

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: July 6, 2012

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

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2011-2046-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 331, Underground Injection Control
Use of a Class I Well for Disposal of Certain Wastes through Underground
Injection into a Bedded Salt Formation
Rule Project No. 2011-023-331-WS

Background and reasons for the rulemaking:

The purpose of this rulemaking is to amend existing rules, add new rules and develop guidance pertaining to the use of a Class I well for disposal of nonhazardous drinking water treatment residuals (DWTR) into a salt cavern in horizontally bedded or non-domal salt. This includes disposal of nonhazardous DWTR that contain naturally occurring radioactive material (NORM). A Radioactive Materials License is required for disposal of DWTR containing NORM that does not meet an exempted level for its radiological content. The adopted rules would provide a disposal alternative within Texas for public water systems that dispose of their treatment residuals containing NORM in a manner that is protective of human health and safety and the environment. Currently, the only facilities licensed to dispose of these wastes are landfills located out of state. The adopted rules also include editorial clarifications and corrections.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking would amend Chapter 331, Underground Injection Control:

- Subchapter A (General Provisions): Definitions pertinent to injection into bedded and domal salt formations are added and amended. The prohibition on Class I well disposal in salt formations other than salt stocks of salt domes is removed.
- Subchapter C (General Standards and Methods): Terminology in some subsections is revised to clarify provisions that pertain to caverns in domal salt and not bedded salt. Other corrections, updates and clarifications are also being adopted.
- Subchapter D (Standards for Class I Wells Other Than Salt Cavern Solid Waste Disposal Wells): Corrections, updates and clarifications of terminology are being adopted.

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- Subchapter G (Consideration Prior to Permit Issuance): The adopted rules would repeal obsolete provisions and make clarifying editorial corrections.
- Subchapter I (Financial Responsibility): An obsolete requirement for liability coverage for hazardous waste Class I salt cavern disposal wells is deleted because disposal of hazardous waste in Class I salt cavern disposal wells is prohibited.
- Subchapter J (Standards for Class I Salt Cavern Solid Waste Disposal Wells): Clarifying editorial corrections are being adopted, and a reference to the prohibition of bedded salt cavern disposal wells is deleted because this rulemaking removes that prohibition.
- Subchapter L (General Permit Authorizing Use of a Class I Injection Well to Inject Nonhazardous Desalination Concentrate or Nonhazardous Drinking Water Treatment Residuals): An editorial change revises an incorrect subchapter title.
- Subchapter N (Standards for Class I Bedded Salt Cavern Disposal Wells): Adopted new Subchapter N specifies standards for disposal of nonhazardous DWTR, including nonhazardous DWTR containing NORM, in bedded salt waste disposal wells. Subchapter N is analogous to Subchapter J for salt dome cavern disposal wells, and Subchapter N is structured with sections titled similarly to Subchapter J.

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

None of the recommended rule changes are required by federal regulations.

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

There are no additional recommendations.

Statutory authority:

Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act.

Effect on the:

A.) Regulated community: For public water systems that treat water to comply with the radionuclide maximum contaminant levels established by the United States

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Environmental Protection Agency (EPA), currently the only disposal options for DWTR containing NORM are out-of-state landfills. The adopted rules authorize an in-state disposal option for DWTR containing NORM, resulting in lower disposal costs and transportation costs for these public water systems.

B.) Public: The public benefit anticipated from the changes seen in the adopted rules will be a less expensive, safe disposal method for nonhazardous DWTR, especially if it contains NORM.

C.) Agency programs: By adoption of these rules, the state may pursue a program revision to its Underground Injection Control Program from the EPA.

No new full-time employees will be required as a result of these rule changes. This rule initiative will not create a special group of affected persons.

Stakeholder meetings:

A stakeholder advisory group was formed consisting of the regulated community, consultants, water supply entities, environmental groups, attorneys and governmental entities. Stakeholder meetings were held at TCEQ headquarters on April 15, 2011, September 20, 2011, and December 8, 2011. Stakeholders expressed support for the project and emphasized their interest in expedited processing of applications for use of a Class I well for disposal of nonhazardous DWTR containing NORM. Stakeholders also requested TCEQ staff to identify potential efficiencies in the radioactive materials licensing process for Class I wells to dispose of nonhazardous DWTR containing NORM.

Public comment:

No oral comments were received at the public hearing held on March 20, 2012 at TCEQ headquarters. The commission received written comments from Lotus, LLC and four individuals. Lotus expressed concerns about conflicts in requirements and the potential impairment of Class II operations in dually permitted Class I and Class II wells. Individuals commented generally about the adequacy of the waste analysis plan, the importance of protecting the environment, and the pricing of commodities to cover the cost of protecting the environment.

Significant changes from proposal:

No specific changes to the rules were suggested by any of the commenters, and no changes were made in response to comments. A staff-initiated change was made to correct a rule citation in one of the proposed new rules in Subchapter N.

Potential controversial concerns and legislative interest:

Stakeholders stated that the scope of the rulemaking should be expanded to include: 1) residuals from general surface and groundwater treatment, not just DWTR; and 2) disposal of naturally-occurring source material (primarily uranium), not just NORM, in a Class I bedded salt cavern disposal well. A stakeholder also commented that the rule

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should allow the commission to examine existing financial assurance provided to another state regulatory agency to determine whether existing financial assurance is satisfactory.

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 agency could continue with the rules as they are; however, the current rules effectively prohibit Class I well injection into bedded salt. TCEQ is initiating this rulemaking in lieu of stakeholders' pursuit of legislative action. If this rulemaking does not go forward, stakeholders could pursue legislation or submit a petition for rulemaking to remove the prohibition on construction and operation of Class I bedded salt cavern disposal wells.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date:	February 24, 2012
Anticipated Texas Register publication date:	August 10, 2012
Anticipated effective date:	August 16, 2012
Six-month Texas Register filing deadline:	August 24, 2012

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