
Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to create a program to regulate owners and operators of landfills and surface impoundments used for the disposal or management of coal combustion residuals (CCR), a nonhazardous industrial solid waste generated from the combustion of coal by electric utilities and independent power producers. If adopted, these rules would be eligible for United States Environmental Protection Agency (EPA) approval and would operate in Texas in lieu of the EPA CCR program. The EPA promulgated self-implementing requirements for the regulation of CCR disposed of or managed in certain landfills and surface impoundments, under the United States Resource Conservation and Recovery Act, 40 Code of Federal Regulations (CFR) Part 257, Subpart D (Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments). After the effective date of 40 CFR Part 257,
Subpart D, the United States Congress passed the Water Infrastructure for Improvements to the Nation (WIIN) Act in December 2016. The WIIN Act provides that states may create a permitting program or other system of prior approval that, if approved by the EPA, would operate in lieu of the new federal CCR rule. The commission proposes new Chapter 352 to create a state program eligible for EPA approval to operate in lieu of federal CCR requirements, as provided in the WIIN Act.

The 85th Texas Legislature passed the Texas General Appropriations Act (Act) on June 12, 2017. The Act contained a rider to fund four new full-time equivalent (FTE) employee positions for the commission to create and implement a CCR program.

New Chapter 352 would establish a CCR management program that would be at least as protective as the requirements of the self-implementing federal CCR rules. The new chapter would require owners and operators to obtain a registration, establish compliance monitoring, and maintain compliance with the standards listed under new Chapter 352 for landfills and surface impoundments used to dispose of or manage CCR. Under new Chapter 352, the executive director may issue a registration to owners and operators authorizing certain CCR activities pursuant to application submittal, technical review, and approval. The new chapter would provide opportunities for public participation before issuance of a CCR registration. The public participation process would include an opportunity for the public to review and comment on the application and executive director's draft registration, as well as an opportunity to
request a public meeting. The new chapter would establish a CCR management program by adopting parts of the federal rule by reference, calling out parts of the federal rule in prose, relying on existing commission rules and procedures, and where necessary, creating new requirements. The commission anticipates relying upon EPA guidance in implementing this new regulatory structure.

The commission is specifically soliciting comments from the public on what should be the effective date of proposed Chapter 352.

If new Chapter 352 is adopted, the commission would then seek approval from the EPA for new Chapter 352 to operate in lieu of the federal CCR rule.

**Section by Section Discussion**

*Subchapter A: General Provisions*

§352.1, Applicability

The commission proposes new §352.1 to describe the various persons, activities, and units for which the new CCR program would or would not apply. New §352.1 would establish the applicability of proposed new Chapter 352 consistent with the applicability and intent of 40 CFR Part 257, Subpart D, by utilizing the language of 40 CFR §257.50 (Scope and purpose), and by adding language specific to Texas' waste programs under the Texas Solid Waste Disposal Act and the commission's rules. New Chapter 352 would be applicable to owners and operators of landfills and surface
impoundments used for the disposal or management of CCR generated from the combustion of coal at electric utilities and independent power producers. New Chapter 352 would also be applicable to owners and operators of inactive surface impoundments for the disposal or management of CCR at facilities that otherwise continue producing electricity, regardless of the source of fuel currently used; lateral expansions of CCR surface impoundments and landfills; and waste management units located off-site from facilities generating CCR, and otherwise meeting the applicability criteria. New Chapter 352 would not be applicable to owners and operators of existing CCR landfills that stopped receiving CCR, or electric utilities and independent power producers that stopped producing electricity, before the effective date of the federal CCR rules, October 19, 2015; waste generated at facilities not part of an electric utility or independent power producer; waste generated primarily from the combustion of fuels other than coal to generate electricity, unless the fuel consists of more than a 50% coal mass feed rate of coal; CCR placement at active or abandoned underground or surface coal mines; municipal solid waste landfills or commercial industrial nonhazardous waste landfill facilities that receive CCR; or the beneficial use of CCR as defined in 40 CFR §257.53 (Definitions). In addition, consistent with the EPA's intent in the April 17, 2015, issue of the Federal Register adopting the final CCR rule, new Chapter 352 "[would] not impose any requirements on any CCR surface impoundments that have in fact "closed" before the {federal} rule's effective date {of October 19, 2015}--i.e., those that no longer contain water and can no longer impound liquid" (80 FR 21343). Further, "CCR surface impoundments do not include units generally
referred to as cooling water ponds, process water ponds, wastewater treatment ponds, storm water holding ponds, or aeration ponds” (80 FR 21357).

§352.2, Applicability of Other Regulations

The commission proposes new §352.2 to establish that compliance with the requirements of new Chapter 352 would not relieve owners and operators of obligations to comply with federal, state, and local laws and regulations. These would include, but would not be limited to, federal prohibitions and requirements regarding floodplains, endangered species, and surface water under 40 CFR Part 257, Subpart A (Classification of Solid Waste Disposal Facilities and Practices); TCEQ air quality regulations, including, but not limited to, 30 Texas Administrative Code (TAC) Chapter 111 (Control of Air Pollution from Visible Emissions and Particulate Matter) and Chapter 116 (Control of Air Pollution by Permits for New Construction or Modification); 30 TAC Chapter 305 (Consolidated Permits); 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste); and statutory obligations under the Texas Water Code (TWC), including TWC, §26.408 (in relation to Notice of Groundwater Contamination). The commission notes that certain requirements under Chapter 335 would remain applicable to nonhazardous industrial solid waste meeting the definition of CCR under proposed Chapter 352. These requirements would include and would not be limited to 30 TAC §335.6 (Notification Requirements); §335.9 (Recordkeeping and Annual Reporting Procedures Applicable to Generators); §335.13 (Recordkeeping and Reporting Procedures Applicable to Generators Shipping
Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste); §335.17 (Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials); §335.24 (Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); and Chapter 335, Subchapter R (Waste Classification).

§352.3, Definitions
The commission proposes new §352.3 to establish definitions applicable to new Chapter 352 by adopting by reference definitions in 40 CFR §257.53, importing definitions from other commission rules, and creating new definitions.

§352.4, Engineering and Geoscientific Information
The commission proposes new §352.4 to require engineering and geoscientific information submitted under new Chapter 352 be prepared by, or under the supervision of, licensed professionals, and submitted in accordance with the Texas Engineering Practice Act and the Texas Geoscience Practice Act.

§352.5, Laboratory Accreditation and Certification
The commission proposes new §352.5 to require owners and operators subject to new Chapter 352 to comply with the Environmental Testing Laboratory Accreditation and Certification Program requirements of 30 TAC Chapter 25 (Environmental Testing Laboratory Accreditation and Certification).
§352.6, General Prohibitions

The commission proposes new §352.6 to prohibit any person from causing, suffering, or allowing the collection, handling, storage, processing, management, or disposal of CCR in a way that causes the discharge, or imminent threat of discharge, of CCR into or adjacent to waters of the state without prior authorization from TCEQ; creates and maintains a nuisance; or endangers public health or welfare.

Subchapter B: Registration Conditions

§352.101, Registration Required

The commission proposes new §352.101(a) to require owners or operators that manage or dispose of CCR in regulated units to file an application for a registration under new Chapter 352. Owners or operators of a regulated CCR unit must submit an application within 365 days of the effective date of new Chapter 352. Because 40 CFR Part 257, Subpart D, is effective, the commission expects existing facility owners and operators to continue to comply with 40 CFR Part 257, Subpart D, and applicable provisions in new Chapter 352, prior to issuance of a registration.

The commission solicits comments from the public on the timing of when an application for a registration should be filed by an owner or operator given the difference between the effective date of proposed Chapter 352 and the anticipated date of the EPA's approval of the state's CCR program.
The commission proposes new §352.101(b) to prohibit the management or disposal of CCR in a new or laterally expanding CCR unit unless authorized by a registration issued under new Chapter 352.

The commission proposes new §352.101(c) to clarify that one registration would be issued for one or more CCR units located on contiguous property.

§352.111, Registration Characteristics and Conditions

The commission proposes new §352.111 to establish standard registration conditions. The commission would accomplish this purpose by requiring the executive director to include the applicable characteristics and conditions included in authorizations issued by the commission under 30 TAC Chapter 305, Subchapter F (Permit Characteristics and Conditions).

§352.121, Duration

The commission proposes new §352.121 to identify the duration of the registration as the active life of the CCR unit as well as any post-closure maintenance period, unless the registration is revoked or amended for a failure to meet minimum standards or for any other good cause.

§352.131, Amendments
The commission proposes new §352.131 to establish procedures to amend an existing registration. Section 352.131 would establish that changes to an existing registration require prior approval by the executive director, that applications to amend a registration would be classified as major or minor amendments under 30 TAC §305.62 (Amendments), and would require amendment applications to include the applicable application contents identified in proposed new Chapter 352, Subchapter C (Registration Application Contents).

Proposed new §352.131(b) would classify registration amendments as either major amendments or minor amendments, as described in Chapter 305. Major amendments are described in §305.62(c)(1) as "an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit." Major amendments initiated under new Chapter 352 would be subject to the public participation requirements of new §§352.431, 352.441, 352.451, and 352.461 (Public Notice of Application; Revised Notice of Changes to Application; Public Meeting; and General Notice Provisions), prescribing an opportunity for public participation in these amendments. Minor amendments are described in §305.62(c)(2) as "an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a
potential deterioration of quality of water in the state." An amendment classification as major or minor would require the approval of the executive director. Additionally, §352.131(b) would establish that 30 TAC §305.69 (Solid Waste Permit Modification at the Request of the Permittee) is not applicable to registrations under proposed new Chapter 352, that an amendment application will be processed under new Chapter 352 and not 30 TAC Chapter 281 (Applications Processing), and that changes initiated by the executive director would be classified and processed as major or minor amendments and not as modifications.

For clarity regarding the applicability of Chapter 305, including §305.62, the definition of a "permit" in Chapter 305 includes a "registration" under proposed new Chapter 352.

§352.141, Issuance and Transfer
The commission proposes new §352.141 to establish that a registration would be issued to the person who is the owner and operator or the operator of the subject CCR facility; that a registration may not be transferred without prior approval of the executive director; and that a registration may not be transferred between facilities at different physical locations. The commission proposes to accomplish these purposes by requiring an owner or operator to apply for a registration transfer utilizing the procedures of 30 TAC §305.64 (Transfer of Permits) and by establishing that a registration is attached to the real property to which it pertains.
Subchapter C: Registration Application Contents

§352.201, Application Required

The commission proposes new §352.201 to require an owner or operator requesting a registration, or registration amendment, to use the forms provided by, and in the manner required by, the executive director.

§352.211, Who Applies

The commission proposes new §352.211 to identify the person required to apply for a registration under new Chapter 352.

§352.221, Signatories to Applications

The commission proposes new §352.221 to identify authorized signatories of applications submitted under new Chapter 352.

§352.231, General Application Requirements

The commission proposes new §352.231 to establish the components of the application required by new §352.201 (Application Required), including facility and unit information and documentation, technical reports, professional certifications and their accompanying reports, relevant maps, property owner information, verification that the CCR unit meets the requirements of new §352.2, and other information necessary for the executive director to draft and issue a registration. A licensed
professional geoscientist or licensed professional engineer must sign and seal the documentation in accordance with §352.4, where required. Additionally, §352.231 would require the application to include the supporting documentation and technical reports relied on by a licensed professional geoscientist or licensed professional engineer; and establish an application fee of $150.

§352.241, Geology
The commission proposes new §352.241 to require the owner or operator to provide a summary of the geologic conditions at the facility with the application required by new §352.201 that includes information and documentation necessary for the executive director to assess geological conditions at the facility in relation to the CCR unit, and draft and issue a registration. At a minimum, the summary must include supporting information used in creating the summary; all groundwater monitoring data required by 40 CFR Part 257, Subpart D; and information required by new §§352.601, 352.621, 352.631, and 352.641 (Placement Above the Uppermost Aquifer; Fault Areas; Seismic Impact Zones; and Unstable Areas). A licensed professional geoscientist or licensed professional engineer must sign and seal the documentation in accordance with new §352.4, where required.

§352.251, Location Restriction Application Submission
The commission proposes new §352.251 to require the owner or operator to provide documentation with an application demonstrating compliance with the applicable
location restrictions in new Chapter 352, Subchapter E (Location Restrictions). A licensed professional geoscientist or licensed professional engineer must sign and seal the documentation in accordance with new §352.4, where required.

§352.261, Design Criteria Application Submission

The commission proposes new §352.261 to require the owner or operator to provide documentation with an application demonstrating compliance with the design criteria in new Chapter 352, Subchapter F (Design Criteria). The owner or operator shall submit the applicable documentation and information for the liner design and specifications for each unit, the leachate detection system specifications for each landfill, plans and profile drawings for each unit, and all structural integrity information for each surface impoundment. A licensed professional engineer must sign and seal the documentation in accordance with new §352.4, where required.

For new and laterally expanding CCR units, subsurface soil information is required to be submitted with the application. The information provided must include a description of all borings drilled with a unit map and boring logs, cross-sections depicting the generalized strata, and a description of geotechnical data and properties of subsurface soil materials. A licensed professional geoscientist or licensed professional engineer must sign and seal the documentation in accordance with new §352.4, where required.
§352.271, Operating Criteria Application Submission

The commission proposes new §352.271 to require the owner or operator to provide documentation with an application demonstrating compliance with the operating criteria in new Chapter 352, Subchapter G (Operating Criteria). The owner or operator shall submit the documentation and information as required for the CCR fugitive dust control plan, the run-on and run-off controls for CCR landfills, the inflow design and flood control system plans for CCR surface impoundments, including a description of the hydrologic method and calculations used to estimate peak flow rates required for the inflow design flood control system based on the surface impoundment hazard potential, and any current annual inspection reports required for all units. A licensed professional engineer must sign and seal documentation in accordance with new §352.4, where required.

§352.281, Groundwater Monitoring and Corrective Action Application Submission

The commission proposes new §352.281 to require the owner or operator to provide documentation with the application demonstrating compliance with the groundwater monitoring and corrective action program criteria in new Chapter 352, Subchapter H (Groundwater Monitoring and Corrective Action). The owner or operator shall submit documentation and information for the initial and most recent annual groundwater monitoring and corrective action reports, groundwater monitoring systems, and groundwater sampling and analysis program; and identify the monitoring program type the unit is currently following. If the facility has made an alternate source
demonstration at or before the time of the application, the most recent demonstration must be included in the application. A licensed professional geoscientist or licensed professional engineer must sign and seal information and documentation in accordance with new §352.4, where required.

§352.291, Demonstration of No Migration Submission
The commission proposes new §352.291 to require an owner or operator seeking a suspension of groundwater monitoring requirements based on a demonstration of no migration potential, to submit the demonstration with an application for a registration or registration amendment. The executive director shall review the demonstrations and issue a denial or concurrence. Owners or operators of CCR units that make a successful demonstration must repeat the demonstration and request no later than every ten years from the date of initial approval.

§352.301, Closure and Post-Closure Care Application Submission
The commission proposes new §352.301 to require the owner or operator to provide documentation with the application demonstrating compliance with the requirements in new Chapter 352, Subchapter J (Closure and Post-Closure Care), including copies of the closure and post-closure plans. A licensed professional geoscientist or licensed professional engineer must sign and seal documentation in accordance with new §352.4, where required.
Proposed new §352.301(b) would require an owner or operator to submit a post-closure care cost estimate. The estimate must be based upon the cost of hiring a third-party to perform post-closure maintenance requirements that would be adopted by reference in proposed §352.1241. Post-closure maintenance requirements include maintaining the final cover system, the leachate collection and removal system, if applicable, and the groundwater monitoring system. The estimate would be used for establishing financial assurance as required in proposed new Chapter 352, Subchapter I (Financial Assurance).

§352.311, Retention of Application Data
The commission proposes new §352.311 to require the owner or operator to retain records of all data and supplemental information used to complete the final application for the term of the registration, which in this case is the active life of the unit and any post-closure care period.

Subchapter D: Registration Application Procedures
§352.401, Application Deficiencies
The commission proposes new §352.401 to establish procedures for the executive director to notify applicants of deficiencies identified in applications, and a deadline for applicants to provide responses to these notifications. The commission proposes imposing up to a 60-day deadline for an applicant to respond, depending on the extent and nature of the items in the deficiency letter.
§352.411, Extensions

The commission proposes new §352.411 to establish a process for applicants to request extensions for responding to notices of application deficiencies. The commission proposes to require applicants to submit written requests for extensions of the response deadline. The request must include the reason an extension is needed and describe the length of the extension being requested. The executive director may grant or deny an extension request.

§352.421, Applications Returned

The commission proposes new §352.421 to establish procedures for the executive director to return an incomplete application. The executive director would notify an applicant that the executive director is discontinuing the review of an application, and the application is being returned. An application is considered returned upon issuance of a notice from the executive director that the application is returned. A returned application would not be physically returned to the applicant but would be managed in accordance with the commission’s records management procedures.

§352.431, Public Notice of Application

The commission proposes new §352.431 to establish public notice and public participation procedures for applications requesting new registrations and major amendments of registrations issued under new Chapter 352.
Proposed new §352.431(a) would establish that the requirements of new §352.431 would be applicable to applications for new CCR registrations and major amendments of CCR registrations. Proposed new §352.431(b) would create a notice of the executive director's receipt of, and initial decision on, a registration application, and of opportunities to provide public comment and request a public meeting. The commission would use the applicable public participation procedures of 30 TAC Chapter 39 (Public Notice).

New §352.431(b) would also require the applicant to follow the solid waste notice publication requirements of 30 TAC §39.405(f)(1) and (2) (General Notice Provisions) and 30 TAC §39.418 (Notice of Receipt of Application and Intent to Obtain Permit). These requirements specify publication of the notice must be in the newspaper of largest circulation in the county in which the facility is located or is proposed to be located. If the facility is located, or is proposed to be located, in a municipality, the publication requirements specify publication of the notice in any newspaper of general circulation in the municipality, and in the newspaper of largest general circulation published in the county in which the facility is located or is proposed to be located. If a newspaper is not published in the county, notice would be required to be published in any newspaper of general circulation in the county in which the facility is located or is proposed to be located. These solid waste notice newspaper publication requirements may be satisfied by one publication if the newspaper is both published in the county
and is the newspaper of largest general circulation in the county. Additionally, if the alternative language publication decision criteria of §39.405(h) are met, new §352.431(b) would require the applicant to publish notice of an application in an alternative language following the procedures of §39.405(h).

Further, new §352.431(b) would require the executive director to mail a copy of an application made under new Chapter 352, or a summary of its contents, to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the facility is located, or is proposed to be located, and to the county judge and the health authority of the county in which the facility is located, or proposed to be located, by following the procedures of 30 TAC §39.503(c)(2)(B) (Application for Industrial or Hazardous Waste Facility Permit). New §352.431(b) would also require notice of an application under new Chapter 352 be mailed to: the state senator and representative who represent the area in which the facility is, or is proposed to be located; the adjacent landowners named in the application; the Texas Department of State Health Services; the Texas Parks and Wildlife Department; the Railroad Commission of Texas; persons on a relevant mailing list maintained by the chief clerk, which may include persons who have requested to be added to a mailing list and persons who have requested to receive notice of an application; other persons the executive director or chief clerk may elect to include; and if applicable, the secretary of the Coastal Coordination Advisory Committee (formerly the Coastal Coordination
Council) in accordance with 30 TAC §§39.413 (Mailed Notice), 39.418(b)(2), and 39.503(c)(1) and (2)(A).

There would not be an opportunity to request a contested case hearing on, and Chapter 281 would not be applicable to, an application for a registration under proposed Chapter 352. Proposed new §352.431(b) would not require notice of an application under new Chapter 352 to comply with the date of administrative completeness requirements of Chapter 281.

Proposed new §352.431(b) would require the text of the notice to include the items listed under 30 TAC §39.411(b) (Text of Public Notice), in accordance with §39.418(b)(3) and §39.503(c)(2)(A). The text of the notice would include, at a minimum: the name and address of the agency, and the telephone number of an agency contact from whom interested persons may obtain further information; the name, address, and telephone number of the applicant; the application or registration number; a description of the manner in which a person may contact the applicant for further information; a brief description of the location and nature of the proposed activity; a brief description of public comment procedures; a brief description of procedures by which the public may participate in the final registration decision; instructions on how to request a public meeting; an explanation that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is or is proposed to be located, or if there is substantial
public interest in the proposed activity; instructions on how to request a motion to overturn the executive director's decision; if applicable, a statement that the application or requested action is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP's goals and policies; the location of a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying; a description of the procedure by which a person may be placed on a mailing list to receive additional information about the application; and any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program.

Proposed new §352.431(c) would require the text of the notice to include the internet address of a website where the application, the executive director's draft registration, and notice required by new Chapter 352 would be available for the public to access.

Proposed new §352.431(d) would require a public comment period of a minimum of 30 days after the publication of the notice in the newspaper.

Finally, proposed new §352.431(e) would require the executive director to take into consideration all public comments received before the close of the public comment period when making the decision to grant or deny an application.
§352.441, Revised Notice of Changes to Application

The commission proposes new §352.441 to restrict the applicant from making substantive revisions to the application after public notice is published in the newspaper, without reissuing the public notice with a description of the proposed revisions.

§352.451, Public Meeting

The commission proposes new §352.451 to establish public participation procedures for public meetings on applications received under new Chapter 352. The commission would accomplish this by utilizing applicable public participation procedures in Chapter 39 and 30 TAC Chapter 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment).

Proposed new §352.451(a) would allow an applicant and the executive director to hold a public meeting in accordance with 30 TAC §55.154 (Public Meetings), in the county in which the facility is located, or is proposed to be located, for receiving public comment concerning the application and the executive director’s draft registration. Additionally, proposed new §352.451(b) would require a public meeting, based on the criteria contained in §§39.503(e), 55.154(c), and 352.961(c) (Assessment of Corrective Measures). The criteria under §39.503(e) and §55.154(c) that would make holding a public meeting mandatory include: a substantial degree of public interest in an application as determined by the executive director and at the request of a member of
the legislature who represents the general area in which the facility is located or is proposed to be located. A substantial degree of public interest in an application would also be demonstrated by a request for a public meeting filed by: a local governmental entity with jurisdiction over the location at which the facility is located, or is proposed to be located, by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is located, or is proposed to be located, by formal request of either the council's solid waste advisory committee, executive committee, or governing board; a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located, or is proposed to be located; or a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located, or proposed to be located, in accordance with §39.503(e). The criteria in new §352.961(c) that would require a public meeting would be either the submission of an initial application that will include corrective action requirements or an application to amend a registration to include corrective action requirements. The purpose of the mandatory public meeting would be to fulfill the requirements of 40 CFR §257.96(e) (Assessment of corrective measures), which would be adopted by reference in proposed §352.961. Facilities that have already met the public meeting requirement of 40 CFR §257.96(e) and are either in the process of selecting the remedy under 40 CFR §257.97 (Selection of remedy) or have begun the implementation of the selected remedy under 40 CFR §257.98 (Implementation of the corrective action program) at the time of application submission, are not required to
hold a public meeting under new §352.961(c). A public meeting held prior to application submission to satisfy 40 CFR §257.96(e) will not satisfy the other mandatory public meeting criteria in §39.503(e) and §55.154(c), which may result in a public meeting being required after application submission.

Proposed new §352.451(c) would establish procedures for providing public notice of a public meeting. The commission would require notice be made in accordance with the public notice procedures in §39.503(e)(6) and by requiring notice of a public meeting to be mailed to the persons listed in §39.413. The persons who would receive mailed notice under proposed new §352.451(c) would include the city mayor, county judge, and the city and county health authorities in which the facility is located, or is proposed to be located; the Texas Department of State Health Services; the Texas Parks and Wildlife Department; the Railroad Commission of Texas; the river authority in which the facility is located or is proposed to be located; the applicant; persons on a relevant mailing list maintained by the chief clerk under 30 TAC §39.407 (Mailing Lists); any other person the executive director or chief clerk elected to include, if applicable; the secretary of the Coastal Coordination Advisory Committee (formerly the Coastal Coordination Council); and any persons who filed public comment, requested a public meeting, or requested to be added to the mailing list.

Proposed new §352.451(d) would establish that the purpose of a public meeting is to provide information and to receive public comment, and clarify that a public meeting
held on an application submitted under this chapter would not be a contested case
hearing under the Texas Administrative Procedure Act.

§352.461, General Notice Provisions

The commission proposes new §352.461 to establish general notice procedures
of an application for a new registration and a major amendment of a registration submitted
under new Chapter 352. The commission would require notice to be made in
accordance with established general notice procedures of Chapter 39.

Specifically, proposed new §352.461(a)(1) would require that notice of an application
for a new registration and a major amendment of a registration to made in accordance
with the applicable requirements of §39.405, which: sets out procedures the chief clerk
and the executive director may follow if an applicant fails to publish newspaper notice;
allows the chief clerk to require applicants to submit mailing lists in electronic format;
provides for hand delivery of notice in lieu of mailed notice; allows multiple notices to
be combined into one notice; establishes procedures for the applicant to demonstrate
compliance with newspaper notice publication requirements; establishes requirements
for a public copy of the application, including confidentiality procedures, be kept
current to reflect any changes made to the application; and sets out requirements for
publication of newspaper notice in an alternative language, including a decision matrix
based on whether the Texas Education Code requires the elementary or middle school
nearest to the facility to provide a bilingual education program and other factors.
Proposed new §352.461(a)(2) would require that notice of an application under new Chapter 352 to include the applicable requirements of §39.407, which requires the chief clerk to maintain mailing lists of persons who request to be added to mailing lists and who submit public comments.

Proposed new §352.461(a)(3) would require that notice of an application under new Chapter 352 to include the applicable requirements of 30 TAC §39.409 (Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), which requires notices to identify the close of the public comment period, in accordance with 30 TAC §55.152 (Public Comment Period), and which allows the executive director and the commission to take action on an application after the close of the public comment period under 30 TAC Chapter 50 (Action on Applications and Other Authorizations).

Additionally, proposed new §352.461(a)(3) would require, in accordance with §55.152, that text of public notices of applications under new Chapter 352 to identify the end of the public comment period, allow the executive director to extend the comment period for good cause, and require the comment period to be extended to the close of a public meeting, if a public meeting were held. Proposed new §352.461(a)(4) would require that notice of an application under new Chapter 352 to include the applicable requirements of §39.411; and would require an applicant to use a form of notice
approved by the executive director, and any changes to the form of notice to be approved by the executive director.

Proposed new §352.461(a)(5) would require notice of an application under new Chapter 352 to include the applicable requirements of §39.413, which are listed under the Section by Section Discussion for proposed new §352.451(c).

Proposed new §352.461(a)(6) would require notice of an application under new Chapter 352 to include the applicable requirements of 30 TAC §39.420 (Transmittal of the Executive Director’s Response to Comments and Decision). Proposed new §352.461(a)(6) would also require the chief clerk to transmit the executive director’s final decision, instructions for requesting the commission to overturn the executive director’s decision, and if the executive director elected to file a response to public comments, the executive director’s response to public comments to the applicant, any person who requested to be on the mailing list for the application, any person who submitted public comments during the public comment period, and the Office of the Public Interest Counsel.

Finally, proposed new §352.461(b) would clarify that the executive director is not required to provide a response to public comments received on applications under new Chapter 352, Subchapter D. Instead, the commission anticipates preparing an informal response to comments responding to all relevant and material comments received
prior to the end of the comment period. The informal response to comments will be mailed to all commenters and other relevant parties as part of the final notice of the executive director’s action on the application. Proposed new §352.461(b) would also indicate that new Chapter 352, Subchapter D, does not create an opportunity to request the commission to hold a contested case hearing under the Texas Administrative Procedure Act on an application filed under new Chapter 352.

§352.471, Draft Registration

The commission proposes new §352.471 to assure that the public notice of an application under new Chapter 352 would include notice of a draft registration available to the public for review and comment. The commission would establish that the executive director would produce a draft registration upon reaching an initial determination that an application for a new registration or an application for major amendment of a registration filed under new Chapter 352 met the regulatory requirements for issuance. Public availability is required by new §352.1321 (Publicly Accessible Internet Site Requirements), which requires the applicant to post a copy of the draft registration on the publicly accessible CCR website once the executive director's initial determination is made.

§352.481, Motion to Overturn the Executive Director’s Decision

The commission proposes new §352.481 to provide an administrative remedy for review of the executive director's action on an application filed under new Chapter
352. The commission proposes to achieve this purpose by making an application for a new registration or an amendment of a registration under new Chapter 352 subject to the established procedures of 30 TAC §50.133(b) and §50.139 (Executive Director Action on Application or WQMP Update; and Motion to Overturn Executive Director's Decision). These procedures would include mailing a final decision and instructions on how to file a motion to overturn the executive director’s decision to persons on the mailing list.

**Subchapter E: Location Restrictions**

§352.601, *Placement Above the Uppermost Aquifer*

The commission proposes new §352.601 to establish a location restriction placing a limit on how close the base of a new CCR landfill, laterally expanding CCR landfill, laterally expanding CCR surface impoundment, new CCR surface impoundment, or an existing CCR surface impoundment subject to new Chapter 352, may be to the uppermost aquifer, consistent with the requirements of 40 CFR §257.60 (Placement above the uppermost aquifer). New §352.601 adopts by reference 40 CFR §257.60 which requires that a demonstration of compliance with this location restriction be prepared, signed, and certified by a licensed professional geoscientist or licensed professional engineer; the owner or operator of an existing surface impoundment meet the location restriction by October 17, 2018; recordkeeping and notification requirements, including internet posting of information regarding compliance with the location restriction; and an owner or operator of a new surface impoundment, new
landfill, a laterally expanding surface impoundment, and a laterally expanding landfill to demonstrate compliance with the location restriction before placing CCR in the unit. Owners and operators of existing surface impoundments that do not demonstrate compliance with the location restriction by October 31, 2020, must close the unit. The commission would achieve this purpose by adopting by reference 40 CFR §257.60.

§352.611, Wetlands

The commission proposes new §352.611 to adopt by reference the location restrictions included in 40 CFR §257.61 (Wetlands), which prohibits wetland degradation and harm to endangered or threatened species, or critical habitat. These criteria are applicable to new CCR landfills, laterally expanding CCR landfills, laterally expanding CCR surface impoundments, new CCR surface impoundments, or an existing CCR surface impoundment. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. Owners and operators of existing surface impoundments that have not complied with these restrictions by October 17, 2018, must conduct closure of the unit. Owners and operators of all new and laterally expanding units that do not comply with these restrictions may not conduct waste management activities in the unit.

§352.621, Fault Areas
The commission proposes new §352.621 to adopt by reference the location restrictions included in 40 CFR §257.62 (Fault areas), which prohibits the location of a CCR unit in fault areas. These criteria are applicable to new CCR landfills, laterally expanding CCR landfills, laterally expanding CCR surface impoundments, new CCR surface impoundments, or an existing CCR surface impoundment. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. Owners and operators of existing surface impoundments that did not comply with these restrictions by October 17, 2018, must conduct closure of the unit. Owners and operators of all new and laterally expanding units that do not comply with these restrictions may not conduct waste management activities in the unit.

§352.631, Seismic Impact Zones

The commission proposes new §352.631 to adopt by reference the location restrictions included in 40 CFR §257.63 (Seismic impact zones), which prohibits the location of certain CCR units in seismic impact zones. These criteria are applicable to new CCR landfills, laterally expanding CCR landfills, laterally expanding CCR surface impoundments, new CCR surface impoundments, or an existing CCR surface impoundment. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.
Owners and operators of existing surface impoundments that did not comply with these restrictions by October 17, 2018, must conduct closure of the unit. Owners and operators of all new and laterally expanding units that do not comply with these restrictions may not conduct waste management activities in the unit.

§352.641, Unstable Areas
The commission proposes new §352.641 to adopt by reference the location restrictions included in 40 CFR §257.64 (Unstable areas), which prohibits the location of CCR units in unstable areas. These criteria are applicable to all CCR units, including new and existing CCR landfills, new and existing CCR surface impoundments, and lateral expansions of both unit types. Prohibition to operate a CCR unit in unstable areas is the only location restriction existing landfills are subject to. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. Owners and operators of existing landfills and surface impoundments that did not comply with these restrictions by October 17, 2018, must conduct closure of the unit. Owners and operators of all new and laterally expanding units that do not comply with these restrictions may not conduct waste management activities in the unit.

Subchapter F: Design Criteria
§352.701, Design Criteria for Coal Combustion Residuals Landfills
The commission proposes new §352.701, to adopt by reference the design criteria included in 40 CFR §257.70 (Design criteria for new CCR landfills and any lateral expansion of a CCR landfill). The design criteria in 40 CFR §257.70 address liner requirements and leachate collection and removal systems for new or laterally expanding CCR landfills. Demonstration of compliance with these requirements must be signed and sealed by a licensed professional engineer both before and after construction. The demonstration must also meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

§352.711, Liner Design Criteria for Existing Coal Combustion Residuals Surface Impoundments
The commission proposes new §352.711, to establish the liner requirements for existing CCR surface impoundments consistent with the federal liner requirements found under 40 CFR §257.71 (Liner design criteria for existing CCR surface impoundments) and the August 21, 2018, decision to set aside the court order of the clay-liner options by the United States Court of Appeals for the District of Columbia in the matter of Util. Solid Waste Activities Group v. Envtl. Protec. Agency, 901 F.3d 414 (D.C. Cir. 2018). A licensed professional engineer must sign and certify the demonstration of compliance with the requirements of proposed §352.711. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. Owners or operators of existing surface impoundments considered unlined by the standards set out in proposed Chapter 352,
Subchapter F, and that determine a statistically significant increase above groundwater protection standards according to proposed Chapter 352, Subchapter H, are subject to closure or retrofit requirements in accordance with new Chapter 352, Subchapter J.

§352.721, Liner Design Criteria for New and Lateral Expansions of Coal Combustion Residuals Surface Impoundments

The commission proposes new §352.721, to adopt by reference the design criteria included in 40 CFR §257.72 (Liner design criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment). The design criteria in 40 CFR §257.72 address liner requirements for new or laterally expanding CCR surface impoundments. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements both before and upon completion of construction. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

§352.731, Structural Integrity Criteria for Existing Coal Combustion Residuals Surface Impoundments

The commission proposes new §352.731, to primarily adopt by reference the design criteria included in 40 CFR §257.73 (Structural integrity criteria for existing CCR surface impoundments). The design criteria in 40 CFR §257.73 imposes structural integrity standards for existing CCR surface impoundments that are not incised. Owners and operators of existing CCR surface impoundments were required to install
unit identification number markers by December 17, 2015. Owners and operators of existing CCR surface impoundments must: have conducted an initial hazard potential classification assessment by April 17, 2017, and implemented periodic assessments, in accordance with new Chapter 352, Subchapter F; develop, maintain, and implement a written emergency action plan for impoundments classified as high or significant hazard potential, in accordance with new Chapter 352, Subchapter F; develop and maintain a construction history for the unit; and have performed initial, and implemented periodic, structural stability and safety factor assessments. Initial assessments and demonstrations must have been made by October 17, 2016. Failure to comply with the minimum safety factor requirements, or the deadline for conducting the assessment, in new §352.731 would require closure of the unit. All required demonstrations and assessments must be certified by a licensed professional engineer, and must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Additionally, new §352.731(b) would identify specific notifications and notification timelines required by the state in addition to the requirements adopted by reference. Some events requiring notification may also trigger a requirement to request an amendment. Notification alone does not satisfy an amendment requirement.

§352.741, Structural Integrity Criteria for New and Lateral Expansions of Coal Combustion Residuals Surface Impoundments
The commission proposes new §352.741 to primarily adopt by reference the design criteria included in 40 CFR §257.74 (Structural integrity criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment). The design criteria in 40 CFR §257.74 imposes structural integrity standards for new and laterally expanding CCR surface impoundments that are not incised. Owners and operators of new or laterally expanding CCR surface impoundments must: install unit identification number markers before receiving CCR wastes in the unit; conduct initial and periodic assessments in accordance with new Chapter 352, Subchapter F; develop, maintain, and implement a written emergency action plan for impoundments classified as high or significant hazard potential, in accordance with new Chapter 352, Subchapter F; develop and maintain a construction history for the unit; and perform initial and periodic structural stability and safety factor assessments. Initial assessments and demonstrations must be made before the receipt of CCR wastes into the new or expanded unit. Owners and operators failing to comply with the minimum safety factor requirements in new §352.741 during initial assessment are prohibited from placing CCR waste into the unit. Failure to comply with the minimum safety factor requirements, or the deadline for conducting the assessment, in new §352.741 during periodic assessments will require closure of the unit. All required demonstrations and assessments must be certified by a licensed professional engineer, and must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.
Additionally, new §352.741(b) would identify specific notifications and notification timelines required by the state in addition to the requirements adopted by reference. Some events requiring notification may also trigger a requirement to request an amendment. Notification alone does not satisfy an amendment requirement.

Subchapter G: Operating Criteria

§352.801, Air Criteria

The commission proposes new §352.801, to adopt by reference the operating criteria included in 40 CFR §257.80 (Air criteria), to require owners and operators of all CCR units to: minimize airborne CCR wastes; develop, implement, and maintain a fugitive dust control plan meeting the requirements of 40 CFR §257.80; and have the plan certified by a licensed professional engineer. The plan must have been in place by October 19, 2015, for existing units, or by initial receipt of CCR for new and laterally expanding units. Owners and operators must also prepare an annual fugitive dust control report. All the requirements must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

§352.811, Run-On and Run-Off Controls for Coal Combustion Residuals Landfills

The commission proposes new §352.811, to adopt by reference the operating criteria included in 40 CFR §257.81 (Run-on and run-off controls for CCR landfills). Owners and operators of all CCR landfills must develop initial and periodic run-on and run-off control system plans, in accordance with 40 CFR §257.81, and implement and maintain
run-on and run-off control systems capable of withstanding volumes associated with a 24-hour, 25-year storm. Plans were required by October 17, 2016, for existing landfills, and no later than initial receipt of CCR wastes in the unit for new and laterally expanding landfills. Plans must be certified by a licensed professional engineer and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

§352.821, Hydrologic and Hydraulic Capacity Requirements for Coal Combustion Residuals Surface Impoundments

The commission proposes new §352.821, to adopt by reference the operating criteria included in 40 CFR §257.82 (Hydrologic and hydraulic capacity requirements for CCR surface impoundments). Owners and operators of all CCR surface impoundments must develop initial and periodic inflow design flood control system plans in accordance with 40 CFR §257.82. The plan must implement and maintain an inflow design flood control system capable of managing flow into or from the unit of a volume based on the hazard potential classification determination made in accordance with new §352.731 and §352.741. The volumes established in the federal rule are: probable maximum flood for high hazard potential units, 1,000-year flood for significant hazard potential units, 100-year flood for low hazard potential, and 25-year flood for incised impoundments. Plans were required to be completed and placed in the facility's operating record by October 17, 2016, for existing surface impoundments, and no later than initial receipt of CCR wastes in the unit for new and laterally expanding surface
impoundments. Plans must be certified by a licensed professional engineer and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

§352.831, Inspection Requirements for Coal Combustion Residuals Surface Impoundments

The commission proposes new §352.831, to adopt by reference the operating criteria included in 40 CFR §257.83 (Inspection requirements for CCR surface impoundments). Qualified persons must inspect all CCR surface impoundments on a frequency based on the objective of the inspection, and in accordance with 40 CFR §257.83, and must have initiated inspections by October 19, 2015, for existing surface impoundments or at the time of initial receipt of CCR wastes in the unit for new and laterally expanding surface impoundments. All surface impoundments subject to periodic structural stability assessment requirements in new §352.731 and §352.741, require an annual licensed professional engineer’s inspection and inspection report in accordance with 40 CFR §257.83, by January 19, 2016, for existing surface impoundments, and no later than 14 months after initial receipt of CCR wastes in the unit for new and laterally expanding surface impoundments. The owner or operator must remedy any release or deficiency identified during an inspection as soon as feasible and document the response. Inspection reports must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.
Additionally, proposed new §352.831(b) would identify specific notifications and notification timelines required by the state. Some events requiring notification may also trigger a requirement to request an amendment. Notification alone does not satisfy an amendment requirement.

§352.841, Inspection Requirements for Coal Combustion Residuals Landfills

The commission proposes new §352.841, to adopt by reference the operating criteria included in 40 CFR §257.84 (Inspection requirements for CCR landfills). Qualified persons must inspect all CCR landfills on a frequency outlined based on the objective of the inspection and in accordance with 40 CFR §257.84, and must have initiated inspections by October 19, 2015, for existing landfills, or at the time of initial receipt of CCR wastes in the unit for new and laterally expanding landfills. All landfills require an annual licensed professional engineer’s inspection and inspection report in accordance with 40 CFR §257.84, to have been initiated by January 19, 2016, for existing landfills, and no later than 14 months after initial receipt of CCR wastes in the unit for new and laterally expanding landfills. The owner or operator must remedy any release or deficiency identified during an inspection as soon as feasible and document the response. Inspection reports must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Additionally, proposed new §352.841(b) would identify specific notifications and notification timelines required by the state in addition to the requirements adopted by
reference. Some events requiring notification may also trigger requirement to request an amendment. Notification alone does not satisfy an amendment requirement.

§352.851, Pre-Opening Inspection
The commission proposes new §352.851 to require the owner or operator of a new or laterally expanding CCR unit to obtain a licensed professional engineer certification that the unit complies with registration conditions, and to give the executive director an opportunity to inspect the constructed unit before commencing waste management activities. If the owner or operator has not received a notice of intent to inspect the new or expanded unit from the executive director within 15 days of the applicant offering the opportunity for an inspection, then the executive director has waived the opportunity for prior inspection, and the owner or operator may commence CCR management activities in the unit.

Subchapter H: Groundwater Monitoring and Corrective Action
§352.901, Applicability
The commission proposes new §352.901 to primarily adopt by reference the groundwater monitoring and corrective actions included in 40 CFR §257.90 (Applicability), which gives the general requirements for establishing and implementing a groundwater monitoring program, making a no migration demonstration, and corrective action for releases from a unit. The criteria of proposed Chapter 352, Subchapter H, are applicable to all CCR units, including all CCR landfills,
all CCR surface impoundments, and new and lateral expansions of CCR units. All information and data required in proposed Chapter 352, Subchapter H concerning the establishment of a groundwater monitoring system, a sampling and analysis program, and all monitoring data obtained under proposed Chapter 352, Subchapter H, must be included in the annual groundwater monitoring and corrective action report. The initial annual groundwater monitoring and corrective action report was required to be completed and placed in the facility’s operating record by January 31, 2018. The owner and operator must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Proposed new §352.901(b) would establish that with the adoption of new Chapter 352, 30 TAC Chapter 350 (Texas Risk Reduction Program) is not applicable to CCR units as defined in new §352.3 and as further described in new §352.1.

§352.902, Groundwater Monitoring and Corrective Action Report Submittal
The commission proposes new §352.902 to establish that the Groundwater Monitoring and Corrective Action Report, which would be prepared in accordance with new §352.901, must be submitted to the executive director for review. The report would be submitted to the executive director for review no later than 30 days after the report was placed in the facility’s operating record.

§352.911, Groundwater Monitoring Systems
The commission proposes new §352.911 to primarily adopt by reference the groundwater monitoring systems requirements included in 40 CFR §257.91 (Groundwater monitoring systems), which requires owners and operators to install groundwater monitoring systems for all CCR units. The groundwater monitoring system installed must consist of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer accurately representing the background groundwater quality uncontaminated by a CCR unit. Each system must have a minimum of four monitoring wells, one upgradient and three downgradient of the CCR unit. A facility may install a multiunit groundwater monitoring system instead of separate systems, but if a release is detected, then all existing unlined CCR surface impoundments are subject to closure or retrofit. A licensed professional geoscientist or licensed professional engineer must certify the groundwater monitoring system design and construction, and the owner and operator must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Proposed new §352.911(b) would establish that a groundwater monitoring system for CCR units shall be reviewed and approved by the executive director. The executive director may require additional monitoring wells to be installed to determine compliance with the requirements of new Chapter 352, Subchapter H.
Proposed new §352.911(c) would establish that an owner or operator must request an amendment to the registration and the executive director must approve the request before changes to the groundwater monitoring system required by new §352.911 are implemented.

Additionally, proposed new §352.911(d) would require that monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. Installation, plugging, and abandonment of wells or borings must be carried out in accordance with the requirements in 16 TAC Chapter 76 (Licensing and Regulations of Water Well Drillers and Water Well Pump Installers).

§352.931, *Groundwater Sampling and Analysis Requirements*

The commission proposes new §352.931 to adopt by reference the groundwater sampling and analysis program requirements included in 40 CFR §257.93 (Groundwater sampling and analysis requirements). The groundwater monitoring program must include sampling and analysis procedures designed to ensure monitoring results will provide an accurate representation of groundwater quality at all background and downgradient wells. The program must include procedures and techniques for sample collection; sample preservation and shipment; analytical procedures; chain of custody control; and quality assurance and quality control. The sampling and analysis methods chosen must be appropriate for groundwater sampling and accurately measure the prescribed constituents, and other monitoring parameters,
in groundwater. The owner or operator must establish background groundwater quality in all upgradient wells. The number of samples collected for groundwater monitoring programs must be consistent with the statistical procedures chosen. A licensed professional geoscientist or licensed professional engineer must certify that the chosen statistical method is appropriate for evaluating the groundwater monitoring data. The owner and operator must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Proposed new §352.931(b) would establish that an owner or operator must request an amendment to the registration before making changes to the groundwater sampling and analysis program required by §352.931.

§352.941, Detection Monitoring Program

The commission proposes new §352.941 to primarily adopt by reference the detection monitoring program requirements included in 40 CFR §257.94 (Detection monitoring program), which outlines the requirements for conducting a groundwater detection monitoring program. For all CCR units, a minimum of eight independent samples from each background and downgradient well were required to be collected and analyzed for the constituents listed in Appendix III adopted by reference in proposed §352.1421 and Appendix IV adopted by reference in proposed §352.1431, no later than October 17, 2017, for existing units, and within the first six months after receiving waste in the unit when sampling for new units. The owner or operator must sample all groundwater
monitoring wells at least on a semiannual basis, and during each sampling event must sample for all Appendix III constituents adopted by reference in proposed §352.1421, at a minimum, at each well. Upon executive director approval, an alternative sampling frequency may be used if a demonstration is made based on site-specific characteristics and is certified by a licensed professional geoscientist or licensed professional engineer that an alternative sampling frequency is necessary. The alternative sampling frequency can be no less than once a year. If the owner or operator determines there is a statistically significant increase (SSI) over the background values for any constituent in Appendix III adopted by reference in proposed §352.1421, then the owner or operator must either demonstrate that the increase is from a source other than the CCR unit or begin assessment monitoring within 90 days of detecting the SSI. The owner and operator must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Additionally, proposed new §352.941(b) - (d) would identify state notification requirements and associated timelines if it is determined that there is an SSI detected over background value. These requirements include the additional procedures required to pursue an alternative source demonstration under new Chapter 352.

§352.951, Assessment Monitoring Program

The commission proposes new §352.951 to primarily adopt by reference the assessment monitoring requirements included in 40 CFR §257.95 (Assessment
monitoring program), except for 40 CFR §257.95(h). The section requires that certain steps and stages of the groundwater monitoring assessment, required under the self-implementing federal rule, would include certain notifications, submittals, and approvals by the executive director. New §352.951 would require the owner or operator to conduct assessment monitoring if an SSI over background levels is detected for one or more of the constituents listed in Appendix III adopted by reference in proposed §352.1421. New §352.951 would also require that within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator sample and analyze the groundwater for all Appendix IV constituents adopted by reference in proposed §352.1431. Further, new §352.951 would require the owner or operator to resample all wells and conduct analyses for all Appendix III parameters adopted by reference in proposed §352.1421, and the Appendix IV constituents adopted by reference in proposed §352.1431 detected during the initial assessment monitoring sampling, within 90 days of obtaining the initial results, and on at least a semiannual basis thereafter. The owner or operator shall establish groundwater protection standards for all detected Appendix IV constituents adopted by reference in proposed §352.1431 within 90 days of obtaining the initial results.

New §352.951(b) would establish that a groundwater protection standard for a constituent shall be the higher of either the maximum contaminant level established under 40 CFR §141.62 (Maximum contaminant levels for inorganic contaminants) and
§141.66 (Maximum contaminant levels for radionuclides); the background concentration; or a health-based groundwater protection standard established by new §352.951(b).

The owner or operator shall continue assessment monitoring if the concentrations of any constituent in Appendix III adopted by reference in proposed §352.1421 and Appendix IV adopted by reference in proposed §352.1431 are statistically above background values and below the established groundwater protection standards. If the concentrations of all constituents listed in Appendix III adopted by reference in proposed §352.1421 and Appendix IV adopted by reference in proposed §352.1431 are shown to be statistically at or below background values for two consecutive sampling events, the owner or operator would be allowed to return to detection monitoring upon written approval from the executive director, in accordance with new §352.951(c). If one or more constituents in Appendix IV adopted by reference in proposed §352.1431 are detected at statistically significant levels above the established groundwater protection standard in any sampling event, the owner or operator must prepare a notification identifying the Appendix IV constituents adopted by reference in proposed §352.1431 that have exceeded the groundwater protection standard and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

The owner or operator of the CCR unit must also characterize the nature and extent of the release, both vertically and horizontally, and any relevant site conditions that may affect the remedy ultimately selected. The owner or operator must also notify all
persons who own the land or reside on the land that directly overlies any part of the plume of contamination, if constituents have migrated off-site.

Within 90 days of finding that any of the constituents in Appendix IV adopted by reference in proposed §352.1431 have exceeded the established groundwater protection standards, the owner or operator must either initiate an assessment of corrective measures or demonstrate that the contamination was from a source other than the CCR unit. If an assessment of corrective measures is required and the CCR unit is an existing unlined CCR surface impoundment, then the unit is subject to the closure or retrofit requirements found in §352.1211.

Additionally, proposed §352.951(d) - (f) would identify state notification requirements and associated timelines, demonstrations, and information that the owner or operator must submit to the executive director if it is determined that there is an SSI exceeding any groundwater protection standards at any monitoring well, including the procedures for pursuing an alternative source demonstration.

§352.961, Assessment of Corrective Measures
The commission proposes new §352.961 to primarily adopt by reference the groundwater monitoring and corrective action requirements included in 40 CFR §257.96, which outlines the requirements for conducting the assessment of corrective measures. Within 90 days of finding that any constituent listed in Appendix IV
adopted by reference in proposed §352.1431 has been detected at a statistically significant level exceeding the established groundwater protection standard, or immediately upon detection of a release from a CCR unit, the owner or operator must initiate an assessment of corrective measures to prevent further releases, remediate any releases, and restore affected areas to original conditions. The assessment of corrective measures must be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The owner or operator of the CCR unit must continue to monitor groundwater in accordance with the assessment monitoring program while the assessment of corrective measures is conducted. The assessment of corrective measures must include an analysis of the effectiveness of potential corrective measures in meeting all the requirements and objectives of the remedy. The completed assessment of corrective measures must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

In accordance with proposed §352.961(b), the owner or operator would submit to the executive director an application for amendment to the registration within 30 days of completing the assessment of corrective measures, and would include the completed assessment of corrected measures; the proposed selection of remedy; information that characterizes of the extent of the release both horizontally and vertically; a comparison of the constituents from Appendix III adopted by reference in proposed §352.1421 with an SSI to the corresponding background values; a comparison of the
detected constituents from Appendix IV adopted by reference in proposed §352.1431 and the corresponding groundwater protection standards of new §352.951(b); a schedule for submitting the Corrective Action Effectiveness Reports required by new §352.991; and a signed affidavit certifying that all persons who own land or reside on land that directly overlays the plume of contamination have been notified as required by new §352.951.

Proposed new §352.961(c) would prescribe how an applicant for a major amendment to a registration to add corrective action and select a final remedy would fulfill public notice requirements in 40 CFR §257.96(e) that would be adopted by reference in proposed new §352.961(a). The federal rule requires an owner or operator to discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy for corrective action, in a public meeting with interested and affected parties. Proposed §352.961(c) would implement this federal requirement by requiring an owner or operator submitting an application for a major amendment to add corrective action requirements to a registration to provide notice and hold a public meeting with the executive director, in accordance with proposed new Chapter 352, Subchapter D. An application to amend a registration to add corrective action would include the assessment of corrective measures in the application. The entire application, including the assessment, would be open for public comment during the entire public comment period and the mandatory public meeting. In the interest of administrative efficiency, the commission expects that the notice of public meeting will
likely be combined with the notice of receipt of application and the executive director's initial decision. As a result, the executive director's initial decision on the final remedy would be available for public comment during the public meeting in addition to the application, including the corrective measures assessment. Owners and operators that held a public meeting satisfying the requirement of 40 CFR §257.96(e) prior to application submission are not required by proposed §352.961(c) to hold another public meeting; however, other mandatory public meeting criteria in proposed §352.451 may require a public meeting after application submission.

§352.971, Selection of Remedy

The commission proposes new §352.971 to adopt by reference the groundwater monitoring and corrective action requirements in 40 CFR §257.97, which outlines the requirements for selecting a remedy for a release. Based on the results of the assessment of corrective measures, the owner or operator must, as soon as feasible, select a remedy that, at a minimum: is protective of human health and the environment; will attain the established groundwater protection standards; control the source of the release; remove as much of the contaminated materials as possible; and comply with the waste management standards in new §352.981. When selecting the remedy to be used, the owner or operator shall consider the following: the long- and short-term effectiveness of the remedy; the effectiveness of the remedy in controlling the source of contamination; the ease or difficulty of implementing the remedy; and how the remedy addresses the impacted parties' concerns. The owner or operator must
specify, as part of the selected remedy, a schedule for implementing and completing remedial activities. The schedule must take the following into consideration: extent and nature of the contamination; reasonableness of meeting the established groundwater protection standards; availability of treatment or disposal for CCR managed during the remedy; potential risks to human health and the environment; the resource value of the aquifer; and other relevant factors. Demonstration of these requirements being met must be signed and sealed by a licensed professional geoscientist or licensed professional engineer, and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. The selection of remedy will be considered complete when the registration amendment, including the approved corrective action program, is issued.

§352.981, Implementation of the Corrective Action Program

The commission proposes new §352.981 to primarily adopt by reference the groundwater monitoring and corrective action requirements in 40 CFR §257.98, which outlines the requirements for implementing the approved corrective action program, including the final remedy. Within 90 days of selecting a remedy, the owner or operator must initiate remedial activities based on the schedule established during the selection of remedy process. The corrective action groundwater monitoring program must, at a minimum: meet the requirements for an assessment monitoring program; document the effectiveness of the corrective actions; and demonstrate compliance with the established groundwater protection standards. The owner or operator must
also take any interim measures necessary to reduce further contamination from the unit. If at any time the owner or operator determines that the remedy is not achieving compliance, then they must implement other methods or techniques that could possibly achieve compliance. Corrective action shall be considered complete when the owner or operator can demonstrate for three consecutive years, compliance with the established groundwater protection standards at all points within the plume of contamination for the constituents listed in Appendix IV adopted by reference in proposed §352.1431, and all remedial activities have been completed. Demonstration of these requirements must be signed and sealed by a licensed professional geoscientist or licensed professional engineer, and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. The owner or operator may return to detection monitoring or assessment monitoring upon written approval from the executive director.

§352.991, Corrective Action Effectiveness Report

The commission proposes new §352.991 to describe the reporting requirements for owners and operators conducting corrective action. Owners and operators must provide to the executive director a periodic evaluation of the ongoing corrective action program to identify how effective the corrective measures have been, how much of the remediation is complete, and an estimate of remaining time required to achieve corrective action goals.
Subchapter I: Financial Assurance

§352.1101, Financial Assurance Required

The commission proposes new §352.1101 to require financial assurance from owners and operators required to perform post-closure care under new Chapter 352. The amount of the financial assurance will be for the post-closure care maintenance requirements that would be adopted by reference in proposed §352.1241. The amount will be based on the cost to hire a third-party to perform the post-closure care maintenance requirements for the duration of the post-closure care period. A financial assurance mechanism acceptable to the executive director must be submitted no more than 90 days after the executive director approves a registration.

If an owner or operator must maintain financial assurance beyond the minimum 30 years in accordance with new §352.1241, then the owner or operator must submit a new cost estimate within 180 days before the end of the preceding post-closure care period.

If an owner or operator fails to perform post-closure care, then the executive director may direct the use of the funds provided under this section to perform the required care.

Financial assurance under this chapter must be demonstrated in accordance with 30 TAC Chapter 37, Subchapters A - D (General Financial Assurance Requirements;

§352.1111, Exceptions
The commission proposes new §352.1111 to clarify exceptions to 30 TAC Chapter 37 (Financial Assurance). The exceptions in new §352.1111 include identifying any mechanisms that may not be used for financial assurance under new Chapter 352; identifying sections in Chapter 37 that do not apply to new Chapter 352; prescribing which endorsement must be used for insurance mechanisms; clarifying the timing for mechanism increases for financial tests, corporate guarantees, and local government financial tests; and requiring registration numbers be noted on mechanisms.

Subchapter J: Closure and Post-Closure Care
§352.1200, General
The commission proposes new §352.1200 to clarify that all references in new Chapter 352, Subchapter J to 40 CFR §257.95(h), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.951(b).

§352.1201, Inactive Coal Combustion Residuals Surface Impoundments
The commission proposes new §352.1201 to adopt by reference the closure requirements in 40 CFR §257.100 (Inactive CCR surface impoundments), which requires all inactive surface impoundments to meet all of the requirements for existing surface impoundments. Owners and operators of inactive surface impoundments must demonstrate compliance with regulations applicable to existing surface impoundments by the timeframes prescribed in this section or will be subject to closure requirements in §352.1211 (Closure or Retrofit of Coal Combustion Residuals Units).

§352.1211, Closure or Retrofit of Coal Combustion Residuals Units

The commission proposes new §352.1211 to adopt by reference the closure and retrofit requirements in 40 CFR §257.101 (Closure or retrofit of CCR units), which identifies CCR units required to close, and the timeframe for initiating closure procedures. Owners and operators of existing unlined surface impoundments must stop applying CCR and non-CCR wastes to the unit and initiate closure or retrofitting of the unit no later than October 31, 2020, in accordance with Chapter 352, Subchapter J. Existing CCR surface impoundments not meeting the location standards identified in new Chapter 352 will be required to close in accordance with new §352.1211. New or existing surface impoundments failing to make the safety factor assessments within the established timeframes, or do not meet the minimum safety factors required by new Chapter 352 will also be required to close in accordance with new §352.1211; and existing landfills that are not compliant with the location restriction for unstable areas will be required to close in accordance with new §352.1211.
§352.1221, Criteria for Conducting the Closure or Retrofit of Coal Combustion Residuals Units

The commission proposes new §352.1221 to adopt by reference the closure requirements in 40 CFR §257.102 (Criteria for conducting the closure or retrofit of CCR units). Owners and operators of CCR units must close the unit by either removing the CCR wastes and decontaminating until groundwater monitoring concentrations for Appendix IV adopted by reference in proposed §352.1431 constituents do not exceed the groundwater protection standards, or by leaving wastes in place and installing a final cover. A written plan of how closure will be conducted on all CCR units, including planned closure steps and schedules, must have been generated by October 17, 2016, for existing units, and no later than initial receipt of wastes for new or laterally expanding units. Surface impoundments that close leaving wastes in place must be drained and stabilized before installation of the final cover. Owners and operators are required to initiate closure no later than 30 days after the known last receipt of waste or removal of wastes for beneficial use. Idle units that have not received waste, or have not had waste removed for beneficial use, must initiate closure no later than two years after the last date of either activity. The owner or operator may make a demonstration meeting the requirements of new §352.1221 that the waste activities will resume, including providing a certification from an authorized representative. CCR landfills are expected to complete closure within six months, unless a demonstration can be made that additional time is needed. No more than two, one-year extensions will be added to
the time required for landfill closure. CCR surface impoundments are expected to complete closure within five years, unless a demonstration can be made that additional time is needed. A surface impoundment of 40 acres or less will only be granted one, two-year extension to complete closure. A surface impoundment greater than 40 acres, may be granted up to five, two-year extensions to complete closure. Units closed with wastes left in place are subject to deed recordation requirements. Owners and operators must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

New §352.1221 also contains the guidelines for retrofitting an existing CCR surface impoundment, which requires removing all wastes and installing or upgrading the liner to meet the liner requirements in new §352.721. A written plan of retrofitting activities must be created at least 60 days before initiating retrofitting. Retrofitting activities must follow the timelines for closure of a surface impoundment prescribed in new §352.1221.

New §352.1221 requires a licensed professional engineer certification of documentation and demonstrations made to comply with new §352.1221 and these records must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.
The commission also proposes new §352.1221(b) to require that prior to a certification of closure being issued by the executive director for closing a CCR unit, an approved financial assurance mechanism, other than insurance, that meets the requirements of new Chapter 352, Subchapter I must be in place.

§352.1231, Alternative Closure Requirements

The commission proposes new §352.1231 to adopt by reference the alternative closure requirements in 40 CFR §257.103 (Alternative closure requirements), which describes flexibilities that may be afforded to owners and operators of units that would otherwise be forced to initiate closure under the requirements of new Chapter 352. If there is no alternative disposal capacity available, the owner or operator must initiate closure when an alternative disposal capacity becomes available, or five years after the alternative closure demonstration was made. Owners or operators may pursue these flexibilities if no additional capacity is available and the coal-fired boiler is designated for closure. Closure of the unit is required by: April 19, 2021 for landfills; October 17, 2023, for surface impoundments of 40 acres or less; and October 17, 2028, for surface impoundments greater than 40 acres. Progress reports are required by new §352.1231. Notifications complying with the requirements of new §352.1231 require a licensed professional engineer certification and must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

§352.1241, Post-Closure Care Requirements
The commission proposes new §352.1241 to adopt by reference the post-closure requirements from 40 CFR §257.104 (Post-closure care requirements), which requires post-closure maintenance and monitoring for 30 years after CCR units are closed with wastes in place. A unit ending the post-closure care period in assessment monitoring will be required to extend the post-closure period until the owner or operator meets the requirements to return to detection monitoring. A written post-closure care plan was required by October 17, 2016, for existing units, and no later than initial receipt of wastes for new or laterally expanding units. Documentation of information required by new §352.1241 requires licensed professional engineer certification and must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. New §352.1241(c) proposes to extend the post-closure care period beyond 30 years until the owner or operator makes a demonstration of no further risk to human health, the environment, or property, and the executive director approves the demonstration.

Subchapter K: Recordkeeping, Notification, and Posting of Information to the Internet

§352.1301, Recordkeeping Requirements

The commission proposes new §352.1301 to adopt by reference the recordkeeping requirements from 40 CFR §257.105 (Recordkeeping requirements). Owners and operators subject to new Chapter 352 must maintain a written record of all materials generated in response to the requirements of new Chapter 352. The retention time is five years for most records, however design and construction records must be kept until closure. Corrective action effectiveness reports must be kept until the completion
of the remedy. Facilities need only retain the most recent revision in the record for many of the reoccurring plans and reports.

Proposed new §352.1301(b) would also include a requirement that groundwater monitoring and associated elevation records must be kept for the active life and the post-closure care period of a CCR unit.

§352.1311, Notification Requirements
The commission proposes new §352.1311 to adopt by reference the notification requirements from 40 CFR §257.106 (Notification requirements), which requires an owner or operator of a CCR unit to send a notification to the executive director of the availability of information generated in response to requirements in new Chapter 352. In most cases, notification is required within 30 days of including the information in the facility's operating record, however, an owner or operator constructing a new unit must provide a notice within 60 days of the construction and certify the construction no later than receipt of the first CCR wastes in the new or expanded unit.

§352.1321, Publicly Accessible Internet Site Requirements
The commission proposes new §352.1321 to adopt by reference the internet posting requirements from 40 CFR §257.107 (Publicly accessible internet site requirements). An owner or operator of a CCR unit must post information required by new Chapter 352 on a publicly accessible website and maintain the availability of the information
for at least five years. In most cases, the information is required to be posted within 30
days of including the information in the facility's operating record, however an owner
or operator constructing a new unit must post the information to the publicly
accessible website within 60 days of the construction, and certify the construction no
later than receipt of the first CCR wastes in the new or expanded unit.

Additionally, new §352.1321 would identify the items the owner or operator shall post
to a publicly accessible website to comply with public participation requirements.
These items shall be posted for the active life of the CCR unit and through the
completion of the post-closure care requirements of new §352.1241.

Subchapter L: Appendices

§352.1401, Appendix I - Maximum Contaminant Levels Promulgated Under the Federal
Safe Drinking Water Act

The commission proposes new §352.1401 to adopt by reference Appendix I-Maximum
Contaminant Levels (MCLs) from 40 CFR Part 257, Subpart D, which lists the maximum
contaminant levels of various constituents of concern, as promulgated under the
federal Safe Drinking Water Act. Owners and operators of CCR units must compare
groundwater data to these values for determination of exceedances and releases.

§352.1421, Appendix III - Constituents for Detection Monitoring
The commission proposes new §352.1421 to adopt by reference Appendix III--Constituents for Detection Monitoring from 40 CFR Part 257, Subpart D, which lists the constituents owners and operators of CCR units must evaluate during the groundwater detection monitoring protocol.

§352.1431, Appendix IV - Constituents for Assessment Monitoring

The commission proposes new §352.1431 to adopt by reference Appendix IV--Constituents for Assessment Monitoring from 40 CFR Part 257, Subpart D, which lists the constituents owners and operators of CCR units must evaluate during the groundwater assessment monitoring protocol.

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 rules are in effect, fiscal implications are anticipated for the agency as a result of the administration or enforcement of the proposed rules. Fiscal implications are also expected for units of local government that own or operate coal fired power plants or manage CCR; though in general, these fiscal implications are not expected to be significant.

The proposed rulemaking creates a new Chapter 352, which contains the state's plan to operate a CCR registration program in lieu of the federal requirements. The proposed rules will implement a state registration and compliance monitoring
program to authorize CCR units, complaint and compliance inspections, enforcement proceedings, and the review of compliance monitoring data.

In 2017, the General Appropriations Act (Senate Bill 1, 85th Texas Legislature) indicated that $390,000 each year of the commission’s appropriation, under Strategy A.2.3. Waste Management and Permitting, shall be used to implement a CCR program and authorized an additional four FTE employee positions for this purpose. In 2019, the enactment of House Bill 1, General Appropriations Act (86th Texas Legislature), continued the funding and authorization of employees. The method of finance for this funding is the state’s General-Revenue Dedicated Waste Management Account Number 549.

Proposed §352.231(h) contains a registration fee of $150 per application or amendment application. It is estimated that in the first year, 17 applications would be filed for an increase of $2,550 to the Waste Management Account, and an estimated annual increase of $1,200 in subsequent years due to amendment fees. The additional revenue raised by the implementation of these proposed rules combined with the current level of appropriations for the program are expected to have a negative impact on the fund balance of the Waste Management Account.

Two units of local government will be affected by this proposed rule change, Texas Lower Colorado River Authority and City Public Service (CPS Energy of San Antonio),
because they operate power plants with CCR units. Each will be required to complete the application, pay the $150 registration fee, and any subsequent amendment fee of $150. Under the federal regulations, an application fee is not required, so this is an increased cost to the regulated community. If the applicant uses outside counsel or experts to prepare their initial application, those expenses could total $29,750, using an average rate of $175 per hour at 170 hours. It is estimated that amendment applications require approximately 29 hours of preparation time, and if they required expert assistance to complete the amendment application, it could total $5,075.

In addition, the proposal will require owners and operators to provide financial assurance if post-closure care is required under new Chapter 352. The exact cost depends on a number of factors and would include contracting with a third-party to perform the post-closure care maintenance requirements for the duration of the post-closure care period.

Public Benefits and Costs
Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the proposed rules will be the creation of a state plan to regulate disposal of CCR, including enforcement capability, a complaint process and compliance inspections. The proposed rules are expected to enhance the commission’s effort to protect public health and the environment by preventing or minimizing the level of contaminants and waste released to the
environment through regulation and authorization of facilities. Without these proposed rules, the only enforcement tool available to the public is a citizen lawsuit.

In addition to the two entities of local government, there are approximately 15 businesses which will be subject to the proposed rules and will be required to pay the $150 application fee and amendment application fee. Under the federal regulations, an application fee is not required, so this is an increased cost to the regulated community. If the applicant uses outside counsel or experts to prepare their initial application, those expenses could total $29,750, using an average rate of $175 per hour at 170 hours. It is estimated that amendment applications require approximately 29 hours of preparation time, and if a business required expert assistance to complete the amendment application, it could total $5,075.

In addition, the proposal will require owners and operators to provide financial assurance if post-closure care is required under new Chapter 352. The exact cost depends on a number of factors and would include contracting with a third-party to perform the post-closure care maintenance requirements for the duration of the post-closure care period.

**Local Employment Impact Statement**

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

**Rural Community Impact Statement**

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The registrations and amendments 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 rules for the first five-year period the proposed rules are in effect. Currently, the owners and operators that are storing CCR and would be subject to the proposed rules are not small businesses.

**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 rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.
Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking creates a registration program and requires owners and operators to prepare and submit registration applications, amendment applications, if needed, and to submit annual compliance monitoring reports to the commission for approval. The program created by these proposed regulations will require a continuation of funding in future appropriations to operate the program. It is estimated that these proposed rules will increase fees paid to the agency, an estimated $2,550 in the first year and $1,200 in subsequent years. The proposed rulemaking does increase the number of individuals subject to its applicability; however, those individuals were previously regulated by federal regulations. During the first five years the proposed rules are in effect, the rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed new rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule." A "Major environmental rule" is defined under Texas Government Code, §2001.0225(g)(3), as a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy,
productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed new rules provide comprehensive standards and create a program to regulate owners and operators of landfills and surface impoundments used for the disposal and management of CCR generated from the combustion of coal by electric utilities and independent power producers.

The proposed new rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because the proposed new rules do not alter in a material way the existing, self-implementing requirements already in effect under 40 CFR Part 257, Subpart D, for owners and operators of landfills and surface impoundments managing CCR.

In addition to not meeting the definition of a "Major environmental rule," the proposed new rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) 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 4) adopt a rule solely under the general powers of the agency. The proposed new rules do not exceed
a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor are the new rules proposed solely under the general powers of the agency.

The proposed new rules do not exceed a standard set by federal law because the proposed new rules substantially incorporate federal requirements for new and existing landfills and surface impoundments managing CCR generated from the combustion of coal at electric power utilities and independent power producers. Further, programmatic elements of the proposed new rules are consistent with federal requirements for state programs of prior approval. Therefore, the proposed rules are compatible with federal law.

Additionally, the proposed rules do not exceed an express requirement of state law because Texas Health and Safety Code (THSC), Chapter 361, Solid Waste Disposal Act, establishes requirements for the commission to regulate industrial solid waste. Therefore, the proposed rules are compatible with state law.

The proposed new rules do not exceed a requirement of a delegation agreement because the proposed new rules are not subject to a delegation agreement.

Finally, the proposed new rules are not proposed solely under the general powers of the agency. The proposed new rules are proposed under the THSC, Solid Waste
Disposal Act, §361.017 and §361.024, which require the commission to control all aspects of the management of industrial solid waste by all practical and economically feasible methods consistent with its powers and duties.

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 these proposed new rules and performed an assessment of whether the proposed new rules constitute a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment is that implementation of these proposed new rules would not constitute a taking of real property. The purpose of the proposed new rules is to provide comprehensive standards and create a program regulating owners and operators of landfills and surface impoundments used for the disposal and management of CCR generated from the combustion of coal by electric utilities and independent power producers. The proposed new rules do not substantially change the existing, self-implementing federal requirements in effect under 40 CFR Part 257, Subpart D, for owners and operators of landfills and surface impoundments managing CCR.
A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Promulgation and enforcement of these proposed new rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the proposed new rules because the proposed new rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the proposed new rules. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

**Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found that the proposal is subject to the CMP in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.
CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and 3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs. CMP policies applicable to the proposed rules include that new CCR facilities and lateral expansion of existing facilities shall be sited, designed, and constructed to prevent releases of pollutants; and new and existing CCR facilities will be operated in a way to prevent releases of pollutants.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules would ensure proper management of CCR in all regionals of the state, including coastal area.

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.
Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 9, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission’s central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. 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 2017-037-352-WS. The comment period closes on January 21, 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 Ms. Charly Fritz, Waste Permits Division, at (512) 239-2331.
SUBCHAPTER A: GENERAL PROVISIONS

§§352.1 - 352.6

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

§352.1. Applicability.
(a) This chapter applies to:

(1) owners and operators of new and existing coal combustion residuals (CCR) landfills and surface impoundments that dispose of or manage CCR generated from the combustion of coal at electric utilities and independent power producers;

(2) owners and operators of CCR disposal units located off-site of electric utility or independent power producer facilities;

(3) owners and operators of inactive CCR surface impoundments located at active electric utilities and independent power producers regardless of the fuel currently used to produce electricity at the facility;

(4) a lateral expansion of a CCR landfill or surface impoundment; and

(5) any CCR management practice that does not meet the definition of beneficial use of CCR in 40 Code of Federal Regulations (CFR) §257.53 (Definitions) as amended through the July 30, 2018, issue of the Federal Register (83 FR 36435).

(b) This chapter does not apply to:
(1) owners and operators of CCR landfills that ceased receiving CCR before October 19, 2015;

(2) owners and operators of electric utilities and independent power producers that ceased producing electricity before October 19, 2015;

(3) wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals;

(4) fly ash, bottom ash, boiler slag, or flue gas desulfurization materials generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

(5) beneficial use of CCR as defined in 40 CFR §257.53 as amended through the July 30, 2018, issue of the Federal Register (83 FR 36435);

(6) CCR placement at active or abandoned underground or surface coal mines;
(7) owners and operators of municipal solid waste landfills that receive CCR; or

(8) owners and operators of commercial industrial nonhazardous waste landfill facilities authorized by a permit issued under Chapter 335, Subchapter T of this title (relating to Permitting Standards for Owners and Operators of Commercial Industrial Nonhazardous Waste Landfill Facilities), that receive CCR.

§352.2. Applicability of Other Regulations.

The commission adopts by reference 40 Code of Federal Regulations §257.52 (Applicability of other regulations) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301).

§352.3. Definitions.

(a) The commission adopts by reference 40 Code of Federal Regulations §257.53 (Definitions) as amended through the July 30, 2018, issue of the Federal Register (83 FR 36435), subject to the exceptions, modifications, and additions under this section.
(b) The terms used in this chapter that are not defined under this section are not given the definitions found in the United States Resource Conservation and Recovery Act.

(c) The words and terms used in this chapter also have the meanings in Chapter 3 of this title (relating to Definitions) and the following additional meanings.

(1) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste as defined in §335.1 of this title (relating to Definitions) into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters. For purposes of this chapter, disposal does not include the storage or the beneficial use of coal combustion residuals.

(2) Impacted property--The entire area (i.e., on-site and off-site) containing a statistically significant increase over the groundwater protection standards as determined in this chapter for any constituents in Appendix IV in §352.1431 of this title (relating to Appendix IV - Constituents for Assessment Monitoring).
(3) Leachate--Any liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such wastes.

(4) Licensed professional geoscientist--A geoscientist who holds a valid license issued by the Texas Board of Professional Geoscientists under the Texas Geoscience Practice Act.

(5) Off-site--Property which cannot be characterized as on-site.

(6) On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

(7) Publicly accessible website--A website at which all information required to be posted is immediately available to anyone visiting the site, without requiring any prerequisite, such as a registration or submittal of personal information, including an e-mail address, or requirement to submit a document request. All
required information must be clearly identifiable and must be able to be printed and
downloaded by anyone accessing the site.

(8) Registration—Written authorization of specific solid waste
management activities relating to certain coal combustion residuals, as authorized by
this chapter.

§352.4. Engineering and Geoscientific Information.

All engineering and geoscientific information submitted to the commission
under this chapter shall be prepared by, or under the supervision of, a licensed
professional engineer or licensed professional geoscientist, and shall be signed, sealed,
and dated by qualified professionals as required by the Texas Engineering Practice Act
and the Texas Geoscience Practice Act, and the licensing and registration boards under
these acts.

§352.5. Laboratory Accreditation and Certification.

Environmental testing laboratories generating analytical data required under
this chapter must be accredited in accordance with the Texas Commission on
Environmental Quality Environmental Testing Laboratory Accreditation and
Certification Program requirements of Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification).

§352.6. General Prohibitions.

In addition to the requirements of §352.101 of this title (relating to Registration Required), no person may cause, suffer, or allow the collection, handling, storage, processing, management, or disposal of coal combustion residuals (CCR) in such a manner so as to cause:

(1) the discharge, or imminent threat of discharge, of CCR into, or adjacent to, the waters in the state, without obtaining specific authorization for such a discharge from the Texas Commission on Environmental Quality;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health or welfare.
**Statutory Authority**

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

§352.101. **Registration Required.**
(a) Except as provided by §352.1 of this title (relating to Applicability), a person who manages or disposes of coal combustion residuals (CCR) generated from the combustion of coal at electric utilities and independent power producers in an existing landfill; or an existing, or inactive surface impoundment; shall within 365 days of the effective date of this chapter file a registration application in accordance with this chapter.

(b) Except as provided by §352.1 of this title, no person may cause, suffer, or allow the disposal or management of CCR in a new or lateral expansion of a CCR landfill or surface impoundment, unless such activity is authorized by a registration under this chapter.

(c) The executive director may issue a registration as provided in this chapter. One or more CCR units located at the same facility, and on contiguous property must be authorized under one registration. CCR units located on non-contiguous property may not be authorized under the same registration.

§352.111. Registration Characteristics and Conditions.

The executive director shall incorporate the applicable characteristics and conditions of Chapter 305, Subchapter F of this title (relating to Permit Characteristics and Conditions) into a registration issued under this chapter.
§352.121. Duration.

A registration may be issued for the active life of the unit as well as any post-closure care period, as needed, but may be revoked or amended at any time that the owner or operator fails to meet the minimum standards set forth in this chapter, or for any other good cause.

§352.131. Amendments.

(a) A change in a term, condition, or provision of a registration requires an amendment.

(b) An application requesting an amendment of a registration issued under this chapter will be processed as a major amendment or a minor amendment in accordance with §305.62 of this title (relating to Amendments), subject to the following exceptions:

(1) §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) does not apply to a registration issued under this chapter;
(2) an amendment application will be processed under this chapter and will not be processed under Chapter 281 of this title (relating to Applications Processing); and

(3) a change initiated by the executive director under §305.62(d) of this title shall be processed as an amendment, and not as a modification.

§352.141. Issuance and Transfer.

(a) The executive director may issue a registration to a specific person, and a registration may not be transferred from one person to another without complying with §305.64 of this title (relating to Transfer of Permits).

(b) A registration is attached to the real property to which it pertains and may not be transferred from one facility to another.
SUBCHAPTER C: REGISTRATION APPLICATION CONTENTS


Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.
§352.201. Application Required.

Any person who is required to obtain a registration, or who requests an amendment of a registration, shall complete, sign, and submit an application on forms provided by, and in the manner required by, the executive director.

§352.211. Who Applies.

For coal combustion residuals registrations, it is the duty of the owner to submit an application for a registration, unless a facility is owned by one person and operated by another, in which case it is the duty of the facility operator to submit an application for a registration.

§352.221. Signatories to Applications.

The owner or operator shall sign an application in accordance with §305.44 of this title (relating to Signatories to Applications).

§352.231. General Application Requirements.

(a) The owner or operator applying for a registration, or registration amendment, shall submit an application containing the information required by
application forms prescribed by the executive director and the information required by this subchapter.

(b) The owner or operator shall provide any additional information requested by the executive director.

(c) All technical reports in an application must be prepared and signed in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information).

(d) All certifications executed by a licensed professional engineer or licensed professional geoscientist in an application must be accompanied by all technical reports relied upon by the professional for the certification.

(e) General maps shall be provided with the application in accordance with §305.45(a)(6) of this title (relating to Contents of Application for Permit) and §330.59(c) of this title (relating to Contents of Part I of the Application). In addition, topographic, aerial, and facility layout maps shall be provided that visually describe surrounding features, the facility layout, and identify unit-related details. If an application is submitted in accordance with §352.961(b) of this title (relating to Assessment of Corrective Measures), the land ownership map with accompanying landowners list must contain impacted property owner information, if applicable, in
the format prescribed by this subsection.

(f) The owner or operator shall verify that the design, construction, and operation of the coal combustion residuals landfill or surface impoundment meets the requirements of §352.2 of this title (relating to Applicability of Other Regulations).

(g) Property owner information shall be provided in the application in accordance with §330.59(d) of this title, except §330.59(d)(2)(B) of this title.

(h) In accordance with §305.53 of this title (relating to Application Fee), the application fee for a registration or amendment is $150 total, including $100 toward the application fee, and an additional $50 to provide for the cost of providing the required notice.

§352.241. Geology.

(a) A summary of the geologic conditions at the facility, including the relation of the geologic condition to each coal combustion residuals unit, must be prepared and signed in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information) and included in the application. The summary must include sufficient information and data; all groundwater monitoring data required by 40 Code of Federal Regulations Part 257, Subpart D, as amended through the April 17, 2015, issue of the
Federal Register (80 FR 21301); and information required by §§352.601, 352.621, 352.631, and 352.641 of this title (relating to Placement Above the Uppermost Aquifer; Fault Areas; Seismic Impact Zones; and Unstable Areas).

(b) Previously prepared documents may be submitted, but must be supplemented or updated as necessary to provide the requested information.

(c) Sources and references for information must be provided.

§352.251. Location Restriction Application Submission.

In the application, the owner or operator shall submit documentation demonstrating compliance with applicable location restrictions in Subchapter E of this chapter (relating to Location Restrictions).

§352.261. Design Criteria Application Submission.

(a) In the application, the owner or operator shall submit documentation demonstrating compliance with applicable design criteria in Subchapter F of this chapter (relating to Design Criteria).

(b) For new or laterally expanding coal combustion residuals landfills and
surface impoundments, the owner or operator shall submit subsurface soil information. A sufficient number of borings shall be performed to establish the subsurface stratigraphy and determine geotechnical properties beneath the unit. The borings must be to a sufficient depth to identify the uppermost aquifer and any underlying hydraulically interconnected aquifers. All borings shall be conducted in accordance with established field exploration methods. The subsurface soil information must be prepared and certified in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information) and shall be included with the application. The subsurface soil information must include:

(1) a description of all borings drilled at the unit location, to test soils and characterize groundwater;

(2) a unit map drawn to scale showing the surveyed locations and elevations of the borings;

(3) cross-sections prepared from the borings depicting the generalized strata at the unit;

(4) boring logs including a description of materials encountered, including any discontinuities such as fractures, fissures, slickensides, lenses, or seams;
(5) a description of the geotechnical data and the geotechnical properties of the subsurface soil materials, including the suitability of the soils and strata for the intended uses; and

(6) a demonstration that all geotechnical tests were performed in accordance with industry practice and recognized procedures.

§352.271. Operating Criteria Application Submission.

In the application, the owner or operator shall submit documentation demonstrating compliance with Subchapter G of this chapter (relating to Operating Criteria), including submittal of the most recent annual inspection report.


(a) In the application, the owner or operator shall submit the following:

(1) a copy of the initial and most recent annual groundwater monitoring and corrective action reports required by §352.901 of this title (relating to Applicability);
(2) a description and details of the groundwater monitoring system that demonstrate compliance with the requirements of §352.911 of this title (relating to Groundwater Monitoring Systems); and

(3) a description and details of the groundwater sampling and analysis program that demonstrate compliance with the requirements of §352.931 of this title (relating to Groundwater Sampling and Analysis Requirements).

(b) Detection monitoring. The owner or operator shall submit sufficient information, supporting data, analyses, and where applicable the most recent alternative source demonstration, to support a detection monitoring program meeting the requirements of §352.941 of this title (relating to Detection Monitoring Program).

(c) Assessment monitoring. If any Appendix III constituents adopted by reference in §352.1421 of this title (relating to Appendix III – Constituents for Detection Monitoring) have been detected in the groundwater at statistically significant increases over background values at or before the time of registration application submission, the owner or operator shall submit sufficient information, supporting data, analyses, and where applicable the most recent alternative source demonstration, to support an assessment monitoring program that meets the requirements of §352.951 of this title (relating to Assessment Monitoring Program).
(d) Corrective action. If any Appendix IV constituents adopted by reference in §352.1431 of this title (relating to Appendix IV - Constituents for Assessment Monitoring) have been detected in the groundwater at statistically significant levels above the groundwater protection standards established in §352.951 of this title, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of §§352.951, 352.961, and 352.971 of this title (relating to Assessment Monitoring Program; Assessment of Corrective Measures; and Selection of Remedy).

§352.291. Demonstration of No Migration Submission.

An owner or operator seeking suspension of groundwater monitoring requirements by demonstration of no potential for any Appendix III and Appendix IV constituent adopted by reference in §352.1421 and §352.1431 of this title (relating to Appendix III - Constituents for Detection Monitoring; and Appendix IV - Constituents for Assessment Monitoring) to migrate into the uppermost aquifer from a coal combustion residuals unit during the active life and post-closure care of that unit, may, in the application, provide a demonstration documenting the assessment in accordance with §352.901 of this title (relating to Applicability). The executive director shall review the demonstration for denial or concurrence.
§352.301. Closure and Post-Closure Care Application Submission.

(a) In the application, the owner or operator shall submit documentation demonstrating compliance with Subchapter J of this chapter (relating to Closure and Post-Closure Care).

(b) The owner or operator must also submit the post-closure care cost estimate required by §352.1101(b) of this title (relating to Financial Assurance Required).

§352.311. Retention of Application Data.

The owner or operator shall keep records throughout the term of the registration. These records include applications, notifications, and reports required by this chapter and data and supplemental information used to complete applications and reports required by this chapter.
SUBCHAPTER D: REGISTRATION APPLICATION PROCEDURES


Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

§352.401. Application Deficiencies.
The executive director will notify an applicant of any additional information or application materials required to complete the application by transmitting a notice of deficiency (NOD) to the applicant. The NOD will specify a deadline for the NOD response up to 60 days from the executive director's transmittal of the NOD.

§352.411. Extensions.

The applicant may submit a written request for additional time to respond to a notice of deficiency that sets forth the reasons why the applicant cannot respond within the time provided and specifies the amount of additional time requested.

§352.421. Applications Returned.

If the executive director does not receive an adequate and timely response to a notice of deficiency by the response deadline, the executive director may return the incomplete application to the applicant.


(a) Applicability. This section applies to an application for a new coal combustion residuals (CCR) registration, and an application for a major amendment of a CCR registration.
(b) Public Notice. Notice of receipt of application, the executive director's initial decision, and an opportunity to provide public comment and request a public meeting shall be made in accordance with the procedures contained in §39.503(c) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit), without regard to the date of administrative completeness.

(c) Text of public notice. The text of the notice under this section shall include the internet address required by §352.1321 of this title (relating to Publicly Accessible Internet Site Requirements).

(d) Comment period. The public comment period for an application under this section shall be a minimum of 30 days after the publication of the notice in the newspaper.

(e) Public comments. The executive director shall consider all public comments received before the close of the public comment period.

§352.441. Revised Notice of Changes to Application.
Revised notice is required if changes to an application that would constitute a major amendment under §352.131 of this title (relating to Amendments) are made after notice of receipt of application has been mailed and published.


(a) The owner or operator under this chapter and the commission may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is located.

(b) The commission shall hold a public meeting if a public meeting is required based on the criteria of:

(1) §39.503(e) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit);

(2) §55.154(c) of this title; or

(3) §352.961(c) of this title (relating to Assessment of Corrective Measures).
(c) Notice of a public meeting shall be provided in accordance with the procedures contained in §39.503(e)(6) of this title, and shall be mailed by the chief clerk to the persons listed in §39.413 of this title (relating to Mailed Notice).

(d) The purpose of a public meeting held on an application submitted under this chapter is to provide information and receive public comment. A public meeting held on an application submitted under this chapter is not a contested case hearing under the Texas Administrative Procedure Act.


(a) Notice under this subchapter shall comply with the requirements of:

(1) §39.405 of this title (relating to General Notice Provisions);

(2) §39.407 of this title (relating to Mailing Lists);

(3) §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing);

(4) §39.411 of this title (relating to Text of Public Notice);
(5) §39.413 of this title (relating to Mailed Notice); and

(6) §39.420 of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision).

(b) This subchapter does not require the executive director to respond to comments, and it does not create an opportunity for a contested case hearing.

§352.471 Draft Registration.

Upon the executive director's preliminary determination that an application for a new registration or a major amendment of a registration meets the regulatory requirements for issuance, the executive director shall prepare a draft registration.

§352.481 Motion to Overturn the Executive Director's Decision.

The executive director's action on an application for a new registration or an amendment of a registration under this chapter is subject to §50.133(b) and §50.139 of this title (relating to Executive Director Action on Application or WQMP Update; and Motion to Overturn Executive Director's Decision).
SUBCHAPTER E: LOCATION RESTRICTIONS

§§352.601, 352.611, 352.621, 352.631, 352.641

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

§352.601. Placement Above the Uppermost Aquifer.
§352.601. Wetlands.

The commission adopts by reference 40 Code of Federal Regulations §257.60 (Placement above the uppermost aquifer) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

§352.611. Fault Areas.

The commission adopts by reference 40 Code of Federal Regulations §257.61 (Wetlands) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

§352.621. Fault Areas.

The commission adopts by reference 40 Code of Federal Regulations §257.62 (Fault areas) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).


The commission adopts by reference 40 Code of Federal Regulations §257.63 (Seismic impact zones) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).
§352.641. Unstable Areas.

The commission adopts by reference 40 Code of Federal Regulations §257.64 (Unstable areas) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301).
SUBCHAPTER F: DESIGN CRITERIA

§§352.701, 352.711, 352.721, 352.731, 352.741

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

The commission adopts by reference 40 Code of Federal Regulations §257.70 (Design criteria for new CCR landfills and any lateral expansion of a CCR landfill) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301).

§352.711. Liner Design Criteria for Existing Coal Combustion Residuals Surface Impoundments.

(a) The owner or operator of an existing coal combustion residuals (CCR) surface impoundment must meet the requirements of this section.

(1) The owner or operator of an existing CCR surface impoundment must document whether or not such unit was constructed with any one of the following:

(A) a composite liner that meets the requirements of §352.701 of this title (relating to Design Criteria for Coal Combustion Residuals Landfills); or

(B) an alternative composite liner that meets the requirements of §352.701 of this title.

(2) The hydraulic conductivity of the compacted soil must be determined and documented using recognized and generally accepted methods.
(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:

(A) the owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of paragraph (1)(A) or (B) of this subsection; or

(B) the owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of paragraph (1)(A) or (B) of this subsection.

(4) All existing unlined CCR surface impoundments are subject to the requirements of §352.1211 of this title (relating to Closure or Retrofit of Coal Combustion Residuals Units).

(b) The owner or operator of the CCR unit must obtain a certification from a licensed professional engineer attesting that the documentation as to whether a CCR unit meets the requirements of subsection (a) of this section is accurate.

(c) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in §352.1301 of this title (relating to Recordkeeping Requirements), the notification requirements specified in §352.1311 of this title

The commission adopts by reference 40 Code of Federal Regulations §257.72 (Liner design criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301).

§352.731. Structural Integrity Criteria for Existing Coal Combustion Residuals Surface Impoundments.

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.73 (Structural integrity criteria for existing CCR surface impoundments) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), subject to the additions set forth in this section.

(b) The owner or operator shall comply with the following.
(1) Upon activation of the Emergency Action Plan under 40 CFR §257.73(a)(3)(v), notify the executive director and appropriate local government officials verbally within 24 hours, and in writing within five days.

(2) Notify the executive director in writing of significant changes to the history of construction as required by 40 CFR §257.73(c)(2) within 14 days.

(3) Notify the executive director in writing of changes to the hazard potential classification within 14 days.

(4) Notify the executive director and appropriate local government officials verbally within 24 hours and in writing within five days if a deficiency under 40 CFR §257.73(d)(2) could result in harm to human health, the environment, or has resulted in a release. Notify the executive director in writing within 14 days of all other deficiencies under 40 CFR §257.73(d)(2).

(5) Notify the executive director in writing of intent to close a coal combustion residuals surface impoundment in accordance with 40 CFR §257.73(f)(4) within 14 days of:

(A) a failure to meet the minimum safety factors during a safety factor assessment; or
(B) a failure to complete a safety factor assessment in the timeframe prescribed by this section.


(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.74 (Structural integrity criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), subject to the additions in this section.

(b) The owner or operator shall comply with the following.

(1) Upon activation of the Emergency Action Plan under 40 CFR §257.74(a)(3)(v), verbally notify the executive director and appropriate local government officials within 24 hours, and in writing within five days.

(2) Notify the executive director in writing within 14 days of significant changes to the design and construction plans under 40 CFR §257.74(c)(2).
(3) Notify the executive director in writing of changes to the hazard potential classification within 14 days.

(4) Notify the executive director and appropriate local government officials verbally within 24 hours, and in writing within five days if a deficiency under 40 CFR §257.74(d)(2) could result in harm to human health, the environment, or has resulted in a release. Notify the executive director in writing within 14 days of all other deficiencies under 40 CFR §257.74(d)(2).

(5) Notify the executive director in writing of intent to close a coal combustion residuals surface impoundment in accordance with 40 CFR §257.74(f)(4) within 14 days of:

   (A) a failure to meet the minimum safety factors during a safety factor assessment; or

   (B) a failure to complete a safety factor assessment in the timeframe prescribed by this section.
SUBCHAPTER G: OPERATING CRITERIA

§§352.801, 352.811, 352.821, 352.831, 352.841, 352.851

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

§352.801. Air Criteria.
The commission adopts by reference 40 Code of Federal Regulations §257.80 (Air criteria) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301).


The commission adopts by reference 40 Code of Federal Regulations §257.81 (Run-on and run-off controls for CCR landfills) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301).

§352.821. Hydrologic and Hydraulic Capacity Requirements for Coal Combustion Residuals Surface Impoundments.

The commission adopts by reference 40 Code of Federal Regulations §257.82 (Hydrologic and hydraulic capacity requirements for CCR surface impoundments) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301).

§352.831. Inspection Requirements for Coal Combustion Residuals Surface Impoundments.

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.83 (Inspection requirements for CCR surface impoundments) as amended
through the July 2, 2015, issue of the Federal Register (80 FR 37988), subject to the addition in this section.

(b) Notify the executive director verbally within 24 hours and in writing within five days if a deficiency under 40 CFR §257.83(b)(5) could result in harm to human health, the environment, or has resulted in a release. Notify the executive director in writing within 14 days of all other deficiencies under 40 CFR §257.83(b)(5).

§352.841. Inspection Requirements for Coal Combustion Residuals Landfills.

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.84 (Inspection requirements for CCR landfills) as amended through the July 2, 2015, issue of the Federal Register (80 FR 37988), subject to the addition in this section.

(b) Notify the executive director verbally within 24 hours and in writing within five days if a deficiency under 40 CFR §257.84(b)(5) could result in harm to human health, the environment, or has resulted in a release. Notify the executive director in writing within 14 days of all other deficiencies under 40 CFR §257.84(b)(5).

§352.851. Pre-Opening Inspection.
For a new or lateral expansion of a coal combustion residuals (CCR) landfill or surface impoundment, the owner or operator may not commence CCR disposal or waste management in the new or laterally expanded unit until:

(1) the owner or operator has submitted to the executive director a letter signed by the signatory and a licensed professional engineer stating that the unit has been constructed or expanded in compliance with the specifications of the registration; and

(2) the executive director has inspected the expanded or newly constructed unit and finds it in compliance with the conditions of the registration. If within 15 days of submission of the letter required by paragraph (1) of this section, the owner or operator has not received notice from the executive director of an intent to inspect, then the executive director has waived the opportunity for prior inspection, at which point the owner or operator may commence CCR disposal or waste management.
SUBCHAPTER H: GROUNDWATER MONITORING AND CORRECTIVE ACTION

§§352.901, 352.902, 352.911, 352.931, 352.941, 352.951, 352.961, 352.971, 352.981, 352.991

Statutory Authority
The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.
§352.901. Applicability.

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.90 (Applicability) as amended through the July 30, 2018, issue of the Federal Register (83 FR 36435), subject to the changes and additions in this section. All references in this subchapter to 40 CFR §257.95(h) (Assessment monitoring program), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.951(b) of this title (relating to Assessment Monitoring Program). All references in this subchapter to 40 CFR §257.101(a) (Closure or retrofit of CCR units), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.1211(b) of this title (relating to Closure or Retrofit of Coal Combustion Residuals Units).

(b) The requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) are not applicable to coal combustion residuals units as defined in §352.3 of this title (relating to Definitions) and as addressed further in §352.1 of this title (relating to Applicability).

The Groundwater Monitoring and Corrective Action Report shall be submitted to the executive director for review no later than 30 days after the report has been placed in the facility’s operating record.


(a) The commission adopts by reference 40 Code of Federal Regulations §257.91 (Groundwater monitoring systems) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), subject to the additions in this section.

(b) The groundwater monitoring system plan shall be submitted to the executive director for review and approval. The executive director may require the owner or operator to install additional monitoring wells to determine compliance with the requirements of this subchapter.

(c) Changes to an approved groundwater monitoring system required by this section must be approved by the executive director in accordance with §352.131 of this title (relating to Amendments).

(d) Installation, plugging, and abandonment of wells or borings must be done in accordance with 16 TAC Chapter 76 (relating to Licensing and Regulation of Water Well Drillers and Water Well Pump Installers).
§352.931. Groundwater Sampling and Analysis Requirements.

(a) The commission adopts by reference 40 Code of Federal Regulations §257.93 (Groundwater sampling and analysis requirements) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), subject to the addition in this section.

(b) Changes to an approved groundwater sampling and analysis program required by this section must be approved by the executive director in accordance with §352.131 of this title (relating to Amendments).

§352.941. Detection Monitoring Program.

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.94 (Detection monitoring program) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), subject to the additions in this section.

(b) After making a determination of a statistically significant increase (SSI) over the background value for any Appendix III constituent adopted by reference in §352.1421 of this title (relating to Appendix III - Constituents for Detection Monitoring) at any monitoring well, the owner or operator shall notify the executive
director, and any local pollution agency with jurisdiction that has requested to be notified, in writing within 14 days of this determination.

(c) After making a determination of an SSI over the background value for any Appendix III constituent adopted by reference in §352.1421 of this title at any monitoring well, the owner or operator may submit an alternative source demonstration in accordance with 40 CFR §257.94(e)(2) to the executive director for review. In making a demonstration under this section, the owner or operator must:

(1) notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing within 14 days that the owner or operator intends to make an alternative source demonstration under this section;

(2) within 90 days of making a determination of an SSI over the background value for any Appendix III constituent adopted by reference in §352.1421 of this title, submit a report prepared and certified in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information), to the executive director, and any local pollution agency with jurisdiction that has requested to be notified, demonstrating that a source other than a coal combustion residuals unit caused the SSI or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality; and
(3) continue to monitor in accordance with the detection monitoring program established under this section.

(d) If the owner or operator does not make an alternative source demonstration under this section satisfactory to the executive director, then the owner or operator shall initiate an assessment monitoring program as required in 40 CFR §257.94(e). The executive director may require the owner or operator to install additional monitoring wells to determine whether the demonstration is satisfactory.

§352.951. Assessment Monitoring Program.

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.95 (Assessment monitoring program) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), excluding 40 CFR §257.95(h), subject to the additions in this section.

(b) The owner or operator of the coal combustion residuals (CCR) unit must establish a groundwater protection standard for each constituent in Appendix IV adopted by reference in §352.1431 of this title (relating to Appendix IV - Constituents for Assessment Monitoring) detected in the groundwater. The groundwater protection standard shall be one of the following.
(1) For constituents for which a maximum contaminant level (MCL) has been established under 40 CFR §141.62 (Maximum contaminant levels for inorganic contaminants) and §141.66 (Maximum contaminant levels for radionuclides), the MCL for that constituent.

(2) For the following constituents:

(A) Cobalt: 6 micrograms per liter (µg/l);

(B) Lead: 15 µg/l;

(C) Lithium: 40 µg/l; and

(D) Molybdenum: 100 µg/l.

(3) For constituents for which the background level is higher than the levels identified under paragraphs (1) and (2) of this subsection, the background concentration.

(c) The owner or operator may return to detection monitoring only after satisfying the conditions of 40 CFR §257.95(e), and after obtaining written approval from the executive director.
(d) If a statistically significant increase (SSI) exceeding any groundwater protection standards at any monitoring well has occurred, the owner or operator shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing within seven days of this determination.

(e) If an SSI exceeding any groundwater protection standard at any monitoring well has occurred, then the owner or operator may submit an alternative source demonstration in accordance with 40 CFR §257.95(g)(3) to the executive director for review. In making a demonstration under this subsection, the owner or operator must:

1. within 90 days of determining an SSI over the groundwater protection standards, submit a report prepared and certified in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information) to the executive director, and any local pollution agency with jurisdiction that has requested to be notified, demonstrating that a source other than a CCR unit caused the SSI or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality; and

2. continue to monitor in accordance with the assessment monitoring program established under this section.
(f) If the owner or operator does not make an alternative source demonstration under this section satisfactory to the executive director, then the owner or operator shall initiate assessment of corrective measures as required in 40 CFR §257.95(g)(4). The executive director may require the owner or operator to install additional monitoring wells to determine whether the demonstration is satisfactory.

§352.961. Assessment of Corrective Measures.

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.96 (Assessment of corrective measures) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), subject to the changes and additions set forth in this section.

(b) Within 30 days of completing the assessment of corrective measures required by this section, and before implementation of the remedy, the owner or operator shall submit an amendment application, on forms prescribed by the executive director, in accordance with §352.131 of this title (relating to Amendments). The owner or operator shall provide any additional information as the executive director may require to determine compliance with this section. The application must include, at a minimum:
(1) documentation that characterizes the nature and extent of the release, both vertically and horizontally, and meets the applicable requirements of §352.951 of this title (relating to Assessment Monitoring Program);

(2) the completed assessment of corrective measures required by this section;

(3) the proposed Selection of Remedy required by §352.971 of this title (relating to Selection of Remedy);

(4) a comparison of the Appendix III constituents adopted by reference in §352.1421 of this title (relating to Appendix III - Constituents for Detection Monitoring) with a statistically significant increase over the background value, and the corresponding background value at each monitoring well;

(5) a comparison of the Appendix IV constituents adopted by reference §352.1431 of this title (relating to Appendix IV - Constituents for Assessment Monitoring) and the corresponding groundwater protection standard meeting the requirements of §352.951(b) of this title at each monitoring well;
§352.991. Selection of Remedy.

(a) The commission adopts by reference 40 Code of Federal Regulations §257.97 (Selection of remedy) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), subject to the addition in this section.

(b) The final remedy selection shall be achieved through issuance of the registration amendment required under §352.961 of this title (relating to Assessment of Corrective Measures).
§352.981. Implementation of the Corrective Action Program.

(a) The commission adopts by reference 40 Code of Federal Regulations §257.98 (Implementation of the corrective action program) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301), subject to the modifications and additions in this section.

(b) Prior to returning to detection monitoring or assessment monitoring, the owner or operator must submit documentation that demonstrates that the requirements of this section have been fulfilled, and the remedy has been achieved for the impacted property. The documentation submitted must include at a minimum:

(1) all analytical data prepared and presented in accordance with §352.931 of this title (relating to Groundwater Sampling and Analysis Requirements) that demonstrates achievement of the remedy;

(2) a narrative discussion of how the requirements of this section have been fulfilled for the impacted property; and
(3) a description of the volume and final disposal location, and a copy of any waste manifests or other documentation of disposition, for waste or environmental media which were removed from the impacted property.

(c) The owner or operator may return to either detection monitoring or assessment monitoring only after satisfying the conditions of this section, and after obtaining written approval from the executive director.

(d) All coal combustion residuals managed under a remedy required under §352.971 of this title (relating to Selection of Remedy), or an interim measure required under this section, shall be managed in a manner that complies with all applicable United States Resource Conservation and Recovery Act and state requirements.


The owner or operator shall provide the following information in a Corrective Action Effectiveness Report (CAER):

(1) a summary of the corrective actions taken since the last reporting period;
(2) a statistical comparison of the following groundwater monitoring data in accordance with §352.931 of this title (relating to Groundwater Sampling and Analysis Requirements):

(A) the groundwater protection standards;

(B) the initial exceedances of the groundwater protection standards of §352.951(b) of this title (relating to Assessment Monitoring Program); and

(C) the current (i.e., at the time of CAER submittal) exceedances of the groundwater protection standards of §352.951(b) of this title;

(3) an estimate of the percentage of the corrective actions which have been completed;

(4) an estimate, in years, of the additional time necessary to complete the corrective actions;

(5) a determination whether sufficient progress is being made to achieve the selected remedy within a reasonable timeframe, given the circumstances of an impacted property; and
(6) any other information as required by the executive director.
SUBCHAPTER I: FINANCIAL ASSURANCE

§352.1101, §352.1111

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

§352.1101, Financial Assurance Required.
(a) Applicability. This subchapter applies to owners and operators required to perform post-closure care as set out in Subchapter J of this chapter (relating to Closure and Post-Closure Care). Financial assurance shall be established and maintained for the duration of the post-closure care period as prescribed in §352.1241 of this title (relating to Post-Closure Care Requirements).

(b) Cost estimate. The owner or operator shall prepare and include with the application for registration, a written cost estimate in current dollars of the total cost of the 30-year post-closure care period to perform post-closure care requirements as prescribed in §352.1241 of this title. The cost estimate shall be based on the costs of hiring a third-party to conduct post-closure care maintenance. The most recent of these cost estimates approved by the executive director is termed as the post-closure care cost estimate.

(c) Mechanism. No more than 90 days after the executive director's approval of the registration, a financial assurance mechanism acceptable to the executive director must be submitted for the cost of post-closure care in an amount no less than the amount specified in the approved cost estimate. Financial assurance for post-closure care shall be demonstrated in compliance with Chapter 37, Subchapters A - D of this title (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the
Mechanisms for Closure, Post Closure, and Corrective Action), except as indicated in §352.1111 of this title (relating to Exceptions).

(d) Post-closure care financial assurance beyond the initial 30 years. Owners and operators unable to make a demonstration for ending the post-closure care period in accordance with §352.1241 of this title, shall continue to maintain financial assurance for the post-closure care period specified in §352.1241 of this title. At least 180 days before the end of the preceding post-closure care period, a written cost estimate in current dollars shall be prepared and submitted for the cost of continuing the post-closure care specified in the registration for the additional period specified in §352.1241 of this title. The cost estimate shall be based on the cost of hiring a third-party to perform the post-closure care. A financial assurance mechanism acceptable to the executive director shall be submitted for the continued post-closure care period in an amount approved by the executive director. Financial assurance for post-closure care shall be demonstrated in compliance with Chapter 37, Subchapters A - D of this title except as indicated in §352.1111 of this title.

(e) Executive director executed post-closure care. The executive director may use or direct the use of post-closure care funds to perform post-closure care at a coal combustion residuals unit when the executive director determines that a person has failed to perform the post-closure care required under Subchapter J of this chapter.
§352.1111. Exceptions.

 Exceptions to the financial assurance requirements of Chapter 37, Subchapters A - D of this title (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) as specified in §352.1101 of this title (relating to Financial Assurance Required) include:

 (1) §37.31 of this title (relating to Submission of Documents) is not applicable;

 (2) a pay-in trust as described in §37.201 of this title (relating to Trust Fund) may not be used;

 (3) the owner or operator authorized to use insurance as a financial assurance mechanism must use the insurance endorsement approved by the executive director rather than the certificate of insurance specified by §37.241(c) of this title (relating to Insurance);

 (4) the owner or operator using a financial test as described in §37.251 of this title (relating to Financial Test), or a corporate guarantee as described in §37.261
of this title (relating to Corporate Guarantee), must comply with §37.141 of this title (relating to Increase in Current Cost Estimate), except that mechanism increases must be made no later than 90 days after the close of each succeeding fiscal year;

(5) the owner or operator using a local government financial test as described in §37.271 of this title (relating to Local Government Financial Test), or a local government guarantee as described in §37.281 of this title (relating to Local Government Guarantee), must comply with §37.141 of this title, except that mechanism increases must be made within 180 days after the close of each succeeding fiscal year;

(6) insurance as specified in §37.241 of this title and paragraph (3) of this section may not be used if closure of the coal combustion residuals unit has been completed as specified in §352.1211 of this title (relating to Closure or Retrofit of Coal Combustion Residuals Units);

(7) the wording of an instrument under Chapter 37, Subchapter D of this title used to satisfy a financial assurance condition shall be revised to replace the term "permit numbers" with the term "registration numbers."
SUBCHAPTER J: CLOSURE AND POST-CLOSURE CARE

§§352.1200, 352.1201, 352.1211, 352.1221, 352.1231, 352.1241

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

§352.1200. General.
All references in this subchapter to 40 Code of Federal Regulations (CFR) §257.95(h) (Assessment monitoring program), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.951(b) of this title (relating to Assessment Monitoring Program). All references in this subchapter to 40 CFR §257.101(a) (Closure or retrofit of CCR units), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.1211(b) of this title (relating to Closure or Retrofit of Coal Combustion Residuals Units).


The commission adopts by reference 40 Code of Federal Regulations §257.100 (Inactive surface impoundment) as amended through the August 5, 2016, issue of the Federal Register (81 FR 51802).

§352.1211. Closure or Retrofit of Coal Combustion Residuals Units.

(a) The commission adopts by reference 40 Code of Federal Regulations §257.101 (Closure or retrofit of CCR units) as amended through the July 30, 2018, issue of the Federal Register (83 FR 36435), excluding 40 CFR §257.101(a), subject to the additions in this section.
(b) The owner or operator of an existing unlined coal combustion residuals (CCR) surface impoundment, as determined under §352.711 of this title (relating to Liner Design Criteria for Existing Coal Combustion Residuals Surface Impoundments), is subject to the following requirements:

(1) No later than October 31, 2020, the owner or operator of the existing unlined CCR surface impoundment must cease placing CCR and non-CCR waste streams into the CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of §352.1221 of this title (relating to Criteria for Conducting the Closure or Retrofit of Coal Combustion Residuals Units).

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with paragraph (1) of this subsection must include a statement in the notification required under §352.1221 of this title that the CCR surface impoundment is closing or retrofitting under the requirements of paragraph (1) of this subsection.

(3) The timeframe specified in paragraph (1) of this subsection does not apply if the owner or operator complies with the alternative closure procedures specified in §352.1231 of this title (relating to Alternative Closure Requirements).
(4) At any time after the initiation of closure under paragraph (1) of this subsection, the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of §352.1221 of this title.

§352.1221. Criteria for Conducting the Closure or Retrofit of Coal Combustion Residuals Units.

(a) The commission adopts by reference 40 Code of Federal Regulations §257.102 (Criteria for conducting the closure or retrofit of CCR units) as amended through the August 5, 2016, issue of the Federal Register (81 FR 51802).

(b) Before a closure certification for a coal combustion residuals unit in a registration may be issued by the executive director, a financial assurance mechanism other than insurance and that is acceptable to the executive director and authorized by Subchapter I of this chapter (relating to Financial Assurance) must be in place and approved by the executive director.

§352.1231. Alternative Closure Requirements.

The commission adopts by reference 40 Code of Federal Regulations §257.103 (Alternative closure requirements) as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301).
§352.1241. Post-Closure Care Requirements.

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.104 (Post-closure care requirements) as amended through the August 5, 2016, issue of the Federal Register (81 FR 51802), subject to the additions under this section.

(b) The owner or operator shall submit to the executive director:

(1) a copy of the notification of completion of post-closure care period required by 40 CFR §257.104(e); and

(2) a demonstration that the coal combustion residuals (CCR) unit poses no threat to human health, the environment, or property.

(c) The post-closure period shall be extended until the executive director approves a demonstration that the CCR unit poses no threat to human health, the environment, or property. The financial assurance required in §352.1101(d) of this title (relating to Financial Assurance) shall be continued until such time that the executive director determines that post-closure care is no longer needed.
SUBCHAPTER K: RECORDKEEPING, NOTIFICATION, AND POSTING OF INFORMATION TO THE INTERNET

§§352.1301, 352.1311, 352.1321

Statutory Authority
The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.
§352.1301. Recordkeeping Requirements.

(a) The commission adopts by reference 40 Code of Federal Regulations §257.105 (Recordkeeping requirements) as amended through the July 30, 2018, issue of the Federal Register (83 FR 36435), subject to the modification in this section.

(b) The owner or operator shall retain records of groundwater monitoring and associated groundwater surface elevations for the active life and the post-closure care period of the coal combustion residuals unit.

§352.1311. Notification Requirements.

The commission adopts by reference 40 Code of Federal Regulations §257.106 (Notification requirements) as amended through the July 30, 2018, issue of the Federal Register (83 FR 36435).

§352.1321. Publicly Accessible Internet Site Requirements.

(a) The commission adopts by reference 40 Code of Federal Regulations §257.107 (Publicly accessible Internet site requirements) as amended through the July 30, 2018, issue of the Federal Register (83 FR 36435), subject to the additions and modifications in this section.
(b) The Coal Combustion Residuals Rule Compliance Data and Information website (CCR website) the owner or operator is required to maintain under this section shall be a publicly accessible website.

(c) The owner or operator shall post on the CCR website, upon submittal to or receipt from the executive director or the chief clerk for the active life of the coal combustion residuals unit through the completion of the post-closure care period:

(1) a complete copy of the current issued effective registration;

(2) a complete copy of all applications submitted under this chapter, including any revisions;

(3) a copy of public notice the owner or operator is required to publish under this chapter;

(4) a copy of a draft registration;

(5) a copy of the compliance summary; and
(6) a copy of any other document regarding and/or summarizing the executive director's review of or initial decision on an application submitted under this chapter.

(d) The owner or operator must notify the United States Environmental Protection Agency and the executive director, in a manner prescribed by each agency, within 14 days of any changes to the URL for the publicly accessible website.
SUBCHAPTER I: APPENDICES

§§352.1401, 352.1421, 352.1431

Statutory Authority
The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC 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; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

§352.1401. Appendix I - Maximum Contaminant Levels Promulgated Under the

The following appendix contained in 40 Code of Federal Regulations Part 257, Subpart D, is adopted by reference: Appendix I--Maximum Contaminant Levels (as amended through the October 9, 1991, issue of the Federal Register (56 FR 51016)).

§352.1421. Appendix III - Constituents for Detection Monitoring.

The following appendix contained in 40 Code of Federal Regulations Part 257, Subpart D, is adopted by reference: Appendix III--Constituents for Detection Monitoring (as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301)).

§352.1431. Appendix IV - Constituents for Assessment Monitoring.

The following appendix contained in 40 Code of Federal Regulations Part 257, Subpart D, is adopted by reference: Appendix IV--Constituents for Assessment Monitoring (as amended through the April 17, 2015, issue of the Federal Register (80 FR 21301)).