injection unit causes or allows the release of fluid that would result in the pollution of underground sources of drinking water, fresh water, or surface water; or

(2) a pre-injection unit poses an immediate threat to public health or safety.

(c) Registration procedures for pre-injection units not otherwise authorized under this chapter must include the following.

(1) The owner or operator shall submit an application for registration to the executive director, in accordance with the applicable requirements of this subchapter;

(A) for any proposed pre-injection unit, obtain approval from the executive director before operating the pre-injection unit; and

(B) for any existing pre-injection unit, submit the application on or before the date the injection well permit renewal application is submitted.

(2) The owner or operator shall cease operation of any pre-injection unit if:

(A) the registration application has not been submitted before the injection well permit is renewed, for an existing pre-injection unit;

(B) renewal of the registration is denied by the executive director;

(C) the term of the registration expires, provided that if registration renewal procedures have been initiated before the permit expiration date, the existing registration will remain in full force and effect and will not expire until commission action on the application for renewal of the registration is final;

(D) the registration is denied or revoked by the executive director; or

(E) the unit poses an immediate threat to public health or safety.

(d) Design criteria are as follows:

(1) pre-injection units shall be designed in such a manner as to protect underground sources of drinking water, fresh water, and surface water from pollution;

(2) pre-injection units shall be designed in such a manner as to enable the authorized injection well to meet all permit conditions and applicable rules and law;

(3) pre-injection units shall meet the design standards contained in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems) which apply to the type of unit being proposed;
and

(4) all ponds shall be lined according to the requirements of §331.47 of this title (relating to Pond Lining).

(e) Corrective action for pre-injection units not otherwise authorized by permit shall be performed under §331.44 of this title (relating to Corrective Action Standards).

§331.18. Registration Application, Processing, Notice, Comment, Motion to Overturn.

(a) Applicability. This section sets forth the requirements for applications and the manner in which action will be taken on applications filed for a registration for pre-injection units.

(b) Contents of application. Registration applications for pre-injection units must include:

(1) complete application form(s), signed and notarized, and required number of copies provided;

(2) the verified legal status of the applicant(s) as applicable;

(3) the signature of the applicant(s), in accordance with the requirements of §305.44 of this title (relating to Signatories to Applications);

(4) a notarized affidavit from the applicant(s) verifying land ownership or landowner agreement to the proposed activity. Pre-injection unit registration information on file with the commission shall be confirmed or updated, in writing, whenever:

(A) the mailing address and/or telephone number of the owner or operator is changed; or

(B) requested by the commission or executive director;

(5) maps showing:

(A) the name and address of persons who own the property on which the existing or proposed pre-injection unit is or will be located, if different from the applicant; and

(B) the name and address of landowners adjacent to the property on which the pre-injection unit is located or is proposed to be located.

(6) plans and specifications of the pre-injection units which have the seal of a professional engineer licensed in the State of Texas. The engineer shall certify that the submission meets the applicable technical requirements of Chapter 317 of this title (relating to Design Criteria for Sewerage Systems);

(7) the attachment of technical reports and supporting data required by the application;
and

(8) any other information the executive director or the commission may reasonably require.

(c) Administrative completeness. Upon receipt of an application for a registration, the executive director or his designee shall assign the application a number for identification purposes. Applications for registrations shall be reviewed by the staff for administrative completeness within 14 calendar days of receipt of the application by the executive director.

(d) Technical completeness. When the application is declared to be technically complete, the executive director or his designee shall prepare a statement of the receipt of the application and declaration of technical completeness which is suitable for mailing and shall forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification as stated in subsection (e) of this section. The notice of receipt of an application for registration and declaration of technical completeness shall contain the following information:

(1) the location of the pre-injection unit;

(2) the identifying number given the application by the commission;

(3) the type of registration sought under the application;

(4) the name, affiliation, address, and telephone number of the applicant and the name and address of the agency and the telephone number of an agency contact who may be reached to obtain more information about the application to register the unit;

(5) the date on which the application was submitted;

(6) a brief summary of the information included in the application;

(7) a statement that the registration application has been provided to the county judge and that it is available for review by interested parties;

(8) a brief description of public comment procedures; and

(9) the deadline to file public comment. The deadline shall be not less than 30 days after the date notice is mailed.

(e) Notice requirements.

(1) The public notice requirements of this subsection apply to new applications for a registration, and to applications for major amendment or renewal of a registration for pre-injection units;

(2) The chief clerk of the commission shall mail Notice of Receipt of Application and Technical Completeness, along with a copy of the registration application, to the county judge in the county where the pre-injection unit is located or proposed to be located; and

(3) The chief clerk of the commission shall mail Notice of Receipt of Application and Technical Completeness to the adjacent landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map.

(f) Application processing procedures. Any person who is required to obtain approval of a registration, or who requests an amendment, modification, or renewal of a registration for pre-injection units is subject to the application processing procedures and requirements found in Chapter 281 of this title (relating to Application Processing).

(g) Major amendment. A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a registration. Notice requirements of subsection (e) of this section are applicable to major amendments.

(h) Minor amendment. A minor amendment is an amendment to improve or maintain the quality or method of management of waste, and includes any other change to a registration issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of waters in the state. Notice requirements of subsection (e) of this section are not applicable to minor amendments.

(i) Public comment on registrations. A person may provide the commission with written comments on any new or major amendment applications to register pre-injection units. The executive director shall review any written comments received within the public comment period. The written information received shall be utilized by the executive director in determining what action to take on the application for registration, in accordance with §331.17 of this title (relating to Registration of Pre-injection Units). After the deadline for submitting public comment, the executive director may take final action on the application.

(j) Delegation, effective date of registration, term. The commission delegates to the executive director the authority to approve pre-injection unit registrations. The effective date for the registration of a site at which pre-injection units are located is the date that the executive director by letter, approves the application. The term for registration shall not exceed ten years and shall be synchronized with the term of the injection well permit.

(k) Motion to overturn. The applicant or a person affected may file with the chief clerk a motion to overturn the executive director's final approval of an application, under §50.139(b) - (f) of this title (relating to Motion to Overturn).

SUBCHAPTER C: GENERAL STANDARDS AND METHODS

§331.47

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. The amendment is also proposed under THSC, §361.017 and §361.024, which provide the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. The amendment is also proposed under THSC, §401.051, which provides the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

The amendment implements TWC, Chapter 27.

§331.47. Pond Lining.

(a) Except as provided in subsection (b) of this section, all [All] holding ponds, emergency overflow ponds, emergency storage ponds, or other surface impoundments associated with, or part of the pre-injection units [surface facilities] associated with underground injection wells shall be lined with

clay or an artificial liner as approved by the executive director or [and] as required by permit, and shall in addition, conform to any applicable requirements of Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(b) All surface impoundments for nonhazardous, noncommercial Class 1 industrial waste associated with Class I nonhazardous, noncommercial injection wells, or Class V injection wells permitted for the disposal of nonhazardous waste, shall meet the design standards contained in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems) which apply to surface impoundments.

SUBCHAPTER G: CONSIDERATION PRIOR TO PERMIT ISSUANCE

§331.121

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. The amendment is also proposed under THSC, §361.017 and §361.024, which provide the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. The amendment is also proposed under THSC, §401.051, which provides the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

The amendment implements TWC, Chapter 27.

§331.121. Class I Wells.

(a) The commission shall consider the following before issuing a Class I Injection Well Permit:

(1) (No change.)

(2) all information in the Technical Report submitted with the application for permit in accordance with §305.45(a)(8) of this title (relating to Contents of Application for Permit) including, but not limited to:

(A) - (J) (No change.)

(K) engineering drawings of the surface and subsurface construction details of the injection well and pre-injection units, except that pre-injection units registered under the provisions of §331.17 of this title (relating to Pre-Injection Units Registration) shall be considered under that section [system];

(L) - (P) (No change.)

(Q) the authorization status under this chapter of the pre-injection units for the injection well; and

(R) information demonstrating compliance with the applicable design criteria of Chapter 317 of this title (relating to Design Criteria for Sewerage Systems), for pre-injection units associated with Class I nonhazardous, noncommercial injection wells.

(3) - (5) (No change.)

(b) - (g) (No change.)

SUBCHAPTER J: STANDARDS FOR CLASS I SALT CAVERN

SOLID WASTE DISPOSAL WELLS

§331.163

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. The amendment is also proposed under THSC, §361.017 and §361.024, which provide the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act. The amendment is also proposed under THSC, §401.051, which provides the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

The amendment implements TWC, Chapter 27.

§331.163. Well Construction Standards.

(a) - (f) (No change.)

(g) Pre-injection units [Surface facilities].

(1) - (2) (No change.)

(3) Pre-injection units [Surface facilities], while allowing for pressure release, shall be designed to prevent the release of unauthorized cavern contents to the atmosphere.

(4) (No change.)

(h) - (i) (No change.)