

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** November 16, 2012

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

**From:** Brent Wade, Deputy Director  
Office of Waste

**Docket No.:** 2011-1260-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 7, Memoranda of Understanding  
HB 2694 (Article 2): RRC Transfer  
Rule Project No. 2011-037-007-WS

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

This rulemaking is part of the implementation of Article 2 of House Bill (HB) 2694, 82nd Legislature, 2011, by Representative Wayne Smith. HB 2694, Article 2 transferred from the Texas Commission on Environmental Quality (TCEQ) to the Railroad Commission of Texas (RRC) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2 amended Natural Resources Code to revise §91.011 and add §§91.0115, 91.020, and 91.1015 and amended Texas Water Code (TWC), §27.033. The law transferred from the TCEQ to the RRC, effective September 1, 2011, those duties pertaining to responsibility of preparing groundwater protection advisory/recommendation letters. These letters contained TCEQ's recommendations for depth of surface casing for the following activities under jurisdiction of the RRC: oil and gas wells and disposal wells injecting oil and gas wastes. In addition, responsibility for determinations that drilling and operating anthropogenic carbon dioxide injection wells will not injure freshwater strata and that the formation or stratum to be used is not a freshwater sand was transferred to the RRC. The TCEQ's Surface Casing Program and staff transferred to the RRC effective September 1, 2011.

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

The rulemaking amends 30TAC §7.117 to adopt by reference a revised Memoranda of Understanding (MOU) between the RRC and the TCEQ. The RRC has adopted a revised RRC and TCEQ MOU in RRC rule 16 TAC §3.30 to reflect the transfer of duties related to groundwater protection from the TCEQ to the RRC. The amended MOU was adopted by the RRC on March 20, 2012, and was effective May 1, 2012 (see April 6, 2012, issue of the *Texas Register* (37 TexReg 2385)).

Due to delays in the RRC's adoption of concurrent amendments to their rules, the repeal of 30 TAC Chapter 339, relating to Groundwater Protection Recommendation Letters and Fees, will be considered at a later date.

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

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The amendment to §7.117 adopts by reference the revised MOU between the RRC and TCEQ. This revision will update commission rules to reference the current version of the MOU.

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

The state statutes transferred from the TCEQ to the RRC duties relating to the protection of groundwater resources from oil and gas associated activities. Effective September 1, 2011, the law transferred those duties pertaining to responsibility of preparing groundwater protection advisory/recommendation letters from TCEQ to the RRC.

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

None.

**Statutory authority:**

This rulemaking implements TCEQ's sunset bill, HB 2694, 82nd Legislature, 2011.

**Effect on the:**

**A.) Regulated community:**

Effective September 1, 2011, the regulated community no longer needs to seek letters from TCEQ prior to receiving an RRC permit.

**B.) Public:**

None.

**C.) Agency programs:**

Effective September 1, 2011, TCEQ no longer has responsibility for duties related to groundwater protection advisory/recommendation letters. Staff and fees associated with these letters have been transferred from TCEQ to the RRC.

**Stakeholder meetings:**

No.

**Public comment:**

The comment period closed on September 24, 2012. No comments were received.

**Significant changes from proposal:**

No changes from rule proposal have been made.

**Potential controversial concerns and legislative interest:**

None.

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**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?**

If this rulemaking does not go forward then commission rules will not reference the current version of the MOU between the RRC and TCEQ.

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

**Texas Register proposal publication date:** August 24, 2012  
**Anticipated Texas Register publication date:** December 21, 2012  
**Anticipated effective date:** December 27, 2012  
**Six-month Texas Register filing deadline:** February 24, 2013

**Agency contacts:**

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**Attachments**

House Bill 2694

cc: Chief Clerk, 2 copies  
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