

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 4, 2024

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

From: Beth Seaton, Director 
Office of Waste

Docket No.: 2023-1073-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 281, Applications Processing
Chapter 328, Waste Minimization and Recycling
Chapter 330, Municipal Solid Waste
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
House Bill (HB) 3060 Implementation and Minor Program Updates
Rule Project No. 2023-135-330-WS

Background and reason(s) for the rulemaking:

This rulemaking will implement House Bill (HB) 3060 and Senate Bill (SB) 1397 passed by the 88th Texas Legislature, 2023; repeal obsolete rules; make minor programmatic updates; and correct rule citations or references.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The rulemaking implements HB 3060, related to advanced recycling, and one section of SB 1397, the commission's sunset bill. The rulemaking also repeals three rules determined to be obsolete during the quadrennial rule review of 30 Texas Administrative Code (TAC) Chapter 281, makes minor updates to align the rules in 30 TAC Chapter 330 with SB 1397, and revises incorrect rule citations or references in Chapters 330 and 335.

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

HB 3060 amended Texas Health and Safety Code (THSC), Chapter 361 by expanding the exclusion for the conversion of post-use polymers and recoverable feedstocks from solid waste regulations for two additional recycling processes - depolymerization and solvolysis. HB 3060 added, revised, and repealed definitions related to specific methods of plastic recycling. This rulemaking will make conforming changes to the definitions in 30 TAC Chapters 328, 330, and 335.

HB 3060 also requires the Texas Commission for Environmental Quality (TCEQ) to adopt rules to identify third-party mass balance attribution certification systems and establish guidelines by which a product may be considered a recycled product. Waste Permits Division (WPD) collaborated with External Relations Division, to include rules in this regard in 30 TAC Chapter 328.

SB 1397 added Texas Water Code, §5.1734 which requires the commission to electronically post administratively complete permit applications to the agency's website. This rulemaking amends 30 TAC §281.5 to require applicants to submit an electronic copy of permit applications, which facilitates the commission in meeting its requirement to electronically post applications online.

Texas Government Code, §2001.039 requires state agencies to review their rules and assess whether the reasons for initially adopting the rules continues to exist, or if the rules are obsolete and must be repealed. Three sections in Chapter 281 (30 TAC §§281.30, 281.31, and 281.32) were determined to be obsolete (Non-Rule Project Number 2019-051-281-OW) because the statutory authority for these rules, THSC §§361.0232 and 361.0871(c), were repealed.

Re: Docket No. 2023-1073-RUL

Additionally, the revisions update Chapter 330 to conform with changes to the federal hazardous waste regulations which renamed the lowest tier hazardous waste generator category as a “very small quantity generator” (VSQG) and introduced a new conditional exemption for a VSQG who generates more than 100 kilograms of hazardous waste during an episodic event.

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

The amendments revise rules in 30 TAC Chapter 330 to make minor updates aligning the rules with SB 1397 changes. Prior to this adoption the Municipal Solid Waste Permits Program had rules in Chapter 330 that required the applicant to post their application online. The rulemaking removes these requirements and replaces them with requirements for the commission to post applications online. Additionally, minor and non-substantive revisions have been made to correct rule citations and references in 30 TAC Chapters 330 and 335.

Statutory authority:

The rulemaking would be adopted under the statutory authority of Texas Water Code, §5.103 (relating to Rules) and §5.1734 (relating to Electronic Posting of Permit Applications); and THSC, §§361.003 (relating to Definitions), 361.011 (relating to Commission’s Jurisdiction: Municipal Solid Waste), 361.0151 (relating to Recycling), 361.017 (relating to Commission’s Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), 361.024 (relating to Rules and Standards), 361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), 361.119 (relating to Regulation of Certain Facilities as Solid Waste Facilities), 361.421 (relating to Definitions), 361.4215 (relating to Mass Balance Attribution), and 361.427 (relating to Specifications for Recycled Products).

Effect on the:

A.) Regulated community:

Regulated communities affected by this rulemaking include facilities conducting recycling activities using advanced recycling technologies (HB 3060 implementation) and applicants for wastewater discharge, underground injection, municipal solid waste, radioactive material, hazardous waste, and industrial solid waste management permits (SB 1397 implementation). Additionally, applicants for municipal solid waste, hazardous waste, and industrial solid waste authorizations benefit from the corrections made in Chapters 330 and 335 to incorrect and outdated rule references.

B.) Public:

The rulemaking does not create a group of affected persons who were not impacted previously. The public is not expected to be directly affected by this rulemaking. The change to 30 TAC §281.5 supports the implementation of SB 1397 regarding electronic posting of permit applications which will benefit the public by making applications more accessible.

C.) Agency programs:

The agency programs affected by this rulemaking include WPD, External Relations Division, Environmental Law Division, Water Quality Division, Radioactive Materials Division, and Office of Compliance and Enforcement.

Stakeholder meetings:

WPD sought input from the public on the implementation of HB 3060 by message to waste topic GovDelivery subscribers. WPD also sought input from the Municipal Solid Waste Management and Resource Recovery Advisory Council. SB 1397 was enacted based on an extensive agency review

Re: Docket No. 2023-1073-RUL

and included multiple hearings and opportunities for public participation. Additionally, a hybrid virtual and in-person public hearing was held during the comment period.

Public Involvement Plan

A public involvement plan is required for this rulemaking.

Public comment:

The commission offered a public hearing on June 20, 2024. The comment period closed on June 25, 2024. No public comments were received.

Significant changes from proposal:

None.

Alternative Language Requirements

Spanish language documents are required for this rulemaking.

Potential controversial concerns and legislative interest:

No controversial concerns were identified with this rulemaking.

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

The rulemaking does not affect current policies or require development of new policies.

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

If the rulemaking does not go forward, TCEQ would fail to implement state legislation requiring the agency to amend applicable rules and would not comply with statutes requiring state agencies to repeal obsolete rules identified during the quadrennial rule review process. Without revising §281.5, TCEQ programs with permits subject to the electronic application posting requirement of SB 1397 would need to address the requirement themselves. Additionally, retention of incorrect citations in waste rules could create confusion for rule users and perpetuate regulatory inconsistencies and gaps. No alternatives to rulemaking have been identified.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: May 24, 2024

Anticipated *Texas Register* adoption publication date: November 8, 2024

Anticipated effective date: November 14, 2024

Six-month *Texas Register* filing deadline: November 24, 2024

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Attachments:

Rule Project No. 2023-135-330-WS *Texas Register* proposal publication

HB 3060 (Enrolled)

SB 1397 (Enrolled)

Chapter 281 Rule Review Adoption Notice *Texas Register* Publication

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk

Commissioners

Page 4

October 4, 2024

Re: Docket No. 2023-1073-RUL

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