

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** July 24, 2009
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Dan Eden, Deputy Director
Office of Permitting and Registration
Docket No.: 2009-0800-RUL
Subject: Commission Approval for Proposed Rulemaking
Chapter 297, Water Rights, Substantive
SB 1711: Water Rights Sediment Control Pond Exemption
Rule Project No. 2009-031-297-PR

Reasons for the rule package:

Senate Bill (SB) 1711, Section 2, 81st Legislature, requires that the commission adopt rules to implement the amendments to Texas Water Code (TWC), 2009, §11.142(d) no later than January 1, 2010.

Under what authority are we proposing these changes?

The amendment to 30 TAC §297.27 and the proposed repeal of §297.30 are proposed under TWC §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Senate Bill 1711, 81st Legislature, 2009. The proposed amendment and repeal implement TWC, §11.142.

Is this rulemaking required by federal rule or state statute? Which ones?

This rulemaking is required by SB 1711, section 2.

Are there any legal deadlines by which these rules must be proposed, adopted, or effective?

Yes, SB 1711, section 2, requires that rules to implement amended TWC, §11.142(d), be adopted by the commission no later than January 1, 2010.

What issue(s) or problem(s) are we trying to solve?

The proposed rulemaking will enable operators of surface coal mining operations to meet environmental and safety regulations for fire or dust suppression without obtaining previously required water rights permits for diversions from sediment control reservoirs.

Why is it important that we do this rule package?

This rulemaking package meets the rulemaking mandates of SB 1711, section 2. This bill requires that rules be adopted to implement the provision of the TWC amended by this bill.

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Other important background or historical information.

SB 1711 was authored by Senator Glenn Hegar and sponsored by Representative Stephen Frost.

Scope of the rulemaking:

Changes required by federal rule: There are no changes required by federal rule.

Changes required by state statute: Add use of water from exempt sedimentation ponds for fire and dust suppression as an exemption to water right permitting under TWC, §11.142, as amended by SB 1711.

Staff recommendations that are not expressly required by federal rule or state statute:

Staff suggests repealing §297.30 because, by administrative oversight, it is duplicative text of the language being amended in §297.27.

Impact on the regulated community:

Who will be affected?

Operators of surface coal mining operations as these operations are defined under Natural Resources Code, Chapter 134.

Does it create a group of affected persons who were not affected previously? How?

No.

Will there be a fiscal impact? If so, estimate.

No.

Impact on the public:

Who will be affected

The public will not be affected.

Does it create a group of affected persons who were not affected previously? How?

No.

Will there be a fiscal impact? If so, estimate.

No.

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Impact on agency programs:

For Water Rights Permitting and Availability Section, the rulemaking would eliminate the requirement to permit the use of state water to satisfy environmental and safety regulations for fire or dust suppression from an exempt sediment control reservoir as part of a surface coal mining operations. Changes to procedures, staff requirements, guidance documents, and agency funding will not be necessary.

Stakeholder meetings:

Have any stakeholder meetings been held?

No.

With whom?

N/A

What were the general sentiments?

N/A

Were any changes made in response to stakeholder concerns?

N/A

Policy issues:

What policy issues are affected?

None.

Are any policies that are not currently based on rule being made into a rule?

No.

What are the consequences if this rulemaking is not approved to go forward?

The TCEQ will not meet the legislative rulemaking mandate in section 2 of SB 1711 regarding sedimentation ponds.

Are there alternatives?

No.

Potentially controversial matters:

There was no opposition expressed during legislative hearings for SB 1711.

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Key points in proposed rulemaking schedule:

Anticipated proposal date:	August 12, 2009
Anticipated <i>Texas Register</i> publication date:	August 28, 2009
Public hearing date (if any):	September 22, 2009
Public comment period:	August 28, 2009 – September 28, 2009
Anticipated adoption date:	December 9, 2009

Agency contacts:

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Attachments

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