


Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 28, 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 Proposed Rulemaking
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 proposed rulemaking implements Senate Bill (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 the Railroad Commission of Texas (RRC) with jurisdiction over the regulation of closed-loop geothermal injection wells. SB 1186 confers the RRC with jurisdiction over the regulation of brine mining and the injection wells used for brine mining.

Scope of the rulemaking:

This proposed rulemaking 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 the RRC. The proposed rulemaking also implements SB 1186 by amending the commission's underground injection control rules to acknowledge that the RRC has jurisdiction over the regulation of Class V injection wells used for brine mining.

A.) Summary of what the rulemaking would do:

The proposed rulemaking 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 proposed rulemaking implements SB 786 and SB 1186 by amending subsection (b) to identify types of injection wells and activities under the jurisdiction of the RRC. This rulemaking would also correct a typographical error in 30 TAC §331.132(d)(3).

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

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

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Statutory authority:

The amendments are proposed 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, 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 proposed rules implement 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 proposed to be 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 proposed to be amended to implement state legislation that confers RRC with regulatory authority over closed-loop geothermal injection wells and injection wells used for brine mining. The proposed 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 proposed rules 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 the 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 proposed rule.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held in Austin during the comment period.

Public Involvement Plan

A public involvement plan is required.

Alternative Language Requirements

Yes. Spanish.

Potential controversial concerns and legislative interest:

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

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

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

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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 proposal rulemaking schedule:

Anticipated proposal date: July 17, 2024

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

Anticipated public hearing date: August 29, 2024

Anticipated public comment period: August 2, 2024 - September 3, 2024

Anticipated adoption date: December 18, 2024

Agency contacts:

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Attachments:

SB 786, SB 1186

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