

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §331.9 and §331.131.

### **Background and Summary of the Factual Basis for the Proposed Rules**

House Bill (HB) 2230, 84th Texas Legislature, 2015, authored by Representative Lyle Larson, provides 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 drinking water treatment residuals (DWTR). HB 2230 adds Texas Water Code (TWC), §27.026 that allows the TCEQ to authorize, by individual permit, general permit, or by rule, a Class V injection well for the disposal of such nonhazardous brine or nonhazardous DWTR by injection into a Class II well permitted by the Railroad Commission of Texas (RRC) under TWC, Chapter 27, Subchapter C. The proposed rules are consistent with the long-standing practice of the TCEQ's Underground Injection Control (UIC) program to authorize Class V injection wells by rule.

### **Section by Section Discussion**

In addition to proposing amendments to implement HB 2230, the commission proposes non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, and establish consistency in the rules. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble. The commission also proposes other minor amendments to be consistent with current

language in Chapter 331.

*§331.9, Injection Authorized by Rule*

The commission proposes to amend §331.9(b)(2)(E) to update the reference to Chapter 331, Subchapter K to reflect the current title, "Additional Requirements for Class V Injection Wells Associated with Aquifer Storage and Recovery Projects" to be consistent with current language in Chapter 331.

The commission proposes §331.9(b)(2)(F) to state that an owner or operator of a Class V well authorized for disposal by injection of certain wastes into a Class II disposal well is prohibited from injecting into the well if the owner or operator fails to comply with §331.9(b)(3).

The commission proposes §331.9(b)(3) to provide authorization by rule of a Class V injection well for disposal of nonhazardous brine from a desalination operation or nonhazardous DWTR into a Class II disposal well permitted by the RRC whose operator has an active Form P-5 Organization Report in good standing with the RRC. The RRC requires the Form P-5 Organization Report for any entity performing operations within the jurisdiction of the RRC's Oil and Gas Division in accordance with Oil and Gas Statewide Rule 1. The Form P-5 Organization Report includes provisions for financial assurance for plugging and abandonment of a disposal well.

The commission proposes §331.9(b)(3)(A) to state that Chapter 331, Subchapter H (which

references the standards for Class V wells) and §331.9(a) (which references the requirements for plugging and abandonment of a well authorized by rule prior to January 1, 1982, for Class V wells, motor vehicle waste disposal wells, large capacity septic systems, large capacity cesspools, subsurface fluid distribution systems, and dry wells) are not applicable to a Class V well authorized by rule to inject waste into a Class II well permitted by the RRC. The RRC's construction and closure standards for the Class II disposal well would be the applicable construction and closure standards for a Class V well authorized by rule for disposal by injection of nonhazardous brine from a desalination operation or nonhazardous DWTR into a Class II disposal well permitted by the RRC.

The commission proposes §331.9(b)(3)(B) to provide that the use or disposal of radioactive material under §331.9(b)(3) is subject to the applicable requirements of 30 TAC Chapter 336.

*§331.131, Applicability*

The commission proposes to amend §331.131 to exclude Class V wells authorized by rule to dispose of nonhazardous brine from a desalination operation or nonhazardous DWTR by injection into a Class II well permitted by the RRC from the requirements of Chapter 331, Subchapter H. The RRC's Class II disposal well standards would be the applicable standards for a Class V well authorized by rule for disposal by injection of nonhazardous brine from a desalination operation or nonhazardous DWTR into a Class II disposal well permitted by the RRC.

The commission also proposes to amend §331.131 to update the term "aquifer storage wells" to "aquifer storage and recovery injection wells" and to update the reference to Chapter 331, Subchapter K to reflect the current title, "Additional Requirements for Class V Injection Wells Associated with Aquifer Storage and Recovery Projects" to be consistent with current language in Chapter 331.

**Fiscal Note: Costs to State and Local Government**

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules implement HB 2230. The proposed rules would allow the TCEQ to authorize a Class V injection well by individual permit, general permit, or by rule for disposal of nonhazardous desalination brine or nonhazardous DWTR into a Class II disposal well permitted by the RRC. This is known as dual authorization of a Class II-Class V well.

For dual authorization of a Class II-Class V well, the proposed rules provide that the Class II disposal well must also have an active Form P-5 Organization Report in good standing with the RRC. The proposed rules would also provide that the use or disposal of radioactive material is subject to the requirements of the agency's Radioactive Substance

Rules in Chapter 336. The RRC's construction and closure standards for the Class II disposal well would be the applicable standards for a dually permitted Class II-Class V well.

Class V underground injection wells are usually shallow wells permitted for the injection of nonhazardous fluids underground. Class II underground disposal wells are deep wells permitted for the disposal of waste from oil and gas operations. If a desalination facility or a public drinking water system chooses to dispose of brine or DWTR into a Class II disposal well permitted by the RRC, the result could be a decrease in the cost of inland desalination or water treatment operations.

The effect of the proposed rules would be to expand the availability of disposal options for desalination waste and DWTR which is classified as solid waste under TCEQ jurisdiction. Local governments (city, county, water district, river authority, utility district, etc.) could be affected if they choose to use a dually-permitted Class II-Class V well for the disposal of nonhazardous desalination brine or nonhazardous DWTR. The number of governmental entities or facilities that would use a dually permitted Class II-Class V well is not known. Any fiscal implications would depend on factors unique to each specific situation and are not quantifiable at this time.

The proposed rules are not expected to have a significant fiscal impact on the TCEQ. It is not known at this time how many Class II disposal well operators would seek Class V authorization for their disposal wells, but the number is not expected to be significant.

Therefore, significant change in agency workload or revenue is not expected. In addition, HB 2230 does not require the TCEQ to conduct routine investigations of dually permitted Class II-Class V wells to determine compliance with the Class V authorization issued by the TCEQ. If investigations of dually permitted Class II-Class V wells need to be conducted by TCEQ staff based on complaints received or other triggers, then new investigation protocols, procedures, checklists and training would need to be developed.

### **Public Benefits and Costs**

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and the provision of a disposal option for nonhazardous desalination brine or nonhazardous DWTR.

No significant fiscal implications are anticipated for businesses or individuals as a result of the administration or enforcement of the proposed rules. The proposed rules do not increase or decrease requirements for TCEQ regulated entities. The proposed rulemaking provides an additional disposal option for nonhazardous desalination brine or nonhazardous DWTR.

The effect of the proposed rules would be to expand the availability of disposal options for desalination waste and DWTR which is classified as solid waste under TCEQ jurisdiction. Businesses that own or operate desalination facilities or public drinking water systems could be affected if they choose to use a dually-permitted Class II-Class V

well for the disposal of nonhazardous desalination brine or nonhazardous DWTR. The number of facilities that would use a dually permitted Class II-Class V well is not known. There could be potential cost savings if facilities that generate those wastes choose to use this disposal method. Any fiscal implications would depend on factors unique to each specific situation and are not quantifiable at this time.

#### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules would have the same effect on a small business as it does on a large business. The number of facilities that would use a dually permitted Class II-Class V well to dispose of nonhazardous desalination brine or nonhazardous DWTR is not known. There could be potential cost savings if facilities that generate those wastes choose to use this disposal method. Any fiscal implications would depend on factors unique to each specific situation and are not quantifiable at this time.

#### **Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are necessary in order to comply with state law and do not adversely affect small or micro-businesses in a material way for the first five years that the proposed rules are in effect.

#### **Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a local

employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because this rulemaking action does not meet the Texas Government Code definition of a "major environmental rule." "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to implement the statutory requirements of TWC, §27.026, enacted by HB 2230, which provides that the commission may authorize by individual permit, general permit, or by rule, a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR by injection into a Class II disposal well permitted by the RRC. The proposed rules substantially advance this purpose by providing an authorization by rule for a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR by injection into a Class II disposal well permitted by the RRC. The intent is not inconsistent with the first prong of

the definition of "major environmental rule."

However, the proposal does not meet the second prong of the definition of "major environmental rule" because the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or public health and safety of the state or a sector of the state or impose additional regulatory burdens that would affect the economy or a sector of the economy in a material way. The proposed rules would implement the legislative directives of HB 2230 and would not impose additional regulatory burdens that would affect the economy or a sector of the economy in a material way.

Furthermore, the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The proposed rules do not exceed a standard set by federal law, because the proposed rules are consistent with federal standards for Class V injection wells. The proposed rules do not exceed an express requirement of state law because the proposed rules are consistent with the express requirements of HB 2230 and TWC, §27.026; and with TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

Further, the proposed rules do not exceed requirements set out in the TCEQ's UIC program authorized for the state of Texas under the federal Safe Drinking Water Act. Finally, the rulemaking is not proposed under the general powers of the agency, but is proposed under the express requirements of HB 2230 and TWC, §27.026.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated this proposed rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of rule property.

The proposed action would implement the statutory requirements of TWC, §27.026, enacted by HB 2230. TWC, §27.026 provides that the commission may authorize, by individual permit, general permit, or by rule, a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR by injection into a Class II disposal well permitted by the RRC. The proposed rules substantially advance their purpose by amending existing commission rules to establish an authorization by rule for an existing Class II disposal well permitted by the RRC as a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR.

Promulgation of enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce

its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules would establish an authorization by rule for an existing Class II disposal well permitted by the RRC as a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR by injection into a Class II disposal well permitted by the RRC consistent with the requirements of HB 2230. Because the proposed rules apply only to Class II disposal well operators that seek authorization to conduct the subject Class V disposal activity, the rules do not restrict or limit an owner's rights in real property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. Therefore, the proposed rules would not affect real property in a manner that is different than real property would have been affected without the proposed rules.

#### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Effect on Sites Subject to the Federal Operating Permits Program**

The proposed rules, if adopted, will not require any revisions to federal operating permits.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on August 16, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

*<http://www1.tceq.texas.gov/rules/ecomments/>*. File size restrictions may apply to

comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-021-331-WS. The comment period closes on August 22, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Kathryn Hoffman, Radioactive Materials Division, (512) 239-6890.

**SUBCHAPTER A: GENERAL PROVISIONS**  
**§331.9**

**Statutory Authority**

The amendment is proposed under the authority of the Texas Water Code (TWC), §5.103, which provides the commission the authority to propose 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 propose rules reasonably required for the regulation of injection wells; and TWC, §27.026, which allows the commission 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 drinking water treatment residuals (DWTR) into a Class II disposal well permitted by the Railroad Commission of Texas under TWC, Chapter 27, Subchapter C.

The proposed amendment would implement House Bill 2230, 84th Texas Legislature, 2015, which allows the commission 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 Railroad Commission of Texas under TWC, Chapter 27, Subchapter C.

**§331.9. Injection Authorized by Rule.**

(a) Plugging and abandonment of a well authorized by rule at any time after January 1, 1982, shall be accomplished in accordance with the standards of §331.46 of this title (relating to Closure Standards). Class V wells shall be closed according to standards under §331.133 of this title (relating to Closure Standards for Injection Wells). Motor vehicle waste disposal wells, large capacity septic systems, large capacity cesspools, subsurface fluid distribution systems, and drywells shall be closed according to standards under §331.136 of this title (relating to Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells).

(b) Injection into Class V wells, unless otherwise provided in subsection (c) of this section, §331.7 of this title (relating to Permit Required), or §331.137 of this title (relating to Permit for Motor Vehicle Waste Disposal Wells), is authorized under this rule.

(1) Well authorization under this section expires upon the effective date of a permit issued under §331.7 of this title.

(2) An owner or operator of a Class V well is prohibited from injecting into the well:

(A) upon the effective date of permit denial;

(B) upon failure to submit a permit application in a timely manner under subsection (c) of this section;

(C) upon failure to submit inventory information in a timely manner under §331.10 of this title (relating to Inventory of Wells Authorized by Rule);

(D) upon failure to comply with a request for information from the executive director in a timely manner; [or]

(E) upon failure to comply with provisions contained in Subchapter H of this chapter (relating to Standards for Class V Wells) and, if applicable, Subchapter K of this chapter (relating to Additional Requirements for Class V Injection Wells Associated with Aquifer Storage and Recovery Projects [Wells]); or.]

(F) upon failure of the owner or operator to comply with provisions contained in paragraph (3) of this subsection for a Class V well that is authorized to inject certain wastes into a Class II disposal well permitted by the Railroad Commission of Texas.

(3) Unless otherwise provided in subsection (c) of this section, a disposal well authorized by an active Class II permit issued by the Railroad Commission of Texas whose operator has an active Form P-5 Organization Report in good standing with the

Railroad Commission of Texas may be authorized by rule of the commission as a Class V injection well for the disposal by injection of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals.

(A) Subchapter H of this chapter and subsection (a) of this section are not applicable to a Class V well authorized by rule under this paragraph.

(B) The use or disposal of radioactive material under this paragraph is subject to the applicable requirements of Chapter 336 of this title (relating to Radioactive Substance Rules).

(c) The executive director may require the owner or operator of an injection well authorized by rule to apply for and obtain an injection well permit. The owner or operator shall submit a complete application within 90 days after the receipt of a letter from the executive director requesting that the owner or operator of an injection well submit an application for permit. Cases for which a permit may be required include, but are not limited to, wells not in compliance with the standards required by this section.

(d) Class IV wells injecting hazardous waste-contaminated groundwater that is of acceptable quality to aid remediation and that is being reinjected into the same formation from which it was drawn, as authorized by §331.6 of this title (relating to Prohibition of Class IV Well Injection), shall be authorized by rule.

**SUBCHAPTER H: STANDARDS FOR CLASS V WELLS**  
**§331.131**

**Statutory Authority**

The amendment is proposed under the authority of the Texas Water Code (TWC), §5.103, which provides the commission the authority to propose 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 propose rules reasonably required for the regulation of injection wells; and TWC, §27.026, which allows the commission 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 drinking water treatment residuals (DWTR) into a Class II disposal well permitted by the Railroad Commission of Texas under TWC, Chapter 27, Subchapter C.

The proposed amendment would implement House Bill 2230, 84th Texas Legislature, 2015, which allows the commission 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 Railroad Commission of Texas under TWC, Chapter 27, Subchapter C.

**§331.131. Applicability.**

This subchapter applies [The sections of this subchapter apply] to all Class V injection wells under the jurisdiction of the commission except those Class V wells authorized by rule under §331.9(b)(3) of this title (relating to Injection Authorized by Rule). Aquifer storage and recovery injection wells must also comply with Subchapter K of this chapter (relating to Additional Requirements for Class V Injection Wells Associated with Aquifer Storage and Recovery Projects [Wells]) in addition to this subchapter.