

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §39.403.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking would streamline the regulation for pre-injection units (PIUs) associated with injection wells by removing redundant requirements for registering or permitting PIUs under 30 TAC Chapter 331. PIUs are above-ground waste management units associated with an injection well and can include equipment and structures such as tanks, surface impoundments, filters, pumps, and piping used for storage and processing of waste prior to injection into an injection well.

The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells is inconsistent with the regulation of the same types of units under the TCEQ solid waste management program. PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells must be authorized by a permit or registration. The same types of units used to store or process industrial nonhazardous, noncommercial waste not disposed in an injection well do not require authorization by a permit or registration. The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are also inconsistent with the United States Environmental Protection Agency's (EPA) Underground Injection Control (UIC) Program. The EPA does not regulate nonhazardous PIUs under the UIC Program.

Additionally, PIUs managing waste generated from *in situ* mining of uranium are redundantly regulated under TCEQ's radioactive substance rules. PIUs that store or process waste generated from *in situ* mining of uranium disposed in an injection well must be authorized by an injection well permit. The design, construction, operation and closure of these PIUs is also regulated under the radioactive material license.

Consistent with other commission rules and EPA regulations, the proposed rulemaking would amend and repeal rules for PIUs associated with nonhazardous, noncommercial injection wells to remove the requirements to permit or register PIUs under Chapter 331 and would result in a streamlined UIC permit application process.

Although the permitting and registration requirements for PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are proposed to be amended and repealed, the PIUs will still be regulated under either the TCEQ solid waste regulations or the TCEQ radioactive substance regulations. Owners of PIUs used to store or process industrial solid waste must still comply with the notification requirements in 30 TAC §335.6. Owners of PIUs used to store or process waste generated from *in situ* mining of uranium must still comply with the radioactive materials licensing requirements of 30 TAC Chapter 336.

As part of this rulemaking, the commission is also proposing corresponding revisions to 30 TAC Chapter 50, Action on Applications and Other Authorizations; Chapter 55,

Requests for Reconsideration and Contested Case Hearings; Public Comment; and Chapter 331, Underground Injection Control.

Section Discussion

The commission proposes various stylistic, non-substantive changes, such as grammatical corrections. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

§39.403, Applicability

The commission proposes to amend §39.403 by deleting §39.403(c)(6) and renumbering the subsequent paragraph accordingly. Because the commission is eliminating the provisions in §331.17 that address the registration of PIUs, the reference in current §39.403(c)(6) to PIU registrations is no longer necessary. This amendment of §39.403 would improve the ease of use of this rule by removing the reference to a type of authorization that will no longer be required in commission rules. No substantive changes to public notice requirements are made by this amendment.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for

the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

This rulemaking addresses necessary changes in order to eliminate the reference in Chapter 39 to the PIU registrations.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated will be improved readability and compliance with state law. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendment would apply statewide

and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability.

During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to §39.403 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes a reference to an authorization that will no longer be available so that there is no confusion regarding the applicable rules for public notice for certain permit applications.

As defined in the Texas Government Code, §2001.0225 only applies to a major

environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment to §39.403 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §39.403 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a

governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rule does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *<https://www6.tceq.texas.gov/rules/ecomments/>*. File size restrictions may

apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-022-331-WS. The comment period closes on September 15, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Tamara Young, Underground Injection Control Permits Section, (512) 239-6582.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§39.403

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally, the amendment is proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M, §§5.013, 5.102, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - J, L, and M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits).

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - J, L, and M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsection (d) of this section specifies that only certain sections apply to applications for radioactive materials licenses. Subsection (e) of this section lists the types of applications for which public notice is not required.

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific

subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - J, L, and M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations or exempted aquifers under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (d) of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing); and

(8) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

(c) Regardless of the applicability of subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Chapter 321, Subchapter B of this title;

(2) applications for registrations and notifications under Chapter 312 of this title;

(3) applications under Chapter 332 of this title (relating to Composting);

(4) applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title (relating to Amendments), except as provided by §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge);

(5) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); or

[(6) applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-injection Units Registration); or]

(6) [(7)] applications listed in Subchapter P of this chapter (relating to Other Notice Requirements).

(d) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title (relating to General Notice Provisions); §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice) that are not listed in §39.705 of this title (relating to Mailed Notice for Radioactive Material Licenses).

(e) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §50.145 of this title (relating to Corrections of Permits);

(2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(3) applications for special collection route permits under §330.7(c)(2) of this title (relating to Permit Required); or

(4) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee).