

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** July 20, 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 Proposed Rulemaking  
Chapter 7, Memoranda of Understanding  
Chapter 339, Groundwater Protection Recommendation Letters and Fees  
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 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 proposed 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)).

This rulemaking also proposes repeal of 30 TAC Chapter 339, relating to Groundwater Protection Recommendation Letters and Fees. The RRC is adopting concurrent amendments to their rules to reflect the transfer of duties pertaining to preparing groundwater protection advisory/recommendation letters. The Chapter 339 rules are no

Re: Docket No. 2011-1260-RUL

longer needed because the Surface Casing Program and responsibilities have been transferred to the RRC.

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

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.

The repeal of §§339.1 - 339.3 will eliminate rules that are no longer applicable to the commission since responsibility for the Surface Casing Program has been transferred to the RRC and the RRC is concurrently adopting Surface Casing rules.

**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, 82<sup>nd</sup> Legislature, 2011**

TWC, §5.103 - Rules

TWC, §5.104 and Texas Health and Safety Code (THSC), §361.016, require the TCEQ to adopt by rule any MOU or a revision to an MOU.

TWC, §5.105 - General Policy

TWC, §26.011 - In General

TWC, §27.019 – Rules, Etc.

THSC, §361.016 - Memorandum of Understanding by Commission

THSC, §401.069 - Memorandum of Understanding

**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.

Commissioners

Page 3

July 20, 2012

Re: Docket No. 2011-1260-RUL

**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.

**Potential controversial concerns and legislative interest:**

None.

**Will 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. In addition, commission rules would continue to include requirements for a program that is no longer under the commission's jurisdiction.

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

**Anticipated proposal date:** August 8, 2012

**Anticipated *Texas Register* publication date:** August 24, 2012

**Public hearing date (if any):** None

**Public comment period:** September 24, 2012

**Anticipated adoption date:** December 5, 2012

**Agency contacts:**

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**Attachments**

House Bill 2694

Commissioners

Page 4

July 20, 2012

Re: Docket No. 2011-1260-RUL

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