Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners

Date: November 26, 2019

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

From: L'Oreal W. Stepney, P.E., Deputy Director
       Office of Water

Docket No.: 2019-0893-RUL

Subject: Commission Approval for Proposed Rulemaking
         Chapter 305, Consolidated Permits
         HB 2771: Adoption by Reference of Federal Effluent Limitation Guidelines
         (40 CFR Parts 435 and 437)
         Rule Project No. 2019-118-305-OW

Background and reason(s) for the rulemaking:
House Bill (HB) 2771 (86th Texas Legislature, 2019) requires the Texas Commission on
Environmental Quality (TCEQ, agency, or commission) to submit a delegation request by
September 1, 2021 to seek authority from the United States Environmental Protection
Agency (EPA) for the TCEQ to issue federal permits for discharges of produced water,
hydrostatic test water, and gas plant effluent into water in the state resulting from
certain oil and gas activities under the National Pollutant Discharge Elimination System
program. Additionally, HB 2771 transfers permitting authority for these discharges from
the Railroad Commission of Texas (RRC) to the TCEQ upon delegation of authority for
these discharges from EPA to the TCEQ.

This rulemaking would be one of several steps necessary to implement HB 2771. The
proposed rulemaking would amend §305.541 to adopt by reference the EPA's effluent
limitations guidelines for the oil and gas extraction point source category and the
centralized waste treatment category (40 Code of Federal Regulations (CFR) Parts 435 and
437).

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:
The proposed rulemaking would amend §305.541 to adopt by reference 40 CFR Parts 435
and 437 and define the term “produced water” as that term is used in Texas Water Code
§26.131.

B.) Scope required by federal regulations or state statutes:
The proposed rulemaking is required to implement HB 2771.

C.) Additional staff recommendations that are not required by federal rule or state
statute:
Staff recommends revising the format of §305.541 to improve readability and defining
the term “produced water” in order to distinguish between the federal definition of
“produced water” and TCEQ's implementation of Texas Water Code §26.131.

Statutory authority:
Texas Water Code (TWC), §5.102, General Powers
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TWC, §5.103, Rules
TWC, §5.105, General Policy
TWC, §5.120, Conservation and Quality of Environment
TWC, §26.131, Duties of Railroad Commission

Effect on the:

A.) Regulated community:
It is anticipated that the proposed rulemaking would have no effect on the regulated community. Discharge permits issued to entities that discharge produced water, hydrostatic test water, or gas plant effluent into water in the state are currently required to incorporate the effluent limitation guidelines in 40 CFR Parts 435 and 437. Upon full implementation of HB 2771, these entities would be required to seek authorization from TCEQ for these discharges rather than the RRC or the EPA.

B.) Public:
There would be no effect on the public.

C.) Agency programs:
Upon full implementation of HB 2771, the Water Quality Division would review and process permit applications for discharges of produced water, hydrostatic test water, and gas plant effluent into water in this state resulting from certain oil and gas activities. Based on information obtained from the RRC, it issued 529 permits for discharges of produced water, hydrostatic test water, and gas plant effluent in Fiscal Year 2018. Additionally, the Office of Compliance and Enforcement would be required to conduct investigations to determine compliance with the wastewater permits described earlier; address violations in follow up investigations; and manage any other agency responses needed for complaints, emergency response, waste management, or other actions within the agency’s authority.

Stakeholder meetings:
The commission plans to hold stakeholder meetings related to implementing HB 2771. The status of this rulemaking will be discussed at these stakeholder meetings and a rule public hearing will be held in Austin during the comment period.

Potential controversial concerns and legislative interest:
State legislators, the regulated community, and environmental organizations may be interested in implementation of HB 2771.

Will this rulemaking affect any current policies or require development of new policies?
This rulemaking will not affect any current policies or require development of new policies.
What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
The proposed rulemaking is necessary to implement HB 2771. There are no alternatives to this rulemaking.

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 4, 2020
- **Anticipated public comment period:** January 10, 2020 - February 11, 2020
- **Anticipated adoption date:** May 20, 2020

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Attachments:
HB 2771

cc: Chief Clerk, 2 copies
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