

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 18, 2016

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

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2016-0293-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 331, Underground Injection Control
House Bill 2230: Dual Authorizations
Rule Project No. 2016-021-331-WS

Background and reason(s) for the rulemaking:

House Bill (HB) 2230, 84th Texas Legislature, 2015, authored by Representative Lyle Larson, amended the Texas Water Code (TWC) to add TWC, §27.026, which provides authority for the Texas Commission on Environmental Quality (TCEQ or commission) to authorize an injection well used for oil and gas waste disposal permitted by the Railroad Commission of Texas (RRC) to be used for the disposal of nonhazardous brine generated by a desalination operation or nonhazardous drinking water treatment residuals (DWTR). HB 2230 took effect on September 1, 2015.

TWC, §27.026 expanded the availability of disposal options for both DWTR and desalination waste which are classified as solid waste under TCEQ jurisdiction. TWC, §27.026 does not interfere with or compromise TCEQ's implementation of primacy over the federally-delegated Underground Injection Control (UIC) Program.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking would implement the provisions of HB 2230 which provide the authority for the TCEQ to authorize an injection well used for oil and gas waste disposal to be used for the disposal of nonhazardous brine generated by a desalination operation or nonhazardous DWTR.

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

The provisions of HB 2230/TWC, §27.026: 1) allow dual authorization of a Class II injection well under RRC jurisdiction as a Class V injection well under TCEQ jurisdiction for disposal of nonhazardous brine from a desalination operation or nonhazardous DWTR; and 2) allow the TCEQ to authorize a Class V injection well for disposal of nonhazardous desalination brine or nonhazardous DWTR into a Class II well permitted by the RRC by individual permit, general permit, or by rule.

Re: Docket No. 2016-0293-RUL

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

None.

Statutory authority:

The amendments are adopted under the authority of the TWC, §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and TWC, §27.026, which allows the TCEQ to authorize by individual permit, general permit, or by rule, a Class V injection well for the disposal by injection of nonhazardous desalination brine or nonhazardous DWTR into a Class II disposal well permitted by the RRC under TWC, Chapter 27, Subchapter C.

Effect on the:

A.) Regulated community:

A local government, such as a city, county, water district, river authority, or utility district, or other public water supply, or an industrial user desalinating water for industrial uses could be affected if it proposed to send nonhazardous desalination concentrate or nonhazardous DWTR for disposal by injection into a dually permitted Class II-Class V injection well. A Class II injection well operator under the jurisdiction of the RRC could be affected if it elected to seek dual authorization as a Class V injection well.

B.) Public:

This legislation has provided additional disposal options for nonhazardous DWTR or nonhazardous desalination concentrate.

C.) Agency programs:

There is no significant fiscal impact expected to the TCEQ. For the Radioactive Materials Division/UIC Permits Section, it is unknown at this time the number of Class II well operators who may seek Class V authorization, but it is not expected to be significant.

Stakeholder meetings:

No stakeholder meetings were held; however, a public hearing for this rulemaking was held on August 16, 2016, in Austin.

Public comment:

The comment period closed on August 22, 2016. The commission received comments from two individuals on behalf of Lotus, LLC and one individual on behalf of Water Remediation Technology. All three commenters expressed support for the proposed rules. They also stated that the requirements of the commission's radioactive licensing

Re: Docket No. 2016-0293-RUL

rules (which are not under consideration in this rulemaking) impose costs on the disposal of DWTR that contain regulated levels of naturally occurring radioactive material.

Significant changes from proposal:

No changes were made from proposal.

Potential controversial concerns and legislative interest:

There are no known controversial concerns.

Does this rulemaking affect any current policies or require development of new policies?

As part of the overall HB 2230 implementation, the UIC Permits Section is coordinating with the Environmental Law Division to develop new procedures, application templates, and authorization templates for dual authorization of a Class II injection well as a Class V well for disposal of nonhazardous DWTR and/or nonhazardous desalination brine.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Prior to passage of this legislation, TWC, Chapter 27, RRC rules, and TCEQ rules allowed TCEQ and RRC to dually authorize one disposal well as a Class I well for injection of solid waste under TCEQ jurisdiction and as a Class II well for injection activities under RRC jurisdiction. This legislation reinforced the existing authority of the TCEQ and RRC to dually authorize injection. If this rulemaking did not go forward, authorization of a Class V well by an individual permit is available under current TCEQ rules. An individual Class V permit is capable of authorizing the same injection well activity that is authorized by rule in this adopted rulemaking.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** July 22, 2016

Anticipated *Texas Register* adoption publication date: December 23, 2016

Anticipated effective date: December 29, 2016

Six-month *Texas Register* filing deadline: January 22, 2017

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Attachments:

HB 2230

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Commissioners
Page 4
November 18, 2016

Re: Docket No. 2016-0293-RUL

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