

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 333

AGENDA REQUESTED: January 10, 2024

DATE OF REQUEST: December 20, 2023

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

CAPTION: Docket No. 2023-0068-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 333, Brownfields Initiatives. 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 July 14, 2023, issue of the *Texas Register* (48 TexReg 3929). (Anna R. Brulloths, Kody Banda) (Non-Rule Project No. 2023-080-333-WS)



Director



Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 20, 2023

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Interim Executive Director

From: Beth Seaton, Director 
Office of Waste

Docket No.: 2023-0068-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 333, Brownfields Initiatives
Rules Review of 30 TAC Chapter 333
Non-Rule Project No. 2023-080-333-WS

What the adopted action would do:

This action will approve the rules review of Chapter 333 and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality, after opportunity for public review and comment, that the initial reasons for 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 333 and determined that the reasons for initially adopting these rules continue to exist. The rules in Chapter 333, Subchapter A implement Texas Health and Safety Code (THSC), Chapter 361, Subchapter S, Voluntary Cleanup Program (VCP). The stated statutory purpose of the VCP is to provide incentives to remediate property by removing liability of lenders and future landowners. Sections 333.1 - 333.10 implement the VCP statute by defining relevant terms and establishing procedures relating to VCP applications and agreements, work plans and reports, and certificates of completion.

The rules in Chapter 333, Subchapter B implement THSC, Chapter 361, Subchapter V, Immunity from Liability of Innocent Owner or Operator. The statute provides certain liability protection for certain owners or operators who demonstrate that their property has become contaminated due to a release or migration of contaminants from a source or sources not located on or at the property and that the owner or operator did not cause or contribute to the source, among other conditions. Sections 333.31 - 333.43 implement the statute by defining relevant terms and establishing procedures relating to Innocent Owner/Operator Program applications as well as to the issuance, denial, or revocation of an innocent owner/operator certificate.

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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 July 14, 2023, and closed on August 14, 2023 (48 TexReg 3929). No comments were received.

Affected agency program:

The program area responsible for implementing these rules is the Office of Waste, Remediation Division, Voluntary Cleanup Program-Corrective Action Section.

Agency contacts:

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

Kody Banda, Staff Attorney, Litigation Division, (512) 239-0675

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

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 5, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 333, Brownfields Initiatives.

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 reoption, reoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 333 continue to exist.

Comments regarding suggested changes to the rules in Chapter 333 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 333. 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 2023-080-333-WS. Comments must be received by August 14, 2023. For further information, please contact Anna R. Brulloths, Remediation Division, at (512) 239-5052.

TRD-202302427
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 5, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 351, Regionalization.

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 reoption, reoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 351 continue to exist.

Comments regarding suggested changes to the rules in Chapter 351 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 351. 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 2023-076-351-OW. Comments must be received by August 14, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202302424
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 5, 2023

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 4, Prescribed Burning Board Enforcement Program, pursuant to Texas Government Code, Section 2001.039 (Agency Review of Existing Rules). The Department considered whether the initial factual, legal, and policy reasons for adoption of the rules in this chapter continue to exist. Notice of the rule review was published in the August 19, 2022, issue of the *Texas Register* (47 TexReg 5005) under the Review of Agency Rules section. No public comments were received as a result of the proposed rule review notice.

The Department finds that the reasons for initially adopting the rules in this chapter no longer exist and proposes the repeal of these rules. The proposed repeals can be found in the Proposed Rules section of this issue.

TRD-202302382
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: June 29, 2023

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) completed its review of 28 Texas Administrative Code Chapters 41 - 43, 45, 47, 49, 51, 53, 55, 56, 59, 61, 63 - 65, 67 and 69. DWC conducted the review under Texas Government Code §2001.039.

Notice of the review was published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1737). There were no requests for a public hearing.

DWC received one comment by the May 1, 2023, deadline. No comments suggested repealing a rule in its entirety. Commenters for reoption and for reoption with changes were: the Office of Injured Employee Counsel. Commenters against reoption were: none.

Comment on Chapters 41 - 43, 45, 47, 49, 51, 53, 55, 56, 59, 61, 63 - 65, 67 and 69. The commenter stated that the reasons for initially adopting the rules continue to exist, and that it would be to the detriment of the injured employees of Texas if DWC repeals the old law rules. Agency response to comment on Chapters 41 - 43, 45, 47, 49, 51, 53, 55, 56, 59, 61, 63 - 65, 67 and 69. DWC appreciates the comment.

As a result of the review, and in accordance with Texas Government Code §2001.039, DWC finds that the reasons for initially adopting the

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 333, Brownfields Initiatives, 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. TCEQ published its Notice of Intent to Review these rules in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3929).

The review assessed whether the reasons for initially adopting the rules continue to exist and TCEQ has determined that those reasons do continue to exist. The rules in Chapter 333, Subchapter A are required because they implement Texas Health and Safety Code (THSC), Chapter 361, Subchapter S, Voluntary Cleanup Program (VCP). The stated statutory purpose of the VCP is to provide incentives to remediate property by removing liability of lenders and future landowners. Sections 333.1 - 333.10 implement the VCP statute by defining relevant terms and establishing procedures relating to VCP applications and agreements, work plans and reports, and certificates of completion.

The rules in Chapter 333, Subchapter B are required because they implement THSC, Chapter 361, Subchapter V, Immunity from Liability of Innocent Owner or Operator. The statute provides certain liability protection for certain owners or operators who demonstrate that their property has become contaminated due to a release or migration of contaminants from a source or sources not located on or at the property and that the owner or operator did not cause or contribute to the source, among other conditions. Sections 333.31 - 333.43 implement the statute by defining relevant terms

and establishing procedures relating to Innocent Owner/Operator Program applications as well as to the issuance, denial, or revocation of an innocent owner/operator certificate.

Public Comment

The public comment period opened on July 14, 2023, and closed on August 14, 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 333 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. 2023-0068-MIS
Non-Rule Project No. 2023-080-333-WS

On January 10, 2024, the Texas Commission on Environmental Quality (Commission) considered the rules review of 30 Texas Administrative Code (TAC) Chapter 333, Brownfields Initiatives in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider for readoption each of its rules every four years. The proposed Notice of Intention to Review was published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3929).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 333 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

Jon Niermann, Chairman

Date Signed