


Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 26, 2024

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

From: Beth Seaton, Director 
Office of Waste

Docket No.: 2024-0595-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 331, Underground Injection Control
Implementing Senate Bill (SB) 786 and SB 1186, 88th Texas Legislature, 2023,
Relating to Agency Jurisdiction of Closed-loop Geothermal Injection Wells and
Injection Wells Used for Brine Mining
Rule Project No. 2024-020-331-WS

Background and reason(s) for the rulemaking:

This rulemaking adoption implements SB 786 and SB 1186, 88th Texas Legislature, 2023, addressing agency jurisdiction over regulation of closed-loop geothermal injection wells and agency jurisdiction over brine mining injection wells in Texas. SB 786 confers jurisdiction over the regulation of closed-loop geothermal injection wells to the Railroad Commission of Texas (RRC). SB 1186 confers jurisdiction over the regulation of brine mining and the injection wells used for brine mining to RRC.

Scope of the rulemaking:

This rulemaking adoption implements SB 786 by amending the commission's underground injection control rules to remove requirements for the regulation of closed-loop geothermal injection wells. Prior to the enactment of SB 786, the commission's underground injection control rules included geothermal closed-loop injection wells as a type of Class V injection well under the jurisdiction of the commission. SB 786 provides that all commission functions and activities that relate to the regulation of closed-loop geothermal injection wells are transferred to RRC. The rulemaking adoption also implements SB 1186 by amending the commission's underground injection control rules to acknowledge that RRC has jurisdiction over the regulation of Class V injection wells used for brine mining.

A.) Summary of what the rulemaking will do:

The rulemaking adoption amends 30 Texas Administrative Code (TAC) §331.11 to remove subparagraph (a)(4)(B) relating to closed-loop geothermal injection wells to implement SB 786. The rulemaking adoption implements SB 786 and SB 1186 by amending subsection (b) to identify types of injection wells and activities under the jurisdiction of RRC. This rulemaking will also correct a typographical error in 30 TAC §331.132(d)(3).

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

The rulemaking adoption is not required by federal regulations. The rulemaking implements state statutes in Texas Water Code (TWC), §27.036 and §27.037 as established by SB 786 and SB 1186.

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

The rule adoption will correct a typographical error in 30 TAC §331.132(d)(3) to change "close loop" to "closed loop."

Statutory authority:

The amendments are adopted under TWC, Chapter 5, §5.013, which establishes the general jurisdiction of the commission; §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; §5.103,

Re: Docket No. 2024-0595-RUL

which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and §27.019, which authorizes the commission to adopt rules for the performance of its powers, duties and functions under the Injection Well Act.

The rule adoption implements SB 786 and SB 1186, TWC, §§27.011, 27.031, 27.035, 27.036, 27.037, 27.041, and 27.0511.

Effect on the:

A.) Regulated community:

Commission rules are amended to reflect RRC jurisdiction over closed-loop geothermal injection wells and injection wells used for brine mining as established in SB 786 and SB 1186. Operators of closed-loop geothermal injection wells and injection wells used for brine mining are subject to RRC regulation and authority.

B.) Public:

Commission rules are amended to implement state legislation that confers regulatory authority over closed-loop geothermal injection wells and injection wells used for brine mining to RRC. The adopted rule changes will help direct the public to the correct state agency for the regulation of these types of injection wells.

C.) Agency programs:

The rule adoption will have minimal impact on agency programs. On September 1, 2023, all functions and activities for the regulation of closed-loop geothermal injection wells were transferred to RRC. All property of TCEQ, including records, related to closed-loop geothermal injection wells was also transferred to the RRC. No significant 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 adopted rule.

Stakeholder meetings:

No stakeholder meetings were held.

Public Involvement Plan

A public involvement plan is required.

Alternative Language Requirements

Yes. Spanish

Public comment:

The commission offered a public hearing on August 29, 2024. The comment period closed on September 3, 2024. One comment was submitted by Michael Mecke. Michael Mecke commented that the rules should be considered by the Texas Water Development Board, a state agency with responsibility for groundwater and should not be mixed up with oil and gas regulation and issues.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

No potential controversial concerns and/or legislative interest have been identified.

Re: Docket No. 2024-0595-RUL

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

This rulemaking will not affect any current policies or require development of new policies. RRC plans to implement SB 786 through adoption of their own rules relating to Class V closed-loop geothermal injection wells.

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

If this rulemaking does not go forward, current TCEQ rule language that includes closed-loop geothermal injection wells as a type of Class V injection well subject to TCEQ jurisdiction would conflict with the statutory provisions of TWC, §27.037 as established in SB 786 that conferred jurisdiction to RRC. This could lead to confusion within the regulated community and the public, resulting in inefficient and delayed processing times of permit and/or authorization applications.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** August 2, 2024

Anticipated *Texas Register* adoption publication date: January 3, 2025

Anticipated effective date: January 9, 2025

Six-month *Texas Register* filing deadline: February 2, 2025

Agency contacts:

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

Don Redmond, Staff Attorney, Environmental Law Division, (512) 239-0612

Vanessa Onyskow-Lang, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-0682

Attachments:

SB 786, SB 1186

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Krista Kyle
Jessie Powell
Office of General Counsel
Dan Hannah
Don Redmond
Vanessa Onyskow-Lang