

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 (CO₂) 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 CO₂ 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 CO₂. The rulemaking removes Texas Commission on Environmental Quality (TCEQ or commission) jurisdiction over the injection of anthropogenic 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 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

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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 CO₂ 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 CO₂.

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

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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 CO₂ 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

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Attachments:

HB 1284

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