

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of 30 TAC
Chapter 334

AGENDA REQUESTED: June 26, 2019

DATE OF REQUEST: June 7, 2019

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Paige Bond, Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2018-1317-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The proposal was published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8482). (Anna R. Brulloths, Cullen McMorrow) (Project No. 2019-011-334-WS)

Brent Wade

Deputy Director

Beth Seaton

Division Director

Paige Bond

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 7, 2019

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2018-1317-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 334, Underground and Aboveground Storage Tanks
Rules Review of 30 TAC Chapter 334
Non-Rule Project No. 2019-011-334-WS

What the adopted action would do:

This action will approve the rules review of Chapter 334, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality (TCEQ or commission), after opportunity for public review and comment, that the initial reasons for adopting the rules of this chapter continue to exist.

Applicable law:

The review of the rules is authorized under the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

Reason rules are needed:

Executive director's staff conducted a review of the rules in Chapter 334 and determined that the reasons for adopting these rules continue to exist. The stated policy and purpose of Texas Water Code (TWC), Chapter 26, Subchapter I, is to: (1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources; and (2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy. TWC, §26.345, authorizes the commission to develop a regulatory program regarding underground and aboveground storage tanks, and to adopt rules necessary to carry out that purpose.

The TCEQ's regulatory program is established in Chapter 334 and includes: tank registration (authorized by TWC, §26.346); tank standards (authorized by TWC, §26.347); leak detection and record maintenance (authorized by TWC, §26.348); reporting of releases and corrective action (authorized by TWC, §26.349); tank closure requirements (authorized by TWC, §26.350); corrective action requirements (authorized by TWC, §26.351); and financial responsibility requirements (authorized by TWC, §26.352).

Additionally, Texas' program is an approved state program, meaning that the State of Texas is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery

Commissioners

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Act of 1976 (RCRA), as amended, 42 United States Code, §§6991 *et seq.* Texas' program is administered by the TCEQ. For states that do not have approved underground storage tank programs, the United States Environmental Protection Agency regulates such tanks directly.

Rules found to be obsolete:

None.

Public comment:

A public hearing was not offered for this review. The comment period for the rules review closed on January 25, 2019. No comments were received.

Affected agency program(s):

The program areas responsible for implementing these rules are the Petroleum Storage Tank (PST) Program in the Remediation Division, the PST Registration Program in the Permitting and Registration Support Division in the Office of Waste, and the Office of Compliance and Enforcement.

Agency contacts:

Anna R. Brulloths, Project Manager, Remediation Division, (512) 239-5052

Cullen McMorrow, Staff Attorney, (512) 239-0607

Paige Bond, Texas Register/Agenda Coordinator, (512) 239-2678

Attachments:

Texas Register publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

tem. All comments should reference Non-Rule Project Number 2018-041-018-AI. Comments must be received by January 25, 2019. For further information, please contact Elizabeth Sartain, Air Quality Division, at (512) 239-3933.

TRD-201805298

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 11, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 298, Environmental Flow Standards for Surface Water.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 298 continue to exist.

Comments regarding suggested changes to the rules in Chapter 298 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 298. 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: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2018-042-298-OW. Comments must be received by January 28, 2019. For further information, please contact Kathy Ramirez, Water Availability Division, at (512) 239-6757.

TRD-201805301

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 11, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 327, Spill Prevention and Control.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 327 continue to exist.

Comments regarding suggested changes to the rules in Chapter 327 may be submitted, but will not be considered for rule amendments as

part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 327. 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: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-010-327-CE. Comments must be received by January 28, 2019. For further information, please contact Elizabeth Vanderwerken, Project Manager, Program Support Section, Office Compliance and Enforcement, at (512) 239-5900.

TRD-201805302

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 11, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 334, Underground and Aboveground Storage Tanks.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 334 continue to exist.

Comments regarding suggested changes to the rules in Chapter 334 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 334. Written comments may be submitted to Paige Bond, 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: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-011-334-WS. Comments must be received by January 25, 2019. For further information, please contact Anna R. Brulloths, Project Manager, Remediation Division, at (512) 239-5052.

TRD-201805295

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 11, 2018



The Texas Commission on Environmental Quality (TCEQ or commission) has completed its Rule Review of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8482).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The stated policy and purpose of Texas Water Code (TWC), Chapter 26, Subchapter I, is to: (1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources; and (2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy. TWC, §26.345, authorizes the commission to develop a regulatory program regarding underground and aboveground storage tanks, and to adopt rules necessary to carry out that purpose.

The TCEQ's regulatory program is established in Chapter 334 and includes: tank registration (authorized by TWC, §26.346); tank standards (authorized by TWC, §26.347); leak detection and record maintenance (authorized by TWC, §26.348); reporting of releases and corrective action (authorized by TWC, §26.349); tank closure

requirements (authorized by TWC, §26.350); corrective action requirements (authorized by TWC, §26.351); and financial responsibility requirements (authorized by TWC, §26.352).

Additionally, Texas' program is an approved state program, meaning that the State of Texas is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 United States Code, §§6991 *et seq.* Texas' program is administered by the TCEQ. For states that do not have approved underground storage tank programs, the United States Environmental Protection Agency regulates such tanks directly.

Public Comment

The public comment period closed on January 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 334 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

Texas Commission on Environmental Quality



ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2018-1317-MIS
Non-Rule Project No. 2019-011-334-WS

On June 26, 2019, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks, in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for re-adoption each of its rules every four years. The proposed Notice of Intention to Review was published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8482).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 334 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IF ANY PORTION OF THIS ORDER is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed