

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 15, 2015

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

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2013-1381-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 331, Underground Injection Control
SB 1532: Authorization of Certain Injection Wells into the Edwards Aquifer
Rule Project No. 2013-053-331-WS

Background and reason(s) for the rulemaking:

The adopted rule implements Senate Bill (SB) 1532 (sponsored by Senator Zaffirini), 83rd Texas Legislature, 2013. The intent of the legislation was to provide a statutory and regulatory basis to promote research that could make desalination of brackish groundwater and aquifer storage and recovery more viable in the Edwards Aquifer. Within specific geographic boundaries, Texas Water Code (TWC), §27.0516 allows the commission to authorize, by rule or general permit, certain injection wells that transect or terminate in the Edwards Aquifer while providing a statutory and regulatory basis that is protective of the freshwater aquifer and supportive of desalination and aquifer storage and recovery.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rule implements SB 1532 by modifying the current prohibition of certain injection activities in the Edwards Aquifer. The adopted rule allows additional types of injection wells to be authorized by rule or general permit within the geographic area circumscribed by the external boundaries of the Barton Springs-Edwards Aquifer Conservation District (BSEACD) but not within the district's territory. A map is provided in the adopted rule to show where these new injection activities may be authorized. Attachment A gives the basis for the boundaries shown in this map. The adopted rule also adds new definitions.

The adopted rule modifies the current prohibition of certain injection wells in the Edwards Aquifer to allow the authorization by rule for the injection of fresh water withdrawn from the Edwards Aquifer for providing additional recharge; and the injection of rainwater, storm water, flood water or groundwater by means of an improved natural recharge feature.

The adopted rule also allows certain injection wells to be authorized by a general permit. A general permit may authorize the same types of injection wells that can be authorized by rule; authorize certain injection wells for the purpose of injecting desalination concentrate; authorize certain injection wells as part of an engineered aquifer storage and recovery facility; authorize injection wells for aquifer remediation; authorize injection wells for the injection of nontoxic tracer dye as part of a hydrologic study; or authorize injection wells

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for other beneficial activity for purposes of protecting an underground source of drinking water (USDW). The commission would have to issue a general permit at a future time to authorize any of these injection wells.

SB 1532 prescribed very specific requirements for the new injection activities that may be authorized in the Edwards Aquifer. Some of these requirements, such as monitoring and permit term limits, are addressed within the adopted rule. Other requirements would be implemented when a new general permit is issued to authorize the injection wells.

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

There are no federal changes required. SB 1532 requires rulemaking in Chapter 331 to add definitions and change the types of injection activities authorized or prohibited in the Edwards Aquifer. SB 1532 also allows for the development and issuance of new general permits, and/or amendment of the existing Underground Injection Control (UIC) general permit. The following activities within the defined portion of the Edwards Aquifer specified in the legislation may be authorized by general permit:

- Injecting fresh water withdrawn from the Edwards Aquifer for additional recharge;
- Using Class V injection wells for desalination concentrate;
- Injecting fresh water as part of an engineered aquifer storage and recovery facility;
- Aquifer remediation;
- Injecting a nontoxic tracer dye as part of a hydrologic study, or another beneficial activity as listed in the bill; and
- Other beneficial activities that increase protection of a USDW from pollution or other deleterious effects.

The commission's existing UIC general permit authorizes disposal of nonhazardous desalination concentrate and other nonhazardous drinking water treatment residuals in a Class I well. The existing UIC general permit did not contemplate the addition of provisions such as those in SB 1532 that apply to only specific small geographic areas within a certain aquifer. It would not be feasible to amend the existing general permit to add the SB 1532 provisions. Because the number of applications is not expected to be significant under the general permits authorized in SB 1532, new general permits that include the special conditions required in SB 1532 will be implemented when there is a need for them.

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

None.

Statutory authority:

The amended section is adopted under the TWC, §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this

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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; and TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

The amended section implements SB 1532 and TWC, §27.0516, which authorizes certain injection wells in the Edwards Aquifer within a specified geographic area circumscribed by the boundary of the BSEACD.

Effect on the:

A.) Regulated community:

A local government (city, county, water district, river authority, utility district, etc.) could be affected if they propose to use an injection well for the disposal of concentrate from desalination of brackish groundwater, for aquifer storage and recovery, or for any of the other purposes listed above that are in the affected areas of the Edwards Aquifer.

B.) Public:

The public benefit anticipated from the changes in the adopted rule will be compliance with state law and a regulatory basis to promote research that could make desalination of brackish groundwater and aquifer storage and recovery more viable in the Edwards Aquifer.

The adopted rule is not anticipated to result in fiscal implications for businesses or individuals. The adopted rule would not impose new requirements or responsibilities on businesses, but the rule could make desalination of brackish groundwater and aquifer storage and recovery more viable in the Edwards Aquifer. The adopted rule would facilitate research and the use of these techniques through the authorization of certain injection wells. At this time, no such projects have been identified by agency staff, and the number of any future projects is not expected to be significant. If a business did implement such a project, then the adopted rule would benefit them in that the adopted rule would allow for the permitting of these injection wells.

C.) Agency programs:

At this time, no projects to which the adopted rule would apply have been identified by agency staff, and the number of any future projects is not expected to be significant. The agency does not expect a significant increase in general permit applications. If a local government does pursue a project using injection wells permitted under the adopted rule, they would pay the \$100 injection well permit fee for each permit application, as currently required.

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Stakeholder meetings:

Stakeholders were thoroughly involved in the drafting and passage of this legislation so a designated stakeholder group was not created.

Public comment:

The commission scheduled a public hearing in Austin on March 3, 2015; however, the commission did not officially open the hearing because no one registered to provide comments. The public comment period closed March 9, 2015. The commission received one written comment that was outside the scope of this rulemaking.

Significant changes from proposal:

No change was made to the rule from proposal to adoption.

Potential controversial concerns and legislative interest:

No projects to which the adopted rule would apply have been identified by agency staff, and new general permits that include the special conditions required in SB 1532 will be implemented when there is a need for them. The process to issue a new general permit will take up to a year.

Does 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?

SB 1532 will not be implemented, and provisions will not be in place to promote research that could make desalination of brackish groundwater and aquifer storage and recovery more viable in the Edwards Aquifer.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date:	February 6, 2015
Anticipated Texas Register adoption publication date:	June 19, 2015
Anticipated effective date:	June 25, 2015
Six-month Texas Register filing deadline:	August 6, 2015

Agency contacts:

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Attachments

Senate Bill 1532

Attachment A

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**cc: Chief Clerk, 2 copies
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