

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** May 18, 2022

**DATE OF REQUEST:** April 29, 2022

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Cecilia Mena, Rule/Agenda Coordinator, (512) 239-6098

**CAPTION: Docket No. 2021-0948-RUL.** Consideration for adoption of removal of Section 331.11(d) of 30 TAC Chapter 331, Underground Injection Control.

The rulemaking adoption will implement House Bill 1284 from the 87th Legislature, 2021, Regular Session, repealing TCEQ jurisdiction over the injection of CO2 produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources. The proposed rules were published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9189). (Dan Hannah, Mattie Isturiz; Rule Project No. 2021-025-331-WS)

  
\_\_\_\_\_  
**Director**

  
\_\_\_\_\_  
**Division Deputy Director**

Cecilia Mena  
\_\_\_\_\_  
**Agenda Coordinator**

Copy to CCC Secretary? NO  YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 29, 2022

**Thru:** Laurie Gharis, Chief Clerk  
Toby Baker, Executive Director

**From:**  Brent Wade, Director  
Office of Waste

**Docket No.:** 2021-0948-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 331, Underground Injection Control  
HB 1284: Relating to the regulation of the injection and geologic storage of carbon dioxide in this state  
Rule Project No. 2021-025-331-WS

### **Background and reason(s) for the rulemaking:**

This adopted rulemaking implements House Bill (HB) 1284, 87th Texas Legislature, Regular Session (RS), 2021, addressing statutory authority over regulation of injection and geologic sequestration and storage, both onshore and offshore, of anthropogenic carbon dioxide (CO<sub>2</sub>) in Texas. HB 1284 amends Chapter 27 of the Texas Water Code (TWC), §382 of the Texas Health and Safety Code (THSC), §121 of the Natural Resources Code, and §202 of the Tax Code. The Railroad Commission of Texas (RRC) will have sole state jurisdiction over onshore and offshore injection and geologic storage of anthropogenic CO<sub>2</sub> and will seek primacy from the Environmental Protection Agency (EPA) for administration of the Class VI injection well program.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

Under HB 1284, the RRC will have sole state jurisdiction over onshore and offshore injection and geologic storage of anthropogenic CO<sub>2</sub>. The rulemaking removes Texas Commission on Environmental Quality (TCEQ or commission) jurisdiction over the injection of anthropogenic CO<sub>2</sub> produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources by removing 30 Texas Administrative Code (TAC) §331.11(d).

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

The rulemaking is in response to changes made to the TWC, THSC, Natural Resources Code, and Tax Code by HB 1284.

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

None.

### **Statutory authority:**

The amended rule is adopted under TWC §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC §5.103, which requires the commission to adopt any rule

Re: Docket No. 2021-0948-RUL

necessary to carry out its powers and duties under TWC and other laws of the state; and TWC §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The rulemaking implements HB 1284, 87th Texas Legislature, RS, 2021; TWC, Chapter 27; THSC, Chapter 382; Natural Resources Code §121.003; and Tax Code §202.0545, which consolidate the jurisdiction over onshore and offshore Class VI underground injection control (UIC) wells solely to the RRC and directs the RRC to apply for and obtain primacy of this permitting program from the EPA.

**Effect on the:**

**A.) Regulated community:**

The RRC will seek primacy from the EPA for management of the state's Class VI injection program. Members of the regulated community seeking a permit or authorization for any type of injection and geologic sequestration of anthropogenic CO<sub>2</sub> in this state must apply solely through the RRC.

**B.) Public:**

Class VI injection in Texas will be regulated by a single state agency, the RRC, rather than two separate state agencies, potentially leading to a more streamlined and efficient application and permit approval process, thus benefiting the public.

**C.) Agency programs:**

By repealing 30 TAC §331.11(d), the TCEQ's UIC program will no longer be involved with permitting or regulating any form of injection and geologic sequestration/storage of anthropogenic CO<sub>2</sub>.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking.

**Public comment:**

The commission held a public hearing on January 25, 2022. The comment period closed on February 1, 2022. Written comments were received during the comment period from: Carbon Neutral Coalition, Carrizo Comecrudo Tribe of Texas, Texas 2036, and one individual.

Carbon Neutral Coalition and Texas 2036 both commented in support of the rulemaking. Carrizo Comecrudo Tribe of Texas and an individual commented that they oppose the action taken by the legislature, passing HB 1284 and amending Chapter 382 of THSC, Chapter 121 of the Natural Resources Code, Chapter 202 of the Tax Code, and Chapter 27 of TWC.

**Significant changes from proposal:**

None.

**Potential controversial concerns and legislative interest:**

Although permitting of Class VI injection wells under HB 1284 is delegated solely to the RRC, the TCEQ will be required to issue a letter of determination to an applicant who is

Commissioners

Page 3

April 29, 2022

Re: Docket No. 2021-0948-RUL

pursuing a Class VI permit from the RRC stating that Class VI injection operations will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by the TCEQ.

**Will this rulemaking affect any current policies or require development of new policies?**

No.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

HB 1284 does not direct the TCEQ to adopt rules; however, HB 1284 removes the TCEQ's jurisdiction over regulation of any form of injection and geologic storage/sequestration of anthropogenic CO<sub>2</sub> in this state. There are no alternatives to this rulemaking.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: December 31, 2021

Anticipated *Texas Register* adoption publication date: June 3, 2022

Anticipated effective date: June 9, 2022

Six-month *Texas Register* filing deadline: June 30, 2022

**Agency contacts:**

Dan Hannah, Rule Project Manager, Radioactive Materials Division, (512) 239-2161

Mattie Isturiz, Staff Attorney, (512) 239-1283

Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

**Attachments:**

HB 1284

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Krista Kyle  
Office of General Counsel  
Dan Hannah  
Diane Goss  
Mattie Isturiz  
Cecilia Mena

AN ACT

relating to the regulation of the injection and geologic storage of carbon dioxide in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 382.501, Health and Safety Code, is amended by adding Subdivisions (5) and (6) to read as follows:

(5) "Offshore" has the meaning assigned by Section 27.040, Water Code.

(6) "Railroad commission" means the Railroad Commission of Texas.

SECTION 2. Section 382.502, Health and Safety Code, is amended to read as follows:

Sec. 382.502. RULES; ENFORCEMENT. (a) The railroad commission by rule may adopt standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository.

(b) If the United States Environmental Protection Agency issues requirements regarding carbon dioxide sequestration, the railroad commission shall ensure that the construction, maintenance, monitoring, and operation of the carbon dioxide repository under this subchapter comply with those requirements.

(c) Subchapter F, Chapter 27, Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by the railroad commission under this section in the same manner as

1 Subchapter F, Chapter 27, Water Code, applies to the civil,  
2 administrative, or criminal enforcement of a rule adopted by the  
3 railroad commission under Chapter 27, Water Code.

4 (d) A penalty collected under this section shall be  
5 deposited to the credit of the anthropogenic carbon dioxide storage  
6 trust fund established under Section 121.003, Natural Resources  
7 Code.

8 SECTION 3. Section 382.506, Health and Safety Code, is  
9 amended by amending Subsections (a) and (b) and adding Subsection  
10 (e) to read as follows:

11 (a) The railroad commission by rule may establish standards  
12 for the measurement, monitoring, and verification of the permanent  
13 storage status of the carbon dioxide in the carbon dioxide  
14 repository.

15 (b) The bureau shall review any [~~perform the~~] measurement,  
16 monitoring, and verification of the permanent storage status of  
17 carbon dioxide in the carbon dioxide repository performed by  
18 another person at the direction of the state.

19 (e) The board may use revenue from the fee authorized by  
20 Section 382.505 to contract with the bureau to perform the  
21 functions described by this section.

22 SECTION 4. Section 382.509, Health and Safety Code, is  
23 amended to read as follows:

24 Sec. 382.509. RATES FOR TRANSPORTATION. Neither the  
25 railroad commission nor the board may establish or regulate the  
26 rates charged for the transportation of carbon dioxide to the  
27 carbon dioxide repository.

1 SECTION 5. Section 121.003, Natural Resources Code, is  
2 amended by amending Subsections (c) and (d) and adding Subsection  
3 (c-1) to read as follows:

4 (c) Fees collected by the commission under Subchapter C-1,  
5 Chapter 27, Water Code, ~~and~~ penalties imposed for violations of  
6 that subchapter or rules adopted under that subchapter, and funds  
7 received by the commission from financial responsibility  
8 mechanisms under Section 27.073, Water Code, shall be deposited to  
9 the credit of the anthropogenic carbon dioxide storage trust fund.

10 (c-1) Penalties imposed for violations of commission rules  
11 adopted under Section 382.502, Health and Safety Code, shall be  
12 deposited to the credit of the anthropogenic carbon dioxide storage  
13 trust fund.

14 (d) The anthropogenic carbon dioxide storage trust fund may  
15 be used by the commission only for:

16 (1) permitting, inspecting, monitoring,  
17 investigating, recording, and reporting on geologic storage  
18 facilities and associated anthropogenic carbon dioxide injection  
19 wells;

20 (2) long-term monitoring of geologic storage  
21 facilities and associated anthropogenic carbon dioxide injection  
22 wells;

23 (3) remediation of mechanical problems associated  
24 with geologic storage facilities and associated anthropogenic  
25 carbon dioxide injection wells;

26 (4) repairing mechanical leaks at geologic storage  
27 facilities;

1 (5) plugging abandoned anthropogenic carbon dioxide  
2 injection wells used for geologic storage;

3 (6) training and technology transfer related to  
4 anthropogenic carbon dioxide injection and geologic storage; and

5 (7) compliance and enforcement activities related to  
6 geologic storage and associated anthropogenic carbon dioxide  
7 injection wells.

8 SECTION 6. Sections 202.0545(c), (d), (f), and (h), Tax  
9 Code, are amended to read as follows:

10 (c) To qualify for the tax rate reduction under this  
11 section, the operator must:

12 (1) apply to the comptroller for the reduction and  
13 include with the application any information and documentation that  
14 the comptroller may require; and

15 (2) apply for a certification from[+]

16 [~~(A)~~] the Railroad Commission of Texas[~~, if~~  
17 ~~carbon dioxide used in the project is to be sequestered in an oil or~~  
18 ~~natural gas reservoir,~~

19 [~~(B)~~ the Texas Commission on Environmental  
20 ~~Quality, if carbon dioxide used in the project is to be sequestered~~  
21 ~~in a geological formation other than an oil or natural gas~~  
22 ~~reservoir, or~~

23 [~~(C)~~ both the Railroad Commission of Texas and  
24 ~~the Texas Commission on Environmental Quality if both Paragraphs~~  
25 ~~(A) and (B) apply].~~

26 (d) The Railroad Commission of Texas [~~An agency to which an~~  
27 ~~operator applies for a certification under Subsection (c)(2)] may~~

1 issue a [~~the~~] certification under Subsection (c)(2) only if the  
2 commission [~~agency~~] finds that, based on substantial evidence,  
3 there is a reasonable expectation that:

4 (1) at least 99 percent of the carbon dioxide  
5 sequestered as required by Subsection (a)(4) will remain  
6 sequestered for at least 1,000 years; and

7 (2) the operator's planned sequestration program will  
8 include appropriately designed monitoring and verification  
9 measures that will be employed for a period sufficient to  
10 demonstrate whether the sequestration program is performing as  
11 expected.

12 (f) The comptroller shall approve the application if the  
13 operator submits the certification [~~or certifications~~] required by  
14 Subsection (c)(2) and if the comptroller determines that the oil is  
15 otherwise eligible under this section.

16 (h) The comptroller and [~~7~~] the Railroad Commission of  
17 Texas [~~, and the Texas Commission on Environmental Quality~~] may  
18 adopt rules and establish procedures to implement and administer  
19 this section.

20 SECTION 7. Subchapter C-1, Chapter 27, Water Code, is  
21 amended by adding Section 27.040 to read as follows:

22 Sec. 27.040. DEFINITION. In this subchapter, "offshore"  
23 means the area in the Gulf of Mexico seaward of the coast that is  
24 within three marine leagues of the coast.

25 SECTION 8. Sections 27.041(a) and (c), Water Code, are  
26 amended to read as follows:

27 (a) The [~~Except as provided by Subsection (b), the~~] railroad

1 commission has jurisdiction over the onshore and offshore injection  
2 and geologic storage of carbon dioxide in this state~~[, and the~~  
3 ~~injection of carbon dioxide into, a reservoir that is initially or~~  
4 ~~may be productive of oil, gas, or geothermal resources or a saline~~  
5 ~~formation directly above or below that reservoir].~~

6 (c) The ~~[Except as provided by Subsection (b), the]~~ railroad  
7 commission has jurisdiction over a well used for the purpose  
8 provided by Subsection (a) regardless of whether the well was  
9 initially completed for that purpose or was initially completed for  
10 another purpose and is converted to the purpose provided by  
11 Subsection (a).

12 SECTION 9. Section [27.043](#), Water Code, is amended to read as  
13 follows:

14 Sec. 27.043. PERMIT FROM RAILROAD COMMISSION. (a) A person  
15 may not begin drilling or operating an anthropogenic carbon dioxide  
16 injection well for geologic storage or constructing or operating a  
17 geologic storage facility regulated under this subchapter without  
18 first obtaining the necessary permits from the railroad commission.

19 (b) The railroad commission may not issue a permit under  
20 this subchapter for the conversion of a previously plugged and  
21 abandoned Class I injection well, including any associated waste  
22 plume, to a Class VI injection well.

23 SECTION 10. The heading to Section [27.046](#), Water Code, is  
24 amended to read as follows:

25 Sec. 27.046. LETTER OF DETERMINATION FROM RAILROAD  
26 COMMISSION.

27 SECTION 11. Subchapter [C-1](#), Chapter [27](#), Water Code, is

1 amended by adding Section 27.0461 to read as follows:

2       Sec. 27.0461. LETTER OF DETERMINATION FROM COMMISSION. A  
3 person making an application to the railroad commission for a  
4 permit under this subchapter shall submit with the application a  
5 letter of determination from the commission concluding that  
6 drilling and operating an anthropogenic carbon dioxide injection  
7 well for geologic storage or constructing or operating a geologic  
8 storage facility will not impact or interfere with any previous or  
9 existing Class I injection well, including any associated waste  
10 plume, or any other injection well authorized or permitted by the  
11 commission.

12       SECTION 12. Section 27.047, Water Code, is amended to read  
13 as follows:

14       Sec. 27.047. RULES. The railroad commission shall adopt  
15 rules and procedures reasonably required for the performance of its  
16 powers, duties, and functions under this subchapter, including  
17 rules for:

18               (1) the geologic storage and associated injection of  
19 anthropogenic carbon dioxide, including:

- 20                       (A) geologic site characterization;
- 21                       (B) area of review and corrective action;
- 22                       (C) well construction;
- 23                       (D) operation;
- 24                       (E) mechanical integrity testing;
- 25                       (F) monitoring;
- 26                       (G) well plugging;
- 27                       (H) postinjection site care;

- 1 (I) site closure; and  
2 (J) long-term stewardship;  
3 (2) the enforcement of this subchapter and rules  
4 adopted by the railroad commission under this subchapter; and  
5 (3) the collection and administration of:  
6 (A) fees imposed under Section 27.045; ~~and~~  
7 (B) penalties imposed for a violation of this  
8 subchapter or rules adopted by the railroad commission under this  
9 subchapter; and  
10 (C) funds received from financial responsibility  
11 mechanisms under Section 27.073.

12 SECTION 13. Section 27.048(b), Water Code, is amended to  
13 read as follows:

14 (b) If rules or regulations adopted to govern the geologic  
15 storage and associated injection of anthropogenic carbon dioxide  
16 under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et  
17 seq.) or another federal statute allow this state to seek primary  
18 enforcement authority under the underground injection control  
19 program, ~~+~~

20 ~~[(1)] the railroad commission [shall seek primacy to~~  
21 ~~administer and enforce the program subject to the jurisdiction~~  
22 ~~granted under this subchapter; and~~

23 ~~[(2) this state]~~ shall seek primacy to administer and  
24 enforce the program for the geologic storage and associated  
25 injection of anthropogenic carbon dioxide in this state, including  
26 onshore and offshore geologic storage and associated injection~~+~~  
27 ~~and the injection of carbon dioxide into, a saline formation].~~

1 SECTION 14. Section 27.073(b-1), Water Code, is amended to  
2 read as follows:

3 (b-1) The railroad commission is authorized to receive  
4 funds as the beneficiary of a financial responsibility mechanism  
5 established under this chapter for the proper management of an  
6 anthropogenic carbon dioxide injection well or geologic storage  
7 facility. The funds shall be deposited to the credit of the  
8 anthropogenic carbon dioxide storage trust fund established under  
9 Section 121.003, Natural Resources Code.

10 SECTION 15. Sections 27.022 and 27.041(b), Water Code, are  
11 repealed.

12 SECTION 16. This Act takes effect immediately if it  
13 receives a vote of two-thirds of all the members elected to each  
14 house, as provided by Section 39, Article III, Texas Constitution.  
15 If this Act does not receive the vote necessary for immediate  
16 effect, this Act takes effect September 1, 2021.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1284 was passed by the House on April 20, 2021, by the following vote: Yeas 142, Nays 2, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1284 was passed by the Senate on May 21, 2021, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §331.11.

Amended §331.11 is adopted *without changes* to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9189), and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rule**

This rulemaking adoption implements House Bill (HB) 1284, 87th Texas Legislature, Regular Session (RS), 2021, addressing agency jurisdiction over regulation of injection and geologic storage of anthropogenic carbon dioxide (CO<sub>2</sub>) in Texas.

Class VI underground injection control (UIC) wells are authorized under the federal Safe Drinking Water Act and are used to inject anthropogenic CO<sub>2</sub> into the subsurface for geologic sequestration and storage. Owners and operators of these wells must first obtain a permit from the United States Environmental Protection Agency (EPA) in order to inject and store anthropogenic CO<sub>2</sub>, unless EPA has delegated permitting jurisdiction, known as "primacy," to a state to issue such permits. Texas has primacy over the permitting of all other classes of UIC wells, but not over Class VI wells. Prior to HB 1284, Chapter 27 of the Texas Water Code (TWC) split jurisdiction over Class VI wells between the Railroad Commission of Texas (RRC) and the TCEQ, depending on the type of project producing the anthropogenic CO<sub>2</sub> and the zone into which the

anthropogenic CO<sub>2</sub> will be injected. In HB 1284, the legislature consolidated the jurisdiction over onshore and offshore Class VI UIC wells solely to the RRC and directed the RRC to apply for and obtain primacy of this permitting program from the EPA.

Although permitting of Class VI injection wells under HB 1284 is delegated solely to the RRC, the TCEQ will be required to issue a letter of determination to an applicant who is pursuing a Class VI permit from the RRC stating that Class VI injection operations will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by the TCEQ.

HB 1284 is effective immediately and was signed by Governor Abbott on June 9, 2021.

### **Section Discussion**

HB 1284 amends Chapter 27 of TWC; Chapter 382 of the Texas Health and Safety Code (THSC); Chapter 121 of the Natural Resources Code (NRC); and Chapter 202 of the Tax Code to give sole jurisdiction of the Class VI injection activities to the RRC.

The commission adopts amendments to 30 Texas Administrative Code (TAC) §331.11 by removing subsection (d), which states “The commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project into a zone that is below

the base of usable quality water and that is not productive of oil, gas, or geothermal resources.”

### **Final Regulatory Impact Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the action is not subject to TGC, §2001.0225, because it does not meet the definition of a “Major environmental rule” as defined by that statute. A “Major environmental rule” is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule implements legislation (HB 1284, 87th Texas Legislature, RS, 2021) which consolidates the jurisdiction over onshore and offshore Class VI UIC wells solely to the RRC and directs the RRC to apply for and obtain primacy of this permitting program from the EPA. The adopted rule implements this change in jurisdiction and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Existing requirements for the management of underground injection wells in 30 TAC Chapter 331 are not changed by this adopted rulemaking.

As defined in TGC, §2001.0225(a) only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted rule does not exceed an express requirement of state law or a requirement of a delegation agreement as there are no express requirements for underground injection control wells. These rules were not developed solely under the general powers of the agency as they are consistent with HB 1284, Chapter 27 of the TWC, Chapter 382 of THSC, Chapter 121 of the NRC, and Chapter 202 of the Tax Code. Therefore, this adopted rulemaking is not subject to the regulatory analysis provision of TGC, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis during the public comment period. Comments were not received on the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated this rulemaking action and performed a preliminary assessment of whether TGC, Chapter 2007, is applicable. The adopted rule implements

legislative requirements in HB 1284, which consolidates the jurisdiction over onshore and offshore Class VI UIC wells solely to the RRC and directs the RRC to apply for and obtain primacy of this permitting program from the EPA.

The adopted rule will be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under TGC, §2207.002(5). The adopted rule does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this adopted rulemaking action will not constitute a taking under TGC, Chapter 2007.

#### **Consistency with the Coastal Management Program**

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. Comments were not received regarding the CMP.

### **Public Comment**

The commission held a public hearing on January 25, 2022. The comment period closed on February 1, 2022. The commission received comments from Carbon Neutral Coalition, Carrizo Comecrudo Tribe of Texas, Texas 2036, and an individual.

Carbon Neutral Coalition and Texas 2036 were in support of the rulemaking. Carrizo Comecrudo Tribe of Texas and the individual were opposed to the rulemaking. Changes to the rulemaking were not suggested by any of the commenters.

### **Response to Comments**

#### ***Comment***

Carbon Neutral Coalition and Texas 2036 commented in support of the rulemaking.

#### ***Response***

The commission acknowledges these comments.

#### ***Comment***

Carrizo Comecrudo Tribe of Texas and an individual commented that they oppose the action taken by the legislature, passing HB 1284 and amending Chapter 382 of THSC, Chapter 121 of the Natural Resources Code, Chapter 202 of the Tax Code, and Chapter 27 of TWC, which grant jurisdiction over Class VI UIC activities to the RCC and instruct the RCC to seek primacy over Texas' Class VI UIC Program. The commenters therefore

oppose the rulemaking.

***Response***

This rulemaking implements the statutory provisions enacted by the legislature by revising an existing rule to be consistent with the jurisdiction granted by the legislature. The actions of the legislature are outside of TCEQ's jurisdiction and the scope of this rulemaking.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§ 331.11**

#### **Statutory Authority**

The amended rule is adopted under TWC §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; and TWC §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells.

The rulemaking implements House Bill 1284, 87th Texas Legislature, RS, 2021; TWC Chapter 27; Texas Health and Safety Code Chapter 382; Natural Resources Code §121.003; and Tax Code §202.0545, which consolidate the jurisdiction over onshore and offshore Class VI UIC wells solely to the Railroad Commission of Texas (RRC) and direct the RRC to apply for and obtain primacy of this permitting program from the Environmental Protection Agency.

**§ 331.11. Classification of Injection Wells.**

(a) Injection wells within the jurisdiction of the commission are classified as follows.

(1) Class I:

(A) wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells;

(B) other industrial and municipal waste disposal wells which inject fluids beneath the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water (USDW); and

(C) radioactive waste disposal wells which inject fluids below the lower-most formation containing a USDW within 1/4 mile of the wellbore.

(2) Class III. Wells which are used for the extraction of minerals, including:

(A) mining of sulfur by the Frasch process; and

(B) solution mining of minerals which includes sodium sulfate, sulfur, potash, phosphate, copper, uranium and any other minerals which can be mined by this process.

(3) Class IV. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into or above a formation which within 1/4 mile of the wellbore contains a USDW.

(4) Class V. Class V wells are injection wells not included in Classes I, II, III, or IV. Generally, wells covered by this paragraph inject nonhazardous fluids into or above formations that contain USDWs. Except for Class V wells within the jurisdiction of the Railroad Commission of Texas, all Class V injection wells are within the jurisdiction of the commission and include, but are not limited to:

(A) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

(B) closed loop injection wells which are closed system geothermal wells used to circulate fluids including water, water with additives, or other fluids or gases through the earth as a heat source or heat sink;

(C) large capacity cesspools or other devices that receive greater than 5,000 gallons of waste per day, which have an open bottom and sometimes have perforated sides;

(D) cooling water return flow wells used to inject water previously used for cooling;

(E) drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(F) drywells used for the injection of wastes into a subsurface formation;

(G) recharge wells used to replenish the water in an aquifer;

(H) salt water intrusion barrier wells used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the fresh water;

(I) sand backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into mined out portions of subsurface mines;

(J) septic systems designed to inject greater than 5,000 gallons per day of waste or effluent;

(K) subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(L) wells used for the injection of water for storage and subsequent retrieval for beneficial use as part of an aquifer storage and recovery project;

(M) motor vehicle waste disposal wells which are used or have been used for the disposal of fluids from vehicular repair or maintenance activities, such as an automotive repair shop, auto body shop, car dealership, boat, motorcycle or airplane dealership, or repair facility;

(N) improved sinkholes;

(O) aquifer remediation wells, temporary injection points, and subsurface fluid distribution systems used to inject nonhazardous fluids into the subsurface to aid in the remediation of soil and groundwater; and

(P) subsurface fluid distribution systems.

(b) Class II wells and Class III wells used for brine mining fall within the jurisdiction of the Railroad Commission of Texas.

(c) Baseline wells and monitor wells associated with Class III injection wells within the jurisdiction of the commission are also subject to the rules specified in this chapter.

[(d) The commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources.]

(1) If no timely motion for commission review is filed pursuant to subsection (e) of this section, the site's compliance history shall be reclassified to suspended on the 91st day after the date the executive director sends the written Notice of Decision to Reclassify under subsection (b) of this section; or

(2) If a timely motion for commission review is filed pursuant to subsection (e) of this section, the site's compliance history shall be reclassified to suspended on the date a commission order affirming the executive director's decision to reclassify is signed or, in the absence of such an order, on the date the motion is overruled by operation of law.

(g) Effects of Reclassification. While a site's compliance history is reclassified to suspended under this section:

(1) The agency shall continue to evaluate applications for permits specific to the site under subsection (c) of this section; and

(2) The site shall be treated as an unsatisfactory performer for the purposes of §60.3 of this title (relating to Use of Compliance History).

(h) Duration of Reclassification. A site's compliance history reclassification under this rule to suspended shall remain for at least one year after the effective date of reclassification, and then until the earliest of:

(1) the executive director provides written notice of the determination that the reclassification is no longer warranted, after the executive director decides that:

(A) the exigent circumstances have been resolved; and

(B) the cause of the event has been identified and corrective actions have been implemented that appropriately reduce or eliminate the likelihood that the same or a similar event will reoccur;

(2) an enforcement action arising from the event has been resolved and resulted in a component that is accounted for in the site's compliance history, or such enforcement case is neither pending nor anticipated by the executive director; or

(3) three years after the effective date of reclassification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 17, 2021.

TRD-202105141

Charmaine Backens

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: January 30, 2022

For further information, please call: (512) 239-2678



## CHAPTER 331. UNDERGROUND INJECTION CONTROL

### SUBCHAPTER A. GENERAL PROVISIONS

#### 30 TAC §331.11

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §331.11.

#### Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking implements House Bill (HB) 1284, 87th Texas Legislature, Regular Session (RS), 2021, addressing agency jurisdiction over regulation of injection and geologic storage of anthropogenic carbon dioxide (CO<sub>2</sub>) in Texas.

Class VI underground injection control (UIC) wells are authorized under the federal Safe Drinking Water Act and are used to inject anthropogenic CO<sub>2</sub> into the subsurface for geologic sequestration and storage. Owners and operators of these wells must first obtain a permit from the United States Environmental Protection Agency (EPA) in order to inject and store anthropogenic CO<sub>2</sub>, unless EPA has delegated permitting jurisdiction, known as "primacy," to a state to issue such permits. Texas has primacy over the permitting of all other classes of UIC wells, but not over Class VI wells. Prior to HB 1284, Chapter 27 of the Texas Water Code (TWC) split jurisdiction over Class VI wells between the Railroad Commission of Texas (RRC) and the TCEQ, depending on the type of project producing the anthropogenic CO<sub>2</sub> and the zone into which the anthropogenic CO<sub>2</sub> will be injected. In HB 1284, the legislature consolidated the jurisdiction over onshore and offshore Class VI UIC wells solely to the RRC and directed the RRC to apply for and obtain primacy of this permitting program from the EPA.

Although permitting of Class VI injection wells under HB 1284 is delegated solely to the RRC, the TCEQ will be required to issue a letter of determination to an applicant who is pursuing a Class VI permit from the RRC stating that Class VI injection operations will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by the TCEQ.

The Act is effective immediately and was signed by Governor Abbott on June 9, 2021.

#### Section Discussion

HB 1284 amends Chapter 27 of TWC; Chapter 382 of the Texas Health and Safety Code (THSC); Chapter 121 of the Natural Resources Code (NRC); and Chapter 202 of the Tax Code to give sole jurisdiction of the Class VI injection activities to the RRC.

The commission proposes to amend 30 Texas Administrative Code (TAC) §331.11 by removing subsection (d), which states "The commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources."

#### Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

#### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated would be compliance with state law and the potential for a more streamlined application and permit approval process for Class VI injection well programs. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

#### Local Employment Impact Statement

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

#### Rural Communities Impact Assessment

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

#### Small Business and Micro-Business Assessment

The commission reviewed this proposed rulemaking and determined that no adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

#### Small Business Regulatory Flexibility Analysis

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

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking removes 30 TAC §331.11(d) and its applicability to certain individuals. The proposed rulemaking would not create a new regulation or expand, limit, or repeal an existing rule. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the action is not subject to TGC, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined by that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment implements legislation (HB 1284, 87th Texas Legislature, (RS), 2021) which consolidates the jurisdiction over onshore and offshore Class VI UIC wells solely to the RRC and directs the RRC to apply for and obtain primacy of this permitting program from the EPA. The proposed rule implements this change in jurisdiction and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity,

competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Existing requirements for the management of underground injection wells in 30 TAC Chapter 331 are not changed by this rulemaking.

As defined in TGC, §2001.0225(a) only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment does not exceed an express requirement of state law or a requirement of a delegation agreement as there are no express requirements for underground injection control wells. These rules were not developed solely under the general powers of the agency as they are consistent with HB 1284, Chapter 27 of the TWC, Chapter 382 of THSC, Chapter 121 of the NRC, and Chapter 202 of the Tax Code. Therefore, this rulemaking is not subject to the regulatory analysis provision of TGC, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis during the public comment period. Written comments on the Draft Regulatory Impact Analysis 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 this rulemaking action and performed a preliminary assessment of whether TGC, Chapter 2007, is applicable. The proposed amendment implements legislative requirements in HB 1284, which consolidates the jurisdiction over onshore and offshore Class VI UIC wells solely to the RRC and directs the RRC to apply for and obtain primacy of this permitting program from the EPA.

The proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under TGC, §2207.002(5). The proposed rule does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action would not constitute a taking under TGC, Chapter 2007.

#### Consistency with the Coastal Management Program

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

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

#### Virtual Public Hearing

The commission will hold a virtual public hearing on this proposal on January 25, 2022, at 10:00 a.m. 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 virtual hearing; however, Commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

#### Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by January 24, 2022. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 24, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing, they may do so at no cost at:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_Yz-FiMTViZDMtMTIINC00NDRmLTgwNWYtNzAOZGE4N2JiY-Tlz%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22Is-BroadcastMeeting%22%3atru%7d&btpe=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_Yz-FiMTViZDMtMTIINC00NDRmLTgwNWYtNzAOZGE4N2JiY-Tlz%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22Is-BroadcastMeeting%22%3atru%7d&btpe=a&role=a).

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.

#### Written Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-025-331-WS. The comment period closes on February 1, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Dan Hannah, Radioactive Materials Division at (512) 239-2161.

#### Statutory Authority

The amended rule is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the Commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells.

The rulemaking implements House Bill 1284, 87th Texas Legislature, (RS), 2021; TWC, Chapter 27; Texas Health and Safety Code, Chapter 382; Natural Resources Code §121.003; and Tax Code §202.0545, which consolidate the jurisdiction over onshore and offshore Class VI UIC wells solely to the RRC and direct the

RRC to apply for and obtain primacy of this permitting program from the EPA.

#### §331.11. Classification of Injection Wells.

(a) Injection wells within the jurisdiction of the commission are classified as follows.

##### (1) Class I:

(A) wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells;

(B) other industrial and municipal waste disposal wells which inject fluids beneath the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water (USDW); and

(C) radioactive waste disposal wells which inject fluids below the lower-most formation containing a USDW within 1/4 mile of the wellbore.

(2) Class III. Wells which are used for the extraction of minerals, including:

(A) mining of sulfur by the Frasch process; and

(B) solution mining of minerals which includes sodium sulfate, sulfur, potash, phosphate, copper, uranium and any other minerals which can be mined by this process.

(3) Class IV. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into or above a formation which within 1/4 mile of the wellbore contains a USDW.

(4) Class V. Class V wells are injection wells not included in Classes I, II, III, or IV. Generally, wells covered by this paragraph inject nonhazardous fluids into or above formations that contain USDWs. Except for Class V wells within the jurisdiction of the Railroad Commission of Texas, all Class V injection wells are within the jurisdiction of the commission and include, but are not limited to:

(A) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

(B) closed loop injection wells which are closed system geothermal wells used to circulate fluids including water, water with additives, or other fluids or gases through the earth as a heat source or heat sink;

(C) large capacity cesspools or other devices that receive greater than 5,000 gallons of waste per day, which have an open bottom and sometimes have perforated sides;

(D) cooling water return flow wells used to inject water previously used for cooling;

(E) drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(F) drywells used for the injection of wastes into a subsurface formation;

(G) recharge wells used to replenish the water in an aquifer;

(H) salt water intrusion barrier wells used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the fresh water;

(I) sand backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into mined out portions of subsurface mines;

(J) septic systems designed to inject greater than 5,000 gallons per day of waste or effluent;

(K) subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(L) wells used for the injection of water for storage and subsequent retrieval for beneficial use as part of an aquifer storage and recovery project;

(M) motor vehicle waste disposal wells which are used or have been used for the disposal of fluids from vehicular repair or maintenance activities, such as an automotive repair shop, auto body shop, car dealership, boat, motorcycle or airplane dealership, or repair facility;

(N) improved sinkholes;

(O) aquifer remediation wells, temporary injection points, and subsurface fluid distribution systems used to inject non-hazardous fluids into the subsurface to aid in the remediation of soil and groundwater; and

(P) subsurface fluid distribution systems.

(b) Class II wells and Class III wells used for brine mining fall within the jurisdiction of the Railroad Commission of Texas.

(c) Baseline wells and monitor wells associated with Class III injection wells within the jurisdiction of the commission are also subject to the rules specified in this chapter.

~~[(d) The commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 17, 2021.

TRD-202105138

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: January 30, 2022

For further information, please call: (512) 239-2809

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 353. INTRODUCTORY PROVISIONS**

**SUBCHAPTER B. EMPLOYMENT PRACTICES**

**31 TAC §353.32**

The Texas Water Development Board ("TWDB" or "board") proposes amendments to 31 Texas Administrative Code (TAC) §353.32, Sick Leave Pool, to incorporate provisions of a new employee family leave pool.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENTS.**

The 87th Texas Legislature enacted House Bill 2063, amending Texas Government Code Chapter 661 to add new Subchapter A-1, State Employee Family Leave Pool. The new legislation requires state agencies to create and administer an employee family leave pool, and to adopt rules and prescribe procedures relating to the operation of the family leave pool.

**SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.**

*Subchapter B. Employment Practices*

*Section 353.32. Sick Leave Pool*

The section name is proposed to be amended from Sick Leave Pool to Employee Leave Pools to allow for inclusion of the new employee family leave pool program.

*Section 353.32(b)*

Section 353.32(b) is added to outline the TWDB family leave pool program and appoint the TWDB Human Resources Director or other employee designated by the Executive Administrator as family leave pool administrator. The amended rule authorizes the family leave pool administrator to prescribe procedures relating to operation of the family leave pool program.

The remaining sections in §353.32 are relettered to accommodate the addition of §353.32(b) and amended to add references to the family leave pool program.

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS**

Ms. Rebecca Treviño, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments resulting from the proposed rulemaking. For the first five years these rule amendments are in effect, there is no expected additional cost to state or local governments resulting from their administration.

This proposed rulemaking is not expected to result in a reduction in costs to either state or local governments. There is no expected reduction in costs for state and local governments because the proposed amendments apply only to employees of TWDB and involve contributions of existing accrued leave. This proposed rulemaking is not expected to have any impact on state or local revenues. Administering the amendments will not require any increase in expenditures for state or local governments because the amendments apply only to employees of TWDB and involve contributions of accrued leave to a leave pool. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this proposed rulemaking.

Because this rulemaking will not impose a cost on regulated persons, the requirement included in Texas Government Code §2001.0045 to repeal a rule does not apply. Furthermore, the

# Texas Commission on Environmental Quality



## ORDER ADOPTING AMENDED RULES

**Docket No. 2021-0948-RUL**

**Rule Project No. 2021-025-331-WS**

On May 18, 2022, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter 331, concerning underground injection control. The proposed rules were published for comment in the December 31, 2021 issue of the *Texas Register* (46 TexReg 9189).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed