

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 22, 2021

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: BW Brent Wade, Director
Office of Waste

Docket No.: 2019-1058-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
Phase II: RCRA Authorization for Parts of Federal Rule Clusters XXIV, XXV,
XXVI, XXVII, and XXVIII
Rule Project No. 2019-086-335-WS

Background and reason(s) for the rulemaking:

In order for the State of Texas to be consistent with certain federal solid and hazardous waste requirements and with the Resource Conservation and Recovery Act (RCRA), the Texas Commission on Environmental Quality (TCEQ or commission) periodically incorporates specific United States Environmental Protection Agency (EPA) rule changes into state rules. Parts of the EPA federal rule changes in Rule Clusters XXIV - XXVIII are included in this rulemaking adoption, amending 30 Texas Administrative Code (TAC) Chapter 335.

In addition to incorporating federal rule changes, the rulemaking adoption will update and formalize existing guidance regarding the regulatory status of spent foundry sand from the iron and steel casting industry as a coproduct when reused as a substitute material, including use constituting disposal.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking adoption will amend Chapter 335 by adopting federal RCRA revisions and implement state-initiated revisions to clarify the regulatory status of spent foundry sand.

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

This rulemaking initiative will update Chapter 335 to include federal rule changes that are both optional and non-optional. The revisions are set forth in parts of RCRA Clusters XXIV - XXVIII. Each cluster contains one or more checklists, and each checklist explains specific additions and revisions to the rule language.

RCRA Cluster XXIV - Checklist 233

Rule changes in Checklist 233 implement vacatur of parts of the federal definition of solid waste (DSW) ordered by the United States Court of Appeals for the District of Columbia Circuit by revising several recycling-related provisions associated with the DSW. The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations encourage reclamation in a way that does not result in increased risk to human health and the environment. The state previously

Re: Docket No. 2019-1058-RUL

adopted the 2015 DSW revisions and is recognized as broader in scope than the federal regulations, therefore this checklist is optional.

RCRA Cluster XXV - Checklist 237

Rule changes in Checklist 237 revise the existing hazardous waste generator regulatory program by reorganizing the regulations to improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. The checklist is not optional; however, some provisions are equivalent or less stringent.

RCRA Cluster XXVI - Checklists 238 and 239

Rule changes in Checklist 238 revise existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, this rule applies a confidentiality determination such that no person can assert confidential business information claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes. The EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation. This checklist is not optional.

Rule changes in Checklist 239 will adopt the methodology the EPA established to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest (e-Manifest) system that the EPA developed under the Hazardous Waste Electronic Manifest Establishment Act. Certain users of the hazardous waste manifest are required to pay a prescribed fee to the EPA for each electronic and paper manifest they use and submit to the national system. This checklist is not optional.

RCRA Cluster XXVII - Checklist 241

Rule changes in Checklist 241 establish cost-savings and streamlined standards for handling hazardous waste pharmaceuticals to better fit the operations of the healthcare sector while maintaining protection of human health and the environment. The rule will prohibit disposal of pharmaceuticals into the sewage system, exempt nicotine wastes from classification as a listed hazardous waste, and codify the exemption for unused pharmaceuticals that are expected to be legitimately reclaimed from being classified as a solid waste. This checklist is not optional; however, the provision delisting nicotine wastes is less stringent.

RCRA Cluster XXVIII - Checklist 242

Rule changes in Checklist 242 add hazardous waste aerosol cans to the universal waste program. This change will benefit the wide variety of establishments generating and managing hazardous waste aerosol cans, including the retail sector, by providing a clear, protective system for managing discarded aerosol cans,

Re: Docket No. 2019-1058-RUL

easing regulatory burdens, and promoting the collection and recycling of these cans. This checklist is optional.

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

In addition to federal revisions, revisions are being adopted to the state industrial waste program to codify a 1995 regulatory determination letter and provide an exclusion from the DSW for spent foundry sands generated by the iron and steel casting industries when they are appropriately recycled.

Statutory authority:

The rule change will be adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and 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. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission 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 will be affected by this rulemaking are businesses and industries involved in the generation, treatment, storage, recycling, disposal, import, and/or export of hazardous and industrial solid waste. The impacts to the affected industries will largely be beneficial by providing greater flexibility under the hazardous waste generator regulatory program and for managing or recycling hazardous secondary materials, for managing hazardous waste pharmaceuticals, and for managing hazardous waste aerosol cans.

The regulated community will see a benefit through greater utility of the subject foundry sands as a commodity for an appropriate end user. The market acceptance of the material should increase as the waste moniker is removed and the material is viewed as a valuable coproduct.

B.) Public:

The EPA has concluded that the adoption of these amendments will not present a substantial risk to human health or the environment. The public will benefit from greater compliance with hazardous waste management regulations. The public will also benefit

Re: Docket No. 2019-1058-RUL

from the foundry sands exclusion through use of this material as a commodity replacing other more expensive materials in general commerce.

C.) Agency programs:

By adoption of these rules, the state may pursue expanded RCRA authorization from the EPA.

Stakeholder meetings:

Staff received executive management approval to hold an informal advisory group for this rulemaking through an initial Rulemaking Draft Concept and Initiation Memo. A stakeholder meeting to collect informal comments was held July 26, 2019, in Austin. Spent foundry sand was not included in the stakeholder meeting since it was not included in the rule proposal at that time, no stakeholder meeting is planned for it. Additionally, a public hearing was held during the public comment period in Austin.

Public comment:

The commission held a virtual public hearing on August 23, 2021. The comment period closed on August 30, 2021. Timely comments were received from Household & Commercial Products Association, Kyle Beall, Texas Chemical Council, and Texas Industry Project, and untimely comments were received from CVS Health and Texas Molecular Holdings. The executive director considered all comments. Comments focused on the following topics:

- Support for the rulemaking, particularly the inclusion of the pharmaceutical and aerosol can rules.
- Implementation of state small quantity generator notification and renotification requirements.
- Questions and concerns regarding registration and reporting requirements.
- Implementation of adopted federal closure, pre-transport, and quick reference guide requirements.
- Recommendation to retain and enhance the verified recycler exclusion, and a request to clarify that hazardous secondary materials generated in Texas can be shipped out of state to a verified recycler for reclamation.
- Questions regarding the applicability of the pharmaceutical rules.

Significant changes from proposal:

There were no significant rule changes made; however, the following minor revisions were made to rule language in response to comments and to correct a typographical error:

- The catchline in §335.6(a) was revised in response to comments.
- The temporary waste code requirement in §335.13(e)(3) was expanded in response to comments.
- An incorrect citation was corrected in §335.272(b)(9).

Potential controversial concerns and legislative interest:

No controversial matters are anticipated from this rulemaking initiative to adopt federal rule revisions into state rules.

Re: Docket No. 2019-1058-RUL

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

No policy issues are anticipated.

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

To maintain RCRA authorization, amendments that are not optional must be adopted. The commission may elect to not incorporate the federal amendments that are optional, as the RCRA program authorization from the EPA would not be affected; however, the commission would not be in alignment with the EPA's RCRA program. Such differences may make compliance more difficult for the regulated community, especially for entities with facilities in multiple states. In this rulemaking, all federal rule changes are being included in the adopted rules.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: July 30, 2021

Anticipated *Texas Register* adoption publication date: January 28, 2022

Anticipated effective date: February 3, 2022

Six-month *Texas Register* filing deadline: January 30, 2022

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Attachments:

Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule
Hazardous Waste Generator Improvements Rule

Confidentiality Determinations for Hazardous Waste Export and Import Documents
Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste
Manifest System and Amendments to Manifest Regulations

Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the
P075 Listing for Nicotine

Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations

cc: Chief Clerk, 2 copies
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