

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** November 21, 2014

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

**From:** Brent Wade, Deputy Director  
Office of Waste

**Docket No.:** 2014-0488-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste  
*Resource Conservation and Recovery Act (RCRA) Authorization for Parts  
of Federal Rule Clusters XXI-XXIII*  
Rule Project No. 2014-019-335-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 with the Resource Conservation and Recovery Act (RCRA), the TCEQ periodically incorporates specific United States Environmental Protection Agency (EPA) federal rule changes into state rules. The reason for this adopted rulemaking is to incorporate new federal rule changes relating to solid and hazardous waste into 30 TAC Chapter 335.

### **Scope of the rulemaking:**

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

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

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

Adopted rule changes in RCRA, Cluster XXI, Checklist 227 will establish an alternative land disposal treatment standard for carbamate wastes. This amendment provides as an alternative standard the use of a "best demonstrated available technologies" approach for treating hazardous wastes from the production of carbamates and carbamate commercial chemical products.

Adopted rule changes in RCRA, Cluster XXII Checklist 228 will make two technical corrections to the hazardous waste regulations in final rules previously published in the *Federal Register*, correcting a typographical error and making a clarification to rule language. Adopting these changes into the state rules will avoid rule language confusion by both the TCEQ and regulated entities.

Adopted rule changes in RCRA, Cluster XXIII, Checklist 229 will revise the definition of "solid waste" to conditionally exclude solvent-contaminated wipes that are cleaned and reused and revises the definition of "hazardous waste" to conditionally exclude solvent-

Re: Docket No. 2014-0488-RUL

contaminated wipes that are disposed. This amendment will provide regulatory flexibility to regulated entities.

Adopted rule changes in RCRA Cluster XXIII, Checklist 230 will exclude hazardous carbon dioxide streams from the definition of "hazardous waste", provided they are captured from emission sources and injected into Underground Injection Control Class VI wells for purposes of geologic sequestration.

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

No additional rule changes are recommended.

**Statutory authority:**

- 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
- 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.
- THSC, Solid Waste Disposal Act, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorizes 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 adopted rulemaking is industry involved in the generation, transportation, treatment, storage, and disposal of solid and hazardous waste under RCRA.

**B.) Public:**

Members of the general public that are located near these regulated entities should not be affected.

**C.) Agency programs:**

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

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was offered during the comment period on September 16, 2014.

Re: Docket No. 2014-0488-RUL

**Public comment:**

No public comments were received during the comment period.

**Significant changes from proposal:**

There are no substantive changes from the proposed rule project.

**Potential controversial concerns and legislative interest:**

No controversial matters are anticipated from this adopted rulemaking initiative.

**Does 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?**

The commission may opt not to incorporate the EPA federal amendments or may incorporate only some of the EPA federal amendments into the state rules. The commission has the option whether to adopt the federal rule changes. If the Commission decides not to adopt the rule changes, then the regulated community in Texas will not be able to take advantage of the flexibility in the federal rules because existing state rules will be more stringent than federal rules.

If these optional amendments are not incorporated into the state rules, RCRA program authorization from the EPA will not be affected; however, the commission will not be in alignment with the EPA RCRA program. Such differences may make compliance more difficult for the regulated community, especially for companies with facilities in multiple states. In this rulemaking, the Executive Director recommends adopting all optional federal rule changes and corrections.

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

***Texas Register* proposal publication date:** August 22, 2014

**Anticipated *Texas Register* adoption publication date:** December 26, 2014

**Anticipated effective date:** January 1, 2015

**Six-month *Texas Register* filing deadline:** February 19, 2015

**Agency contacts:**

Cynthia Palomares, Rule Project Manager, (512) 239-6079, Waste Permits Division  
Susan White, Staff Attorney, (512) 239-0454  
Bruce McAnally, Texas Register Coordinator, (512) 239-2141

Attachments  
None.

Commissioners  
Page 4  
November 21, 2014

Re: Docket No. 2014-0488-RUL

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Tucker Royall  
Pattie Burnett  
Office of General Counsel  
Cynthia Palomares, P.G., P.E.  
Bruce McAnally