

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 22, 2016

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

From: Brent Wade, Deputy Director
Office of Waste

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2016-1878-PET

Project No.: 2017-005-PET-NR

Who Submitted the Petition:

On October 28, 2016, the Texas Commission on Environmental Quality (commission) received a petition from Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA-UC or petitioner).

What the Petitioner Requests:

TMRA-UC requests that the commission revise rules in 30 TAC §305.62 (Amendments); 30 TAC §331.84 (Monitoring Requirements); 30 TAC §331.105 (Monitoring Standards); 30 TAC §331.107 (Restoration); 30 TAC §336.109 (Fees after Request for Termination of License); and 30 TAC §336.208 (Radiation Safety Officer). The requested revisions to the commission's rules address requirements for both injection well permitting and radioactive materials licensing for uranium mining operations, including: license amendment categories; the timing of monitor well sampling; the criteria for establishing a detected excursion; the selection of groundwater constituents monitored during the restoration period and stability demonstration; the timing of the submission of Production Area Authorization amendment applications for restoration table value revisions; provisions for the proration or waiver of annual licensing fees; and the training requirements for Radiation Safety Officers. TMRA-UC's claims that the subject rule provisions in current form are confusing, burdensome, costly, and inconsistent.

Recommended Action and Justification:

The executive director recommends the commission initiate rulemaking. The executive director agrees that existing rules could be improved for clarity. However, the executive director further recommends that rulemaking include thorough stakeholder involvement on all the issues raised by the petitioner.

In addition, the executive director is expecting revisions to applicable federal requirements for in situ uranium mining operations. On January 26, 2015, the United States Environmental Protection Agency (EPA) proposed extensive changes to its rules in 40 Code of Federal Regulations Part 192 Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (80 FedReg 4156) that establish technical requirements for the protection of groundwater at in situ uranium operations. If adopted by EPA, the rules would need to be implemented by TCEQ to fulfill the requirements of an Agreement State program. EPA's changes to the regulatory program could supersede,

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supplement or even render moot the requested rule revisions in TMRA-UC's petition for rulemaking.

Also, the executive director respectfully recommends initiating stakeholder meetings after the closure of the 85th Texas Legislative Session. This will allow the stakeholder process to consider any statutory changes that may result from the session. Additionally, this will allow the executive director to closely monitor federal activities regarding EPA's Part 192 rulemaking.

Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule;
- 30 TAC §20.15, which provides such procedures specific to the commission;
- Texas Health and Safety Code (THSC), §401.051, which authorizes the commission to adopt rules relating to control of sources of radiation
- THSC, §401.2625, which provides the commission sole and exclusive authority to grant licenses for source material recovery and processing, and for storage, processing or disposal of by-product material.
- Texas Water Code (TWC), §5.103, which provides the commission authority to adopt rules necessary to carry out its powers and duties under the laws of the state.
- TWC, §27.019, which provides the commission authority to adopt rules required for the performance of commission responsibilities under the Injection Well Act.

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Attachment:

Petition

cc: Chief Clerk, 2 copies
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