Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners  Date: May 28, 2020

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

From: L'Oreal W Stepney, P.E., Acting Deputy Director
Office of Water

Docket No.: 2019-1161-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 342, Regulation of Certain Aggregate Production Operations
HB 907: Chapter 342 Registration Fee Adjustment
Rule Project No. 2019-130-342-OW

Background and reason(s) for the rulemaking:
House Bill (HB) 907, 86th Texas Legislature, 2019, amended the Texas Water Code (TWC), Chapter 28A related to Aggregate Production Operations (APOs) by requiring the Texas Commission on Environmental Quality (TCEQ) to investigate APOs every two years during the first six years in which the APO is registered, and at least once every three years thereafter. The TCEQ may also conduct unannounced periodic inspections at APOs that were issued notices of violations during the preceding three-year period. HB 907 also requires investigations to be conducted by one or more inspectors trained in the regulatory requirements under the jurisdiction of the TCEQ that are applicable to an active APO.

Additionally, HB 907 increases the maximum annual registration fee for APOs from $1,000 to $1,500, as well as, increases the maximum penalty assessed to an unregistered APO from $10,000 to $20,000 for each year the APO operates without a registration. HB 907 also increases the maximum total penalty assessed to an APO that is operated three or more years without being registered from $25,000 to $40,000.

This adopted rulemaking amends §342.26 by revising the APO annual registration fee in accordance with HB 907.

Scope of the rulemaking:

A) Summary of what the rulemaking will do:
The adopted rulemaking amends §342.26 to implement the increased maximum annual registration fee in accordance with HB 907. The commission adopts the amendment to §342.26(b) to replace the monetary amount of "$1,000" with the phrase, "the amount specified in the Texas Water Code, Chapter 28A". The commission recommends that a dollar amount not be stated in §342.26(b), but instead, refer to the amount provided in TWC, Chapter 28A. Referencing the governing TWC chapter instead of specifying the monetary amount will provide consistency between Chapter 342 and TWC, Chapter 28A, as well as, maintain compliance with future legislation.
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B.) Scope required by federal regulations or state statutes:
The adopted rulemaking implements the increase in annual registration fees imposed by HB 907.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:
- TWC, §5.013, General Jurisdiction of Commission, establishes general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state;
- TWC, §5.102, General Powers, establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013, and other state laws; and
- TWC, §5.120, Conservation and Quality of Environment, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state.

Effect on the:

A.) Regulated community:
The increased maximum annual registration fee in HB 907 applies to all active APOs in the state. Registration fees are required to be submitted annually. There are currently 1,011 active APOs in the state. All 1,011 APOs are required to submit an annual registration fee; registration fees are implemented using a tier-based fee structure based on the acreage disturbed at the registered site with the annual registration fee not to exceed $1,500.

B.) Public:
The adopted rulemaking will not have an effect on the public.

C.) Agency programs:
Implementing the registration fee increase, as allowed by HB 907, will increase the TCEQ revenue.

Stakeholder meetings:
No stakeholder meetings were held for this rule change.

Public comment:
The comment period closed on March 30, 2020. The commission received comments from four individuals. The comments received were generally focused on the need for additional regulations on the APO industry.
Significant changes from proposal:
No changes have been made since proposal.

Potential controversial concerns and legislative interest:
None.

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?
This rule implements HB 907 amendments to the statute. An alternative course of action would be to leave the rule unchanged, which would allow the current maximum registration fee of $1,000 to remain in the rule rather than increasing the maximum fee to $1,500.

Key points in the adoption rulemaking schedule:
- *Texas Register* proposal publication date: February 28, 2020
- Anticipated *Texas Register* adoption publication date: July 31, 2020
- Anticipated effective date: August 6, 2020
- Six-month *Texas Register* filing deadline: August 28, 2020

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Attachments:
HB 907

cc: Chief Clerk, 2 copies
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