

1999 (64 FR 49673); effective November 15, 1999.

On March 28, 2002, Texas submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. In 1991, Texas Senate Bill 2 created the Texas Natural Resource Conservation Commission (TNRCC) which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. House Bill 2912, Article 18, of the 77th Texas Legislature, 2001, changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ) and directed the TNRCC to adopt a timetable for phasing in the change of the agency's name. The TNRCC decided to make the change of the agency's name to the TCEQ effective September 1, 2002. The change of name became effective September 1, 2002, and the legislative history of the name change is documented in the Attorney General Statement. The TCEQ may perform any act authorized by law either as the TNRCC or as the TCEQ. *Id.* Therefore, references to the TCEQ are references to TNRCC and to its successor, the TCEQ. For further legislative history on the name-change (See, Act of June 15, 2001, 77th Leg. R. S., Ch 965, section 18.01, 2001 Tex. Gen. Laws 1985).

The TCEQ has primary responsibility for administration of laws and regulations concerning hazardous waste, under the Texas Solid Waste Disposal Act (codified in Chapter 361 of the Texas Health & Safety Code). The TCEQ is authorized to administer the RCRA program. However, the Railroad Commission (RRC) has jurisdiction over the discharge, storage, handling, transportation, reclamation, or disposal of waste materials (both hazardous and non hazardous) that result from the activities associated with the exploration, development, or production of oil or gas or geothermal resources and other activities regulated by the RRC. See, Tex. Water Code Ann. section 26.131 and Ch. 27 (Vernon 2000). A list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 Tex. Admin. Code section 3.8(a)(30) and at 30 Tex. Admin. Code section 335.1. Such wastes are termed "oil and gas wastes." The TCEQ has responsibility to administer the RCRA program, however, hazardous waste generated at natural gas or natural gas liquids processing plants or reservoir pressure

maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer those waste under RCRA. When the RRC is authorized by EPA to administer the RCRA program for these wastes, jurisdiction over such hazardous waste will transfer from the TCEQ to the RRC. The EPA has designated the TCEQ as the lead agency to coordinate RCRA activities between the two agencies. The EPA is responsible for the regulation of any hazardous waste for which TCEQ has not been previously authorized.

Further clarification of the jurisdiction between the TCEQ and the RRC can be found in a separate document. This document, a Memorandum of Understanding (MOU), became effective on May 31, 1998. The MOU clarified the jurisdictional boundaries between the agencies for the management and regulation of waste associated with exploration, development, production and refining of oil and gas. The MOU has been adopted by rule, which is an adoption by reference of the RRC's rule, and describes the division of responsibilities as well as the procedures for coordination between the two agencies. See, TCEQ's rule 30 Tex. Admin. Code section 7.117 and RRC's rule at 16 Tex. Admin. Code section 3.30.

The TCEQ has the rules necessary to implement EPA's RCRA Clusters VII through X revisions to the Federal Hazardous Waste Program promulgated from July 1, 1995, to June 30, 2000. The TCEQ authority to incorporate Federal rules by reference can be found at Texas Government Code Annotated section 311.027 (Vernon 1998) and adoption of the hazardous waste rules in general are pursuant to the following statutory provisions: (1) Tex. Water Code Ann. section 5.103 (Vernon 2000), effective September 1995, as amended, (TCEQ's authority to adopt any rules necessary to carry out its powers and duties); (2) Tex. Health & Safety Code Ann. section 361.024 (Vernon 2001), effective September 1, 1995, as amended (authority to adopt rules necessary to "establish minimum standards of operation for the management and control of solid waste"); and (3) Tex. Health & Safety Code Ann. section 361.078 (Vernon 2001), effective September 1, 1989 (specifically recognizing TCEQ's authority to adopt hazardous waste rules and to issue and enforce permits to the extent necessary to receive and maintain RCRA authorization). The TCEQ partially adopted the Hazardous Remediation

Waste Management Requirements (HWIR-Media). The following are the federal rules: 40 CFR 260.10, 261.4(g) through 261.4(g)(2)(ii), 264.1(j)(3)(i) through 264.1(j)(3), 264.554 through 264.554(m), 265.1(b), 268.2(c), 268.50(g) and 270.42 Appendix I because the HWIR-Media rule is an optional rule, States can partially adopt the rule if the State has in place other mechanism to address those hazardous waste. The TCEQ did not adopt 40 CFR 270.11(d)(1)–(3), 270.68, 270.73(a), 270.79, 270.80(a)–(f), 270.85(a)–(c), 270.95, 270.100, 270.105, 270.110 introduction through 270.110(i), 270.115, 270.120, 270.125, 270.130(a)–(b), 270.135 introduction through 270.135(c), 270.140 introduction through 270.140(c), 270.145(a) introduction through 270.145(d)(3), 270.150(a)–(g), 270.155(a) introduction through 270.155(b), 270.160 introduction through 270.160(c), 270.165, 270.170, 270.175(a) introduction through 270.175(c), 270.180(a)–(b), 270.185, 270.190(a)–(d), 270.195, 270.200, 270.205, 270.210 introduction through 270.210(b), 270.215(a), 270.215(a)–(d), 270.220(a)–(b), 270.225, and 270.230(a) through 270.230(e)(2). However, the TCEQ has a Office of Remediation which is responsible for the cleanup of releases of hazardous waste and pollutants so that threats to human health and the environment are controlled or eliminated. The TCEQ rules which address the Remedial Action Plan requirement of the HWIR-media rule are covered in the Texas Risk Reduction Program rules at 30 Tex. Admin. Code Ch. 350 and 30 Tex. Admin. Code section 350.75.

D. What Changes Are We Authorizing With Today's Action?

The State of Texas applied for final approval of its revision to its complete program in accordance with 40 CFR 271.21. Texas' revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1995, to June 30, 2000 (RCRA Clusters VII through X). Texas requirements are included in a chart with this document. The EPA is now making an immediate final decision, subject to receipt of written comments that oppose this action, that Texas' Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Texas final authorization for the following program revisions: