

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: November 20, 2015

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

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2015-1016-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
HB 2598 and RCRA Authorization for Parts of Federal Rule Clusters XXIII
and XXIV
Rule Project No. 2015-021-335-WS

Background and reason(s) for the rulemaking:

The TCEQ routinely updates its rules to reflect changes to state law and federal regulatory changes. The rulemaking is proposed so that the commission's rules meet the requirements of state law and the minimum standards of the federal Resource Conservation and Recovery Act (RCRA) program. The commission must adopt regulations that meet the minimum standards of the federal RCRA program administered in order to maintain RCRA authorization.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking initiative updates 30 Texas Administrative Code Chapter 335 to include mandatory and optional federal rule changes that are set forth in parts of RCRA Clusters XXIII and XXIV and implement state law.

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

Each RCRA cluster contains one or more checklists, and each checklist explains specific rule language additions or changes. Proposed rule changes in RCRA Cluster XXIII include Checklists 231 and 232. The proposed rule changes in Checklist 231 authorize the use of electronic manifests that will become available when the United States Environmental Protection Agency (EPA) establishes a new electronic hazardous waste manifest system. The modification provides waste handlers with the option to complete, sign, transmit, and store manifest information electronically in the electronic system. Checklist 231 is mandatory.

The proposed rule changes in Checklist 232 revise certain export provisions contained in the previous cathode ray tube (CRT) final rule published on July 28, 2006. The revisions in the June 26, 2014 amendment to the July 28, 2006 rule allow better tracking of CRTs exported for reuse and recycling. Checklist 232 is mandatory.

Proposed rule changes in RCRA Cluster XXIV include Checklist 233. Proposed rule changes in Checklist 233 add new and revise existing hazardous waste recycling provisions

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associated with the definition of solid waste in Subtitle C of RCRA. The purpose of these revisions is to ensure that the hazardous secondary material recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material. This amendment is of special interest to the regulated community. Parts of this checklist propose mandatory requirements that are more stringent than the existing requirements and must be adopted to maintain equivalency with the federal regulations. Parts of this checklist propose optional requirements that are less stringent than existing requirements. Maintaining equivalency with the optional federal regulations provides additional recycling opportunities for the regulated community and allows Texas to operate all aspects of the federal waste program in lieu of the EPA.

Furthermore, revisions to Chapter 335 are proposed in this rulemaking project to implement the requirements of House Bill (HB) 2598, 84th Texas Legislature, 2015 and codified in Texas Health and Safety Code (THSC), §361.040. Under this new state law, steel slag is exempt from regulation as a solid waste if it is not discarded, is introduced into the stream of commerce, and is managed as an item of commercial value.

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

The proposed rulemaking initiative includes corrections to existing rules in Chapter 335. These changes revise language and correct typographical errors, incorrect or outdated citations, and omissions.

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;
- THSC, Solid Waste Disposal Act, §§361.017, 361.024, and 361.036, 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; and
- THSC, §361.040, which creates a new exclusion from regulation as solid waste for certain steel slag.

Effect on the:

A.) Regulated community:

The regulated community that will be affected by the proposed rulemaking is industry involved in the generation, transportation, treatment, storage, disposal and recycling of solid and hazardous waste under RCRA and Texas' nonhazardous industrial waste program. The regulated community would be able to take advantage of the increased flexibility in the federal rules because existing state rules are more stringent than federal rules.

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B.) Public:

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

C.) Agency programs:

If this rulemaking is adopted, TCEQ's RCRA program will have expanded authorization to administer the RCRA program and the requirements of HB 2598 will be implemented.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a public hearing will be held during the comment period on January 22, 2016.

Potential controversial concerns and legislative interest:

Although this rulemaking may be of special interest to the regulated community and legal appeals have been filed at the federal level, no controversial matters are anticipated from this rulemaking initiative to adopt federal rule revisions into state rules.

Will 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?

Some federal regulatory changes are mandatory and others are optional. If the commission elects not to adopt proposed regulations required to meet the minimum standards of the federal program administered by the EPA, the commission's RCRA authorization would be jeopardized. If the commission elected not to adopt proposed regulations consistent with optional federal rule changes, RCRA authorization would not be affected. However, Texas' regulated community would be unable to take advantage of the increased flexibility in the federal rules because existing state rules would be more stringent than federal rules. Additionally, the regulated community, in particular entities that operate facilities in multiple states, would be subjected to a greater compliance burden.

The commission's industrial waste program would not be impacted if the commission elected not to adopt the proposed rule changes implementing state law because the commission is capable of implementing state law in the absence of promulgated regulations. However, the regulated community would be required to rely on the statute in lieu of the industrial waste rules in order to take advantage of the new state exclusion. In this rulemaking, the executive director recommends adopting the mandatory and optional federal rule changes and the rule changes that would implement state law.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: December 9, 2015

Anticipated *Texas Register* publication date: December 25, 2015

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Anticipated public hearing date (if any): January 22, 2016
Anticipated public comment period: December 25, 2015 - January 29, 2016
Anticipated adoption date: May 25, 2016

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Attachments

HB 2598

cc: Chief Clerk, 2 copies
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