Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners
Date: November 26, 2019

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

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2019-0896-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 305, Consolidated Permits
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
HB 1953 and Phase I: RCRA Authorization for Parts of Federal Rule
Clusters XXIV, XXV, and XXVII
Rule Project No. 2019-085-335-WS

Background and reason(s) for the rulemaking:
In order for the state of Texas to be consistent with certain federal solid and hazardous waste requirements and with the Resource Conservation and Recovery Act (RCRA), the Texas Commission on Environmental Quality (TCEQ or commission) periodically incorporates specific United States Environmental Protection Agency (EPA) rule changes into state rules.

In addition to federal rule changes, this rulemaking includes the implementation of House Bill (HB) 1953 from the 86th Texas Legislature, 2019, updates to cross-references and various stylistic, non-substantive changes, such as, correcting typographical errors. Furthermore, the proposed repeal of 30 Texas Administrative Code (TAC) §305.149, Time Limitation for Construction of Commercial Hazardous Waste Management Units, is due to the Quadrennial Review of Chapter 305 (Non-Rule Project Number 2019-005-305-WS).

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:
The proposed rulemaking would amend 30 TAC Chapters 305 and 335 by adopting federal RCRA revisions, implementing HB 1953, and making programmatic updates and corrections within state rules, including the repeal of §305.149 which was determined obsolete during the Quadrennial Rule Review of Chapter 305.

B.) Scope required by federal regulations or state statutes:
This rulemaking initiative would update Chapter 335 to include federal rule changes that are both optional and non-optional. The revisions are set forth in parts of RCRA Clusters XXIV, XXV, and XXVII. Each cluster contains one or more checklists, and each checklist explains specific additions and revisions to the rule language.

RCRA Cluster XXIV - Checklists 234 and 235
Rule changes in Checklist 234 implement a court order, as ordered by the United States Court of Appeals for the District of Columbia Circuit on June 27, 2014, to regulations associated with the comparable fuels exclusion and the gasification exclusion. With this judgment, the authorization status of the state program that
was in place prior to authorization of the state comparable fuels and gasification rules is reinstated with regard to these rules. This checklist is not optional.

Rule changes in Checklist 235 codifies a list of wastes generated primarily from processes that support the combustion of coal or other fossil fuels that when co-disposed with coal combustion residuals are not subject to hazardous waste regulations. This action codifies long-standing EPA guidance and reflects Congressional intent. A second Federal Register notice (80 FR 37988, July 2, 2015) corrected the effective date of the rule. This checklist is optional.

RCRA Cluster XXV - Checklist 236
Rule changes in Checklist 236 amend existing regulations regarding the export and import of hazardous wastes from and into the United States. To provide greater protection to human health and the environment, the EPA is revising existing export and import related requirements to be more consistent with shipping requirements of the Organization for Economic Cooperation and Development; enabling electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports); and enabling electronic validation of consent for export shipments subject to RCRA export consent requirements prior to exit. This checklist is not optional.

RCRA Cluster XXVII - Checklist 240
Rule changes in Checklist 240 facilitate a more expedited removal of defective or recalled airbag inflators from vehicles by dealerships, salvage yards, and other locations for safe and environmentally sound disposal by exempting the collection of airbag waste from hazardous waste requirements so long as certain conditions are met. This checklist is optional.

This rulemaking would implement HB 1953, which amended Texas Health and Safety Code (THSC), Chapter 361, to exclude the conversion of plastics and other recyclable material through pyrolysis or gasification from the definition of solid waste and waste management regulations. Implementation of HB 1953 within Chapter 330 will occur in a separate rulemaking.

C.) Additional staff recommendations that are not required by federal rule or state statute:
This rulemaking initiative would include updating cross-references and making various stylistic, non-substantive changes, such as, correcting typographical errors, to existing rules in Chapters 305 and 335.

Statutory authority:
The rule change would be proposed under the authority of THSC, §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act; THSC, §361.017, which establishes the commission’s jurisdiction over all aspects of the management of industrial solid waste and municipal hazardous waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.082, which
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authorizes the commission to require and to issue permits governing the construction, operation, and maintenance of hazardous waste facilities used to store, process, or dispose of hazardous waste; and Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties.

Effect on the:

A.) Regulated community:
The regulated communities that would be affected by this rulemaking are businesses and industries involved in the generation, transportation, treatment, storage, recycling, and/or disposal of hazardous waste and industrial solid waste. This federal rule adoption initiative would not create a special group of affected persons.

Implementation of HB 1953 will exclude the conversion of plastics and other recyclable material through pyrolysis or gasification from the definition of solid waste and waste management regulations. New facilities conducting these activities will not need authorization from the agency but must still operate in a manner that prevents nuisance conditions.

B.) Public:
There is no anticipated effect on the public by the adoption of these rules. The rule changes would primarily affect the regulated community.

C.) Agency programs:
By adoption of these rules, the state may pursue expanded RCRA authorization from the EPA.

Stakeholder meetings:
The commission did not hold any stakeholder meetings related to this rulemaking; however, a public hearing will be held during the comment period in Austin.

Potential controversial concerns and legislative interest:
No controversial matters are anticipated from this rulemaking initiative to adopt federal rule revisions into state rules.

Would this rulemaking affect any current policies or require development of new policies?
No policy issues are affected.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
In order to maintain RCRA authorization, amendments that are not optional must be adopted. The commission may opt to not incorporate the federal amendments that are optional, as the RCRA program authorization from EPA will not be affected; however, the commission will not be in alignment with the EPA’s RCRA program. Such differences may make compliance more difficult for the regulated community, especially for entities with
facilities in multiple states. In this rulemaking, all federal rule changes are being proposed.

Additionally, the commission must adopt revisions to Chapter 335 to remain consistent with THSC, Chapter 361, as amended by HB 1953.

**Key points in the proposal rulemaking schedule:**
- **Anticipated proposal date:** December 18, 2019
- **Anticipated Texas Register publication date:** January 10, 2020
- **Anticipated public hearing date (if any):** February 6, 2020
- **Anticipated public comment period:** January 10, 2020 - February 11, 2020
- **Anticipated adoption date:** May 20, 2020

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**Attachments:**
- Federal Vacatur of the Comparable Fuels Rule and the Gasification Rule
- Federal Disposal of Coal Combustion Residuals from Electric Utilities Rule, Part 261, amended version
- Federal Imports and Exports of Hazardous Waste Rule
- Federal Safe Management of Recalled Airbags Rule
- HB 1953

**cc:**
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