

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: March 23, 2012

Thru: Bridget C. Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2012-0196-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 305, Consolidated Permits
Chapter 324, Used Oil Standards
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
RCRA Authorization for Federal Rule Clusters XIX - XXI and Financial Assurance,
Used Oil, and Manifest Revisions
Rule Project No. 2011-025-335-WS

Background and reason(s) for the rulemaking:

In order for the State of Texas to be consistent with certain federal solid and hazardous waste requirements and to maintain its Resource Conservation and Recovery Act (RCRA) authorization, TCEQ must incorporate specific United States Environmental Protection Agency (EPA) federal rule changes into state rules. The reason for this rulemaking is to incorporate new federal rule changes relating to solid and hazardous waste into 30 TAC Chapters 305, 324 and 335.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

Parts of EPA Federal Rule changes in Rule Clusters XIX - XXI are included in this rulemaking, amending Chapters 305 and 335. Additionally, revisions to Chapters 305, 324, and 335 are included in the rulemaking project to make corrections to existing rule language in response to specific recommendations by EPA. Furthermore, revisions to the Financial Assurance (FA) requirements in Chapter 305 for transfer of a hazardous waste permit are included in the rulemaking project to ensure that there is no lapse in FA for a permitted facility and to ensure that FA requirements are consistent between TCEQ programs.

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

This rulemaking initiative will update Chapter 305 and Chapter 335 to include federal rule changes that are both mandatory and optional and are set forth in parts of RCRA Clusters XIX - XXI. Each cluster contains one or more checklists, and each checklist explains specific rule language additions or changes.

The one rule change that is mandatory, Checklist 222, will establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country.

The rule changes that are optional include Checklists 220, 223, 225, and 226.

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Rule changes in Checklist 220 will establish an alternative set of generator requirements applicable to laboratories owned by eligible academic entities and address the specific nature of hazardous waste generation and accumulation in these laboratories. EPA has created new 40 Code of Federal Regulations (CFR) Part 262, Subpart K to establish these standards. This amendment is of special interest to Texas universities with laboratories.

Rule changes in Checklist 223 make a number of technical corrections to the hazardous waste regulations in numerous final rules previously published in the *Federal Register*, such as typographical errors, incorrect or outdated citations, and omissions. Adopting these changes into the state rules will avoid confusion by both TCEQ and regulated entities.

Rule changes in Checklist 225 will remove "saccharin and its salts" from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded. No action is required to revise the state rule for this Checklist because the hazardous waste definition and any subsequent amendments were previously adopted by reference.

Rule changes in Checklist 226 will make technical corrections to 40 CFR Part 262, Subpart K, which is included in Checklist 220 of this rulemaking project. The corrections should be adopted at the same time as the original rule to avoid confusion by the academic laboratories which are subject to the rule.

In addition, this rulemaking initiative will include corrections to existing Used Oil Rules in Chapter 324, existing Manifest Rules in Chapter 335, and previously adopted language from Checklists: 208, 213, 214, and 215. These changes will revise language and correct typographical errors, revise incorrect or outdated citations, and incorporate omissions as recommended by EPA.

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

The rulemaking initiative will also revise Chapter 305, §305.64(g) to require the new permit owner to provide acceptable FA on the date of a permit transfer. Current state and federal rules allow for up to six months after a change in ownership or operational control for the new owner to comply with the FA requirements. Current rules contemplate uninterrupted FA, meaning the prior permittee continues its FA for the benefit of the new permittee; however, this is problematic. Specific mechanisms, such as insurance policies, create significant risk. Once the permit is transferred, insurance companies have stated there is no longer an insurable interest and they have refused to pay. Other mechanisms, such as the financial test, do not lend themselves to being continued for the new permittee. Also, there has been a situation where a new permittee is unable and/or unwilling to provide any FA. This rule change will make the state rule more stringent than the federal rule; however, this change will make the FA requirements consistent with other programs at TCEQ and reduce the likelihood of any financial burden for potential corrective action by the State of Texas.

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Statutory authority:

The rulemaking is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

Effect on the:

A.) Regulated community:

The regulated community that will be affected by this rulemaking is industry involved in the generation, treatment, storage, and disposal of hazardous waste under the RCRA.

B.) Public:

The rule changes will primarily affect the regulated community consisting of industrial hazardous waste generators. Members of the general public that are located near these generators should not be affected.

C.) Agency programs:

By adoption of these rules, the RCRA program will have expanded authorization to administer the RCRA program.

Stakeholder meetings:

No stakeholder meetings have been held.

Potential controversial concerns and legislative interest:

No controversial matters are anticipated from this rulemaking initiative.

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

No policy issues are affected.

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

If the mandatory amendments in this rulemaking are not adopted, the State of Texas hazardous waste program may not maintain equivalency to EPA's federal hazardous waste program. If equivalency is not maintained, Texas may lose RCRA authorization status. In addition, if the optional amendments are not adopted, Texas may not maintain consistency with EPA's federal hazardous waste program. A lack of consistency between the federal and state hazardous waste programs may cause confusion within the regulated community. If the optional amendments are not adopted, Texas will not lose RCRA authorization status.

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Key points in the proposal rulemaking schedule:

Anticipated proposal date: April 11, 2012

Anticipated *Texas Register* publication date: April 27, 2012

Public hearing date (if any): none

Public comment period: April 27, 2012 - May 29, 2012

Anticipated adoption date: September 19, 2012

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