

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 24, 2026

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

From: Beth Seaton, Director 
Office of Waste

Docket No.: 2026-0432-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 305, Consolidated Permits
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
RCRA Authorization and Amendments to Chapters 305 and 335, Including
Financial Capability Revisions
Rule Project No. 2026-011-335-WS

Background and reason(s) for the rulemaking:

The Texas Commission on Environmental Quality (TCEQ) must periodically adopt specific changes made by the United States Environmental Protection Agency (EPA) into state rules to meet the minimum standards of the federal hazardous waste program and maintain its Resource Conservation and Recovery Act (RCRA) authorization. This rulemaking would include the following revisions made to EPA's regulations: zinc fertilizer exclusions correction; flash point test methods; import and export operations and documentation; and emission test methods. These revisions will be proposed in Title 30 of Texas Administrative Code (TAC) Chapters 305 and 335.

Additionally, this rulemaking includes a program-initiated revision to the financial capability demonstration rules to implement Texas Health & Safety Code (THSC) §361.085. That statute requires a hazardous waste permit applicant to submit financial information to demonstrate they have sufficient financial resources to construct, operate, and close a facility prior to TCEQ issuing, amending, or renewing the applicable hazardous waste permit. THSC §361.085 states that the financial capability demonstration may be based on information that the commission deems necessary and provides a nonexclusive list of examples that an applicant may submit to make this demonstration. TCEQ's implementation of the financial capability demonstration requirement in 30 TAC §305.50(a)(4)(B) does not currently allow a demonstration of financial assurance to be used to demonstrate financial capability. The proposed rulemaking would include financial assurance information as part of the financial capability demonstration for certain application types.

The rulemaking will also propose several corrections and updates to program rules and the repeal of obsolete rules.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The proposed rulemaking would add revisions made to the federal RCRA regulations into state regulations and implement program-initiated financial capability requirement revisions, updates, corrections, and repeals within state rules.

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

This rulemaking initiative would revise 30 TAC Chapters 305 and 335 to incorporate changes made to the federal RCRA regulations. EPA identifies which changes must be adopted for a state to maintain authorization, and those which are considered optional. Incorporating optional federal regulation changes into state rules helps maintain equivalency with federal regulations, which

Re: Docket No. 2026-0432-RUL

enables Texas to continue operating all delegated aspects of the federal hazardous waste program in lieu of EPA and provides more consistent regulation for entities operating in multiple states.

The revisions are set forth in parts of RCRA Clusters XIII, XXIX, XXX, and XXXI. Each cluster contains one checklist, which is a tool designed by EPA to assist states in developing and maintaining their authorized programs. Each checklist outlines specific changes to the federal regulations made by one or more related federal final rules published in the Federal Register.

RCRA Cluster XIII – Checklist 200 Corrections

The regulatory changes identified in Checklist 200 include conditions for excluding hazardous secondary materials used to make zinc fertilizers from the regulatory definition of solid waste. TCEQ previously adopted revisions related to Checklist 200 (effective August 16, 2007), however, the adoption did not include the provisions 40 Code of Federal Regulations §266.20(b) and (d) regarding regulatory exemptions for zinc fertilizers. This rulemaking would make technical corrections to Chapter 335 to complete the adoption of regulations set out in Checklist 200 so that TCEQ may seek final RCRA authorization for the federal regulation. These corrections include replacement of current language in 30 TAC §335.211 with language that more clearly outlines the two conditions that must be met for recyclable-material containing fertilizers to be excluded.

RCRA Cluster XXIX – Checklist 243

The regulatory changes identified in Checklist 243 include finalized updates to the flash point test methods required for determining if liquid waste is an ignitable hazardous waste to include current ASTM International standards. The checklist also includes regulatory changes which allow for alternatives to the use of mercury thermometers in the air sampling and stack emissions methods associated with EPA SW-846 Test methods. These revisions would be made to 30 TAC §305.150 and 30 TAC §§335.29, 335.31, and 335.504. Adoption of the regulations outlined in this checklist is optional, however, adopting these amendments would provide clarity and flexibility in identifying ignitable hazardous waste.

RCRA Cluster XXX – Checklist 244

Federal regulation changes listed in Checklist 244 made conforming changes to regulations related to hazardous waste import-export recovery and disposal operation notices and movement documents submitted to EPA by United States importers and exporters. The revisions reflect regulatory changes to Canadian import-export recovery and disposal operations. The requirements of these federal regulation changes became effective in the United States and its territories on October 31, 2021, and adoption of the requirements in this checklist is not optional. These revisions would be made to 30 TAC §§335.58, 335.112, and 335.152.

RCRA Cluster XXXI – Checklist 245

The federal regulation change listed in Checklist 245 finalized EPA's Method 23, related to sampling and measuring polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, polycyclic aromatic hydrocarbons, and polychlorinated biphenyls from stationary sources; and specified that it can be used instead of SW-846 Method 0023A for measuring these emissions. Adoption of the changes outlined in this checklist is optional, however, adopting the amendments would provide flexibility and consistency for facilities testing emissions from stationary sources. These revisions would be made to 30 TAC §335.221.

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

THSC §361.085(a) requires TCEQ to obtain a financial capability demonstration prior to the issuance of a new permit or for renewal of an existing permit. In addition, this demonstration is

Re: Docket No. 2026-0432-RUL

also required for a major amendment or modification involving capacity expansion and for permit transfers. Financial capability is a distinct and separate requirement from financial assurance requirements. Additionally, financial capability is a state-only requirement and not a federal regulation like financial assurance.

The statute allows for the use of financial assurance documents to make the financial capability demonstration, but that allowance was not included in TCEQ rule. Revising the commission rules would allow existing permittees modifying, renewing, or transferring their permits to utilize their financial assurance documents for the financial capability demonstration. New entities would continue to provide both the financial assurance demonstration and the financial capability demonstration.

Programmatic Updates and Corrections

This rulemaking initiative would include programmatic revisions, updates, repeals, and corrections in 30 TAC Chapters 305 and 335. Substantive programmatic changes include:

- §305.1(a) - add clarifying language that the purpose of Chapter 305 is not limited to waste disposal regulation by replacing “waste disposal activities” with “waste management activities.”
- §305.50(a)(1) - reduce the required number of paper application copies and require an electronic duplicate of the application to conform with 30 TAC §281.5(b).
- §305.69(d) - for Class 3 permit modifications, clarify the timing of an applicant-held meeting as no earlier than 15 days and no later than 45 days from the publication date of the Notice of Receipt of Application and Intent to Obtain Permit, and remove obsolete public participation procedures.
- §335.10(c) - add language related to required exception reporting that was inadvertently omitted in a previous rulemaking.
- §335.41(d)(1) - remove language which appears to inadvertently allow treatment of ignitable and reactive wastes in elementary neutralization units.
- §335.181 - repeal obsolete rule related to commercial hazardous waste management facility technologies.
- §335.521(a)(3) - revise Maximum Contaminant Levels to match federal levels for barium and arsenic, and action levels for lead.

Additional non-substantive corrections would be made in §§305.3, 305.50, 305.69, 305.150, 305.171, 305.172, 305.176, 305.401, 305.533, 305.572, 305.650, 335.10, 335.29, 335.45, 335.53, 335.177, 335.202, 335.251, 335.303, 335.328, 335.509, and 335.521.

Statutory authority:

This rulemaking would be proposed under the statutory authority of Texas Water Code (TWC), §5.102 (relating to the commission’s authority to carry out its duties and general powers under its jurisdictional authority), TWC, §5.103 (relating to authorization of the commission to adopt any rules necessary to carry out its powers and duties), THSC, §361.017 (relating to the commission’s jurisdiction over all aspects of the management of industrial solid waste and municipal hazardous waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction), THSC, §361.024 (relating to the commission’s authority to regulate industrial solid waste and hazardous waste and to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act), THSC, §361.036 (relating to the commission’s authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste), THSC, §361.061 (relating to the commission’s authority to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste and to adopt rules relating to regional and local solid waste management plans), THSC, §361.078 (relating to the maintenance of state program authorization under federal law), THSC, §361.082 (relating to the commission’s authority to require and to issue permits

Re: Docket No. 2026-0432-RUL

governing the construction, operation, and maintenance of hazardous waste facilities used to store, process, or dispose of hazardous waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.119 (relating to the commission's authority to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361).

Effect on the:

A.) Regulated community:

The regulated communities that would be affected by this rulemaking are persons and facilities involved in the generation, treatment, storage, disposal, and/or import and export of hazardous and industrial waste. This rule revision would not create a special group of affected persons.

Financial Capability Revisions would impact persons amending, modifying, transferring, or renewing an existing hazardous waste permit. While no direct fiscal impacts are anticipated, the changes could reduce the fiscal (financial) impact on facilities modifying, transferring, or renewing an existing permit by minimizing the need for consultants and financial experts; and would reduce the amount of financial documentation TCEQ staff must review.

B.) Public:

The rule changes would primarily affect the regulated community and no impact on the public is anticipated.

C.) Agency programs:

The agency programs affected by the rulemaking include the External Relations Division, Office of Waste, Office of Legal Services, Office of Compliance and Enforcement, and the Office of Administrative Services. No fiscal impacts are anticipated.

The financial capability revisions affect the Fiscal Control Division's Revenue Operations, the Radioactive Material Division's Underground Injection Control Permit Section, and the Waste Permits Division's Industrial and Hazardous Waste Permits Section. No fiscal impacts are anticipated. These revisions will enhance permitting efficiency by reducing the volume of financial documentation requiring review by the Fiscal Control Division.

By adopting federal RCRA revisions, the state may pursue expanded RCRA authorization from EPA.

Stakeholder meetings:

A stakeholder meeting to collect informal comments was conducted on May 13, 2025 with a subsequent 30-day comment period. Two comments were received. There will be an additional public comment period and public hearing following rule proposal.

Public Involvement Plan

A Public Involvement Plan is required for this statewide rulemaking.

Alternative Language Requirements

Spanish language documents would be required for this statewide rulemaking.

Potential controversial concerns and legislative interest:

No controversial concerns or legislative interest are anticipated.

Re: Docket No. 2026-0432-RUL

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

As proposed, the rulemaking would 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?

TCEQ must incorporate non-optional amendments to the federal hazardous waste program to maintain the hazardous waste program authorization in Texas. The commission may elect to not incorporate optional amendments to the federal hazardous waste program without impacting Texas' authorized hazardous waste program. However, Texas rules would not be aligned with the federal hazardous waste program and such differences may make compliance difficult for the regulated community, especially for persons owning and operating facilities in multiple states.

Other program-initiated revisions are proposed for clarity and correctness of state rules and improving the efficiency of TCEQ's hazardous waste permitting program.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: August 12, 2026

Anticipated *Texas Register* publication date: August 28, 2026

Anticipated public hearing date: September 22, 2026

Anticipated public comment period: August 28 - September 29, 2026

Anticipated adoption date: February 2027

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Attachments:

Executive Summary Attachment

cc: Chief Clerk, 2 copies
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