


Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** April 19, 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 Proposed Rulemaking
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:

The proposed rulemaking is needed to 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 proposed rulemaking would implement HB 3060, related to advanced recycling, and one section of SB 1397, the commission's sunset bill. The rulemaking would also repeal three rules determined to be obsolete during the quadrennial rule review of 30 Texas Administrative Code (TAC) Chapter 281. The rulemaking would also make minor updates to align the rules in 30 TAC Chapter 330 with SB 1397 and revise 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 adds, revises, and repeals definitions related to specific methods of plastic recycling. The Waste Permits Division (WPD) proposes to adopt the definition amendments into 30 TAC Chapters 328, 330, and 335.

HB 3060 also requires 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. WPD, in collaboration with the External Relations Division, proposes to adopt the required rules in 30 TAC Chapter 328.

SB 1397 added Texas Water Code (TWC), §5.1734 to require the commission to electronically post administratively complete permit applications to the agency's website. This rulemaking would amend 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

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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.

Proposed revisions would 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:

Proposed amendments would revise rules in 30 TAC Chapter 330 to make minor updates aligning the rules with SB 1397 changes. The Municipal Solid Waste Permits Program currently has rules in Chapter 330 that requires the applicant post their application online. The proposed rulemaking removes these requirements and replaces it with requirements for the commission to post applications online. Additionally, revisions in 30 TAC Chapters 330 and 335 would update incorrect rule citations and references. WPD intends to make only minor and non-substantive corrections related to incorrect rule citations and references.

Statutory authority:

The rule changes would be proposed 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 would 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.

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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 and included multiple hearings and opportunities for public participation. The commission did not hold any stakeholder meetings related to this rulemaking; however, a hybrid virtual and in-person public hearing will be held during the comment period.

Public Involvement Plan

A public involvement plan is required for this rulemaking.

Alternative Language Requirements

Spanish language documents will be required for this rulemaking.

Potential controversial concerns and legislative interest:

No controversial concerns are anticipated with this rulemaking.

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

The rulemaking is not expected to 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 violate statute requiring the agency to amend applicable rules to implement passed legislation such as HB 3060, and 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. WPD has not identified alternatives to rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: May 10, 2024

Anticipated *Texas Register* publication date: May 24, 2024

Anticipated public hearing date: June 2024

Anticipated public comment period: May 24 - June 24, 2024

Anticipated adoption date: October 23, 2024

Agency contacts:

Jarita Sepulvado, Rule Project Manager, Waste Permits Division, (512) 239-4413

Diane Goss, Staff Attorney, Environmental Law Division, (512) 239-5731

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

Attachments:

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
Krista Kyle
Office of General Counsel

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Jarita Sepulvado

Diane Goss

Gwen Ricco