

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 10, 2020

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

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2019-1749-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 39, Public Notice
Chapter 50, Action on Applications and Other Authorizations
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
Chapter 331, Underground Injection Control
Permit Streamlining: Pre-Injection Units
Rule Project No. 2016-022-331-WS

Background and reason(s) for the rulemaking:

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 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

Re: Docket No. 2019-1749-RUL

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.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The proposed rulemaking would amend and repeal certain regulations for PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells resulting in a streamlined UIC permit application process.

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

Not Applicable.

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

The proposed rulemaking would amend §§331.2, 331.5, 331.7, 331.17, 331.18, 331.47 and 331.121 to revise some of the regulations for PIUs. The proposed rulemaking would also amend §§39.403, 50.113, 55.101, and 55.201 to align with the proposed changes in Chapter 331. Lastly, the proposed rulemaking would amend §331.64 to update a cross-reference.

Statutory authority:

The rules would be proposed under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules for the management and storage of solid waste and THSC, §361.090, which authorizes the commission to adopt rules to control the handling and storage of industrial solid waste to protect groundwater.

Effect on the:

A.) Regulated community:

Applicants for nonhazardous, noncommercial Class I and Class V injection wells would not spend engineering and administrative resources complying with PIU regulatory requirements that are: not required by the EPA; more stringent than TCEQ regulation of

Commissioners

Page 3

July 10, 2020

Re: Docket No. 2019-1749-RUL

similar units not associated with Class I and Class V wells; and duplicative with TCEQ radioactive substance requirements.

B.) Public:

No additional environmental risk is expected because PIUs would be regulated consistent with the protective standards applied to similar units not associated with injection wells.

C.) Agency programs:

TCEQ engineering staff could be used more effectively for other UIC program priorities.

Stakeholder meetings:

A stakeholder meeting is not scheduled for this rulemaking.

Potential controversial concerns and legislative interest:

None anticipated.

Would 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?

Rules for PIUs would remain inconsistent with other TCEQ rules and EPA requirements.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 29, 2020

Anticipated *Texas Register* publication date: August 14, 2020

Anticipated public hearing date (if any): None

Anticipated public comment period: August 14, 2020 - September 15, 2020

Anticipated adoption date: December 16, 2020

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Attachments:

None.

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