

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Adoption of Rules Review & Readoption of Chapter 334

**AGENDA REQUESTED:** July 19, 2023

**DATE OF REQUEST:** June 30, 2023

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2022-1718-MIS.** Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The proposal was published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1454-1455). (Anna R. Brulloths, Cullen McMorrow) (Non-Rule Project No. 2023-035-334-WS)


  
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**Director**

  
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**Deputy Director**

  
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**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** June 30, 2023  
**Thru:** Laurie Gharis, Chief Clerk  
Erin E. Chancellor Interim Executive Director  
**From:** Beth Seaton, Director   
Office of Waste  
**Docket No.:** 2022-1718-MIS  
**Subject:** Commission Approval for Adoption of Rules Review and Readoption of Rules  
Chapter 334, Underground and Aboveground Storage Tanks  
Rules Review of 30 TAC Chapter 334  
Non-Rule Project No. 2023-035-334-WS

**What the adopted action would do:**

This action will approve the rules review of Chapter 334, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality (TCEQ), after opportunity for public review and comment, that the reasons for initially adopting the rules of this chapter continue to exist.

**Applicable law:**

The review of the rules is authorized under the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

**Reason rules are needed:**

Executive director's staff conducted a review of the rules in Chapter 334 and determined that the reasons for initially adopting these rules continue to exist. The rules in Chapter 334 are required because the relevant stated policy and purposes of Texas Water Code (TWC), Chapter 26, Subchapter I, are to: (1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground storage tanks (UST) and aboveground storage tanks (AST) that may pollute groundwater and surface water resources; and (2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy. TWC, §26.345, authorizes the commission to develop a regulatory program regarding underground and aboveground storage tanks, and to adopt rules necessary to carry out that purpose. Additionally, TWC, Chapter 26, Subchapter K, establishes occupational licensing and registration requirements for professionals who install, repair, or remove USTs and professionals that perform corrective actions for releases from ASTs or USTs.

TCEQ establishes a regulatory program in Chapter 334 and addresses topics such as: tank registration (authorized by TWC, §26.346); tank standards (authorized by TWC, §26.347);

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leak detection and record maintenance (authorized by TWC, §26.348); reporting of releases and corrective action (authorized by TWC, §26.349); tank closure requirements (authorized by TWC, §26.350); corrective action requirements (authorized by TWC, §26.351); financial responsibility requirements (authorized by TWC, §26.352); and occupational licensing for UST contractors, UST on-site supervisors, corrective action specialists, and corrective action project managers (authorized by TWC, §26.452, §26.456, §26.364, and §26.366).

Additionally, Texas' program is an "approved state program," meaning that the State of Texas is approved to administer and enforce a UST program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 United States Code, §6991 *et seq.* Texas' program is administered by the TCEQ.

**Rules found to be obsolete:**

None.

**Public comment:**

A public hearing was not offered for this review. The comment period for the rules review opened on March 10, 2023 and closed on April 10, 2023 (48 TexReg 1454-1455). No comments were received.

**Affected agency programs:**

The program areas responsible for implementing these rules are the Petroleum Storage Tank (PST) Program in the Remediation Division and the PST Registration Program in the Occupational Licensing and Registration Division, both in the Office of Waste, as well as the Office of Compliance and Enforcement.

**Agency contacts:**

Anna R. Brulloths, Project Manager, Remediation Division, (512) 239-5052

Cullen McMorrow, Staff Attorney, Environmental Law Division, (512) 239-0607

Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division, (512) 239-2678

**Attachments:**

*Texas Register* publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

Texas Commission on Environmental Quality

**Title 30, Part 1**

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 17, Tax Relief for Property Used for Environmental Protection.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 17 continue to exist.

Comments regarding suggested changes to the rules in Chapter 17 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

**Submittal of Comments**

The commission invites public comment on this preliminary review of the rules in Chapter 17. Written comments may be submitted to Gwen Ricco, 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://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-031-017-AI. Comments must be received by April 10, 2023. For further information, please contact Elizabeth Sartain, Air Quality Division, at (512) 239-3933.

TRD-202300965

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 1, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 18, Voter-Approval Tax Relief for Pollution Control Requirements.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 18 continue to exist.

Comments regarding suggested changes to the rules in Chapter 18 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

**Submittal of Comments**

The commission invites public comment on this preliminary review of the rules in Chapter 18. Written comments may be submitted to Gwen Ricco, 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://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-032-018-AI. Comments must be received by April 10, 2023. For further information, please contact Elizabeth Sartain, Air Quality Division, at (512) 239-3933.

mation, please contact Elizabeth Sartain, Air Quality Division, at (512) 239-3933.

TRD-202300966

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 1, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 298, Environmental Flow Standards for Surface Water.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 298 continue to exist.

Comments regarding suggested changes to the rules in Chapter 298 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

**Submittal of Comments**

The commission invites public comment on this preliminary review of the rules in Chapter 298. Written comments may be submitted to Gwen Ricco, 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://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-033-298-OW. Comments must be received by April 10, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202300967

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 1, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 334, Underground and Aboveground Storage Tanks.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 334 continue to exist.

Comments regarding suggested changes to the rules in Chapter 334 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

**Submittal of Comments**

The commission invites public comment on this preliminary review of the rules in Chapter 334. Written comments may be submitted to Gwen Ricco, 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://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-035-334-WS. Comments must be received by April 10, 2023. For further information, please contact Anna R. Brulloths, Remediation Division, at (512) 239-5052.

TRD-202300968

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 1, 2023

## Adopted Rule Reviews

Texas Judicial Council

### Title 1, Part 8

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts the review of Chapter 173, concerning Indigent Defense Grants conducted in accordance with Government Code §200.039. Chapter 173 contains Subchapter A, concerning General Funding Program Provisions, Subchapter B, concerning Eligibility and Funding Requirements, Subchapter C, concerning Administering Grants, and Subchapter D, concerning Fiscal Monitoring and Audits. The proposed notice of intent to review rules was published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6471).

No comments were received on the proposed rule review.

The Commission, which administers these rules, has assessed whether the reasons for adopting these rules continue to exist. The Commission find that the rules in Chapter 173 are needed, reflect current legal and policy considerations, and the rules are within the agency's legal authority as certified by legal counsel.

TRD-202300897

Wesley Shackelford

Deputy Director

Texas Judicial Council

Filed: February 24, 2023

Texas Commission on Jail Standards

### Title 37, Part 9

The Texas Commission on Jail Standards reviewed Title 37 Texas Administrative Code, Chapter 251, concerning General; Chapter 255, concerning Rulemaking Procedures, and Chapter 269, Subchapter D, concerning Juvenile Justice Reports. The agency proposed the rule review in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8759). No public comments were received.

In accordance with Texas Government Code §2001.039 and Government Code 511.009(5), the Commission readopts Chapters 251 and 255 because the reasons for their adoption continue to exist. However, it will repeal Chapter 269 Subchapter D because HB 1545 of the 87th Legislative Session repealed Government Code 511.009(a)(12), which required the Commission to report annually the juveniles in county jails. This concludes the review of chapters 251, 255, and 269 Subchapter D. The agency is submitting the proposed repeal contemporaneously with the closure of this review.

TRD-202300858

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Filed: February 23, 2023

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1454-1455).

The review assessed whether the reasons for initially adopting the rules continue to exist, and the commission has determined that those reasons do continue to exist. The rules in Chapter 334 are required because the relevant stated policy and the purposes of the Texas Water Code (TWC), Chapter 26, Subchapter I, are to: (1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground storage tanks (UST) and aboveground storage tanks (AST) that may pollute groundwater and surface water resources; and (2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy. TWC, §26.345, authorizes the commission to develop a regulatory program regarding underground and aboveground storage tanks, and to adopt rules necessary to carry out that purpose. Additionally, TWC, Chapter 26, Subchapter K, establishes occupational licensing and registration requirements for professionals who install, repair, or remove USTs and professionals that perform corrective actions for releases from AST or USTs.

The Texas Commission on Environmental Quality (TCEQ) establishes a regulatory program in Chapter 334 and addresses topics such as: tank registration (authorized by TWC, §26.346); tank standards (authorized by TWC, §26.347); leak detection and record maintenance (authorized by TWC, §26.348); reporting of releases and corrective action (authorized by TWC, §26.349); tank closure requirements (authorized by TWC, §26.350); corrective action requirements (authorized by TWC, §26.351); financial responsibility requirements (authorized by TWC, §26.352); and occupational licensing for UST contractors, UST on-site supervisors, corrective action specialists, and corrective action project managers (authorized by TWC, §26.452, §26.456, §26.364, and §26.366).

Additionally, Texas' program is an "approved state program," meaning that the State of Texas is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 United States Code, §6991 *et seq.* Texas' program is administered by the TCEQ.

#### Public Comment

The public comment period opened on March 10, 2023 and closed on April 10, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for initially adopting the rules in 30 TAC Chapter 334 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

# Texas Commission on Environmental Quality



## ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2022-1718-MIS  
Non-Rule Project No. 2023-035-334-WS

On July 19, 2023, the Texas Commission on Environmental Quality (Commission) considered the rules review of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for re-adoption each of its rules every four years. The proposed Notice of Intention to Review was published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1454-1455).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 334 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

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