

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: January 29, 2014

DATE OF REQUEST: January 10, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Patricia Durón, (512) 239-6087

CAPTION: Docket No. 2013-1110-RUL. Consideration of the adoption of amended Section 290.44 of 30 TAC Chapter 290, Public Drinking Water.

The adoption would implement House Bill 2781 from the 83rd Legislature, 2013, Regular Session, relating to structures that have rainwater harvesting systems (RWHS) and are connected to a public water system (PWS). The adopted rulemaking would amend Section 290.44(j) and its subdivisions to: remove the phrase "for indoor use" from Section 290.44(j); amend Section 290.44(j)(1) to require that a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a back-up supply must have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater; remove the word "indoor" from the phrase "for indoor potable purposes" in Section 290.44(j)(2); remove the phrase "for use for potable purposes" from renumbered Section 290.44(j)(3) (existing Section 290.44(j)(1)); and add Section 290.44(j)(4) to require that the PWS used as a back-up supply for the RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure. The proposed rule was published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7083). (Cindy Haynie, Kayla Murray) (Rule Project No. 2013-043-290-OW)

L'Oreal Stepney, P.E.
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Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: January 10, 2014

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2013-1110-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
HB 2781: Rainwater Harvesting
Rule Project No. 2013-043-290-OW

Background and reason(s) for the rulemaking:

The adopted rulemaking is required to implement the changes to the Texas Health and Safety Code (THSC), §341.042, from House Bill (HB) 2781, 83rd Legislature, 2013, by Representative Allen Fletcher. These changes relate to structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS). Some of the changes required by HB 2781 were implemented through Rule Project No. 2011-057-290-OW, which was in progress when the bill passed. Rule Project No. 2011-057-290-OW was effective on September 12, 2013.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking amends Chapter 290 to:

- remove the phrase "for indoor use" from §290.44(j);
- require a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a back-up supply to have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater in §290.44(j)(1)
- remove the word "indoor" from the phrase "for indoor potable purposes" in §290.44(j)(2);
- remove the phrase "for use for potable purposes" from renumbered §290.44(j)(3) (existing §290.44(j)(1)); and
- require that the PWS used as a back-up supply for a RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure in adopted §290.44(j)(4).

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

There are no federal changes. The adopted rulemaking implements HB 2781.

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

To maintain consistency with Chapter 290's established terminology, the executive director's staff adopted rulemaking refers to a back-up supply instead of an auxiliary water supply or an auxiliary water source as referenced in the legislation. Also, the executive

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director's staff renumbered existing §290.44(j)(1) to (j)(3) to improve organizational structure.

Statutory authority:

Texas Water Code, §§5.102, 5.103, and 5.105; and THSC, §341.042.

Effect on the:

A.) Regulated community:

The adopted rulemaking does not impact the regulated community.

B.) Public:

The adopted rule would not have a significant fiscal impact on individuals as they would make the decision whether it is in their interest to install a RWHS connected to an auxiliary water supply. No adverse fiscal implications are anticipated for small or micro-businesses as a result of the adopted rule. The adopted rule is not expected to have a fiscal impact on large businesses unless they choose to install a RWHS with a back-up supply.

C.) Agency programs:

The adopted rulemaking does not impact agency programs.

Stakeholder meetings:

The TCEQ did not hold a stakeholder meeting; however, the TECQ held a public hearing for this rule on November 5, 2013, in Austin, Texas. At the November 5, 2013, public hearing no one offered comments on the proposed rule.

Public comment:

This rule's comment period began on October 11, 2013, and closed on November 12, 2013. The commission received written comments from Innovative Water Solutions, LLC (IWS); Pair Plumbing and Septic; Texas Rainwater Catchment Association; and one individual.

No commenters expressed opposition to the entire rule as proposed. IWS suggested alternative rule language. Texas Rainwater Catchment Association requested the commission amend the statute. IWS and Texas Rainwater Catchment Association commented that the legislation was ambiguous.

The written comments are summarized in the Response to Comments section of the preamble.

Significant changes from proposal:

There are no changes from proposal to adoption. When responding to comments, the executive director's staff referred the commenters to existing definitions within Chapter 290.

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Potential controversial concerns and legislative interest:

There continues to be heightened interest in rainwater harvesting. Stakeholders may seek to clarify language they feel to be ambiguous through legislative action.

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

No.

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

Without approval, Chapter 290 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date:	October 11, 2013
Anticipated Texas Register adoption publication date:	February 14, 2014
Anticipated effective date:	February 20, 2014
Six-month Texas Register filing deadline:	April 11, 2014

Agency contacts:

Cindy Haynie, Rule Project Manager, (512) 239-3465, Water Supply Division
Kayla Murray, Staff Attorney, (512) 239-4761
Patricia Durón, Texas Register Coordinator, (512) 239-6087

Attachments

HB 2781

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Office of General Counsel
Cindy Haynie
Patricia Durón

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendment to §290.44 *without change* to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7083) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The purpose of the adopted amendment is to reflect changes to the Texas Health and Safety Code (THSC), §341.042, from House Bill (HB) 2781, 83rd Legislature, 2013.

These changes relate to structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS). Some of the changes to §290.44(j) required by HB 2781 were implemented through Rule Project No. 2011-057-290-OW, which was effective on September 12, 2013.

Section Discussion

§290.44, Water Distribution

The commission adopts §290.44(j) and its subdivisions to implement THSC, §341.042, as amended by HB 2781, for structures that have RWHSs and are connected to a PWS.

The adopted rulemaking: removes the phrase "for indoor use" from §290.44(j), requiring all structures that are connected to a PWS and have an RWHS to have appropriate cross-connection safeguards; adds §290.44(j)(1) to require that a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a

back-up supply must have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater; removes the word "indoor" from the phrase "for indoor potable purposes" in §290.44(j)(2), which refers to a RWHS that is connected to a PWS and must be installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist; adds §290.44(j)(3), by renumbering existing §290.44(j)(1), which requires a person who intends to connect a RWHS to a PWS to give written notice to the municipality in which the RWHS is located or the owner or operator of the PWS, as amended to remove the phrase "for use for potable purposes," to improve the rule's organizational structure; and, adds §290.44(j)(4) to require that the PWS used as a back-up supply for the RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure. HB 2781 uses the term "auxiliary water supply" to refer to a PWS that is being used as the back-up supply for a privately owned RWHS, however, throughout Chapter 290, the term "auxiliary" is used to describe a source that is connected to the PWS, such as a well that provides additional water for a surface water system. In order to maintain consistency with Chapter 290's established terminology, the executive director's staff refers to a back-up supply instead of an auxiliary water supply or an auxiliary water source as referenced in the legislation.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have a RWHS and are connected to a PWS. The bill also contains language that states that a municipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing RWHSs in Texas. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking is not adopted solely under the general powers of the agency, but specifically under THSC, §341.042, which allows the commission to adopt and enforce rules related to harvested rainwater.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007.

The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have RWHSs and are connected to a PWS. The bill also contains language that states that a municipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS. The adopted rulemaking would substantially advance these purposes by amending Chapter 290 to incorporate the statutory requirements.

Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This adopted rulemaking will primarily affect those persons who have a structure that has a RWHS and is connected to a PWS; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code,

Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the Coastal Management Program.

Public Comment

The commission held a public hearing on November 5, 2013. At the November 5, 2013, public hearing no one offered comments on the proposed rule. The comment period closed on November 12, 2013. The commission received written comments from Innovative Water Solutions, LLC (IWS); Pair Plumbing and Septic; Texas Rainwater Catchment Association; and one individual. No commenters expressed opposition to the entire rule as proposed. IWS suggested alternative rule language. Texas Rainwater

Catchment Association requested the commission amend the statute. The written comments are summarized in the Response to Comments section of the preamble.

Response to Comments

An individual requested that the commission protect the brown pelicans.

The commission responds that the adopted rule addresses RWHSs that are connected to a PWS and does not pertain to brown pelicans. This comment is outside the scope of this rulemaking. No change has been made in response to this comment.

Pair Plumbing and Septic expressed interest "in seeing how the harvesting of rain water can economically be done without cross-connecting to raw sewerage/Septic systems and Domestic Potable water systems."

The commission responds that Chapter 290 addresses RWHSs that are connected to a PWS. The adopted rule prohibits RWHSs from being connected to a PWS without proper cross-connection protection. The commission's stated mission is to "protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." Allowing

a RWHS to be connected to a raw sewerage/septic system would be counter to that objective as raw sewage contains various pathogens (bacteria, parasites, and viruses) and may contain chemical toxins (heavy metals, pesticides, and pharmaceuticals). No change has been made in response to this comment.

Pair Plumbing and Septic also commented that conventional septic systems should be installed, instead of aerobic septic systems, in order to replenish ground water.

The commission responds that the adopted rule addresses RWHSs that are connected to a PWS and does not pertain to septic systems. This comment is outside the scope of this rulemaking; therefore, no change has been made in response to this comment.

IWS commented that the term "connection" in §290.44(j) is ambiguous and can be interpreted in different ways. Depending on the context, it could be construed to mean a metered residence or a physical connection between RWHS piping and PWS piping and that any residence with a RWHS that is also supplied by a PWS would be required to install a reduced-pressure principle backflow prevention assembly device, regardless of the size, design, or use of the privately owned RWHS. Additionally, the commission's requirement to install a reduced-pressure principle backflow prevention assembly

device would increase the RWHSs cost of installation. Texas Rainwater Catchment Association commented that they seek a clear and universal understanding of the language found in the laws, rules, and regulations relating to rainwater harvesting. Texas Rainwater Catchment Association also requested the commission "amend the code language" in response to their comment.

The commission responds that the words and terms used within Chapter 290 have the meanings defined in §290.38, unless otherwise indicated. Those terms are clearly defined and consistently used by the commission in this rulemaking. The commission has established a definition for "connection" in existing §290.38(15) as, "A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system ... For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if: (A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption); (B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or (C) the executive

director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards." Based upon that definition, the presence of a backflow prevention device or an air gap does not mean that the customer's water service is then disconnected from the PWS, thus creating a stand-alone private water system. The commission also responds that, according to §290.47(i), the specific type of backflow prevention device required for a RWHS is either an air gap or a reduced-pressure principle backflow prevention assembly. While the commission requires the use of a backflow prevention device, it is up to the local municipality to determine whether a reduced-pressure principle backflow prevention assembly device or an air gap is required. Further, the commission responds that this rule implements only the changes made by HB 2781, 83rd Legislature, 2013, which amended THSC, §341.042. If additional legislative changes are implemented, the commission will evaluate those changes and if necessary, consider implementing a rulemaking. No changes have been made in response to these comments.

Texas Rainwater Catchment Association commented that the term "connection" appears in several sections of the proposed rule and it is their position that once a backflow

prevention assembly device is installed downstream of the water meter, the metered water supply is appropriately protected.

The commission requires appropriate cross-connection control protections for structures that are connected to PWSs and have a RWHS. The commission agrees that the appropriate backflow prevention assembly, if properly maintained and tested, does appropriately protect the PWS. No change has been made in response to this comment.

IWS commented that in §290.44(j)(1), the use of "connected" refers to the physical relationship between the RWHS and the PWS supply when the PWS is intended to provide back-up water to the RWHS tank. IWC further commented that it takes no issue with the language as proposed.

The commission acknowledges this comment. No change has been made in response to this comment.

IWS commented that if the term "connection" as used in §290.44(j)(2) is meant to mirror the term's use in §290.44(j), the rule language places restrictions on all RWHSs installed within the jurisdiction of a PWS (if the property is a metered residence) where the collected water is suitable for drinking, making it illegal for a private residence

(other than the residences of master or journeyman plumbers) to capture, store, and treat rainwater for any use, regardless of a physical separation from the PWS and the RWHS's piping. IWS also commented that in §290.44(j)(2), "connection" could mean that a RWHS must be installed and maintained by a master plumber only when there is a physical connection between the RWHS and the PWS and that "the only interpretation of this language that would be consistent with the rest of Chapter 290 would be one that made clear that the term 'connection' points to the nature of the physical relationship between PWS piping and RWHS piping."

The commission responds that the words and terms used within Chapter 290 have the meanings defined in §290.38. The commission has established a definition for "connection" in existing §290.38(15), as stated in this section of the preamble. No change has been made in response to this comment.

IWS commented that in §290.44(j)(4) the term "potable" is not present and this subsection does not clearly define how the use of the rainwater relates to the plumbing of a structure. IWS provided a drawing with their submitted rule comments and asked whether §290.44(j)(4) be interpreted to mean that installation of RWHSs used for irrigation supply would be prohibited if it includes a back-up water connection to a PWS, regardless of the cross-connection safeguards in place. In referring to their

provided drawing, IWS questioned: 1) whether a reduced-pressure principle backflow prevention assembly device or air gap breaks the connection from the PWS; and 2) if so, why there is a need to prohibit the connection to a structure when the connection is made after the appropriate cross-connection safeguards.

The commission responds that HB 2781 was silent regarding the use of potable versus non-potable when amending THSC, §341.042(b-3). HB 2781 amended THSC, §341.042(b-3), to specify that "the public water supply system used as an auxiliary water source may be connected only to the water storage tank and may not be connected to the plumbing of a structure." The legislation does not prohibit the installation of a RWHS as long as appropriate cross-connection safeguards are in place. Based upon the definition of a connection in §290.38(15), the presence of a backflow prevention device or an air gap does not mean that the customer's water service is disconnected from the PWS. Moreover, the commission is not prohibiting the connection to a structure when the connection is made after appropriate cross-connection safeguards are in place; however, the commission is prohibiting the connection to the internal plumbing of a structure to implement the provisions of HB 2781, as passed by the 83rd Legislature. No changes have been made in response to this comment.

**SUBCHAPTER D: RULES AND REGULATIONS FOR PUBLIC WATER
SYSTEMS
§290.44**

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.042, which allows the commission to adopt rules relating to the domestic use of harvested rainwater. Therefore, the TWC and THSC authorize rulemaking that amend §290.44, which relates to structures that have rainwater harvesting systems (RWHS) and are connected to a public water system (PWS).

The adopted amendment implements the language set forth in House Bill (HB) 2781, 83rd Legislature, 2013, which requires the commission to amend the existing rule for structures that have RWHSs and are connected to a PWS by requiring such structures to have appropriate cross-connection safeguards and to be installed by a specially-licensed plumber. Additionally, HB 2781 requires that a RWHS that is connected to a PWS for use as a back-up supply may not also have the plumbing of the structure connected to the PWS. HB 2781 also removes the phrase "for indoor use" when referring to such structures.

§290.44. Water Distribution.

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed, and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial, and other recognized standards utilized by licensed professional engineers.

(1) All newly installed pipes and related products must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(2) All plastic pipes for use in public water systems must also bear the National Sanitation Foundation Seal of Approval (NSF-pw) and have an ASTM design pressure rating of at least 150 pounds per square inch (psi) or a standard dimension ratio of 26 or less.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted or relocated for use in any public drinking water supply.

(4) Water transmission and distribution lines must be installed in accordance with the manufacturer's instructions. However, the top of the waterline must be located below the frost line and in no case shall the top of the waterline be less than 24 inches below ground surface.

(5) The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

(A) for installation or repair of any public water supply; and

(B) for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(c) Minimum waterline sizes. The minimum waterline sizes are for domestic flows only and do not consider fire flows. Larger pipe sizes shall be used when the licensed professional engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new waterline less than two inches in diameter will be allowed to be installed in a public water system distribution system. These minimum line sizes do not apply to individual customer service lines.

Figure: 30 TAC §290.44(c) (No change to the figure as it currently exists in TAC.)

(d) Minimum pressure requirement. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide

fire fighting capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. The distribution system of public water systems that are also affected utilities must be designed to meet the requirements of §290.45(h) of this title (relating to Minimum Water System Capacity Requirements).

(1) Air release devices shall be installed in the distribution system at all points where topography or other factors may create air locks in the lines. Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(2) When service is to be provided to more than one pressure plane or when distribution system conditions and demands are such that low pressures develop, the method of providing increased pressure shall be by means of booster pumps taking suction from storage tanks. If an exception to this requirement is desired, the designing engineer must furnish for the executive director's review all planning material for booster pumps taking suction from other than a storage tank. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls, and other

pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 psi must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures, less than 20 psi, adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Service connections that require booster pumps taking suction from the public water system lines must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. Where these types of installations are necessary, the preferred method of pressure maintenance consists of an air gapped connection with a storage tank and subsequent repressurization facilities.

(4) Each community public water system shall provide accurate metering devices at each residential, commercial, or industrial service connection for the

accumulation of water usage data. A water system that furnishes the services or commodity only to itself or its employees when that service or commodity is not resold to or used by others is exempt from this requirement.

(5) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design.

(6) The system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines less than two inches in diameter will not require flush valves if they end at a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged to ultimately connect the ends to provide circulation.

(e) Location of waterlines. The following rules apply to installations of waterlines, wastewater mains or laterals, and other conveyances/appurtenances identified as potential sources of contamination. Furthermore, all ratings specified shall be defined by ASTM or AWWA standards unless stated otherwise. New mains, service lines, or laterals are those that are installed where no main, service line, or lateral previously

existed, or where existing mains, service lines, or laterals are replaced with pipes of different size or material.

(1) When new potable water distribution lines are constructed, they shall be installed no closer than nine feet in all directions to wastewater collection facilities. All separation distances shall be measured from the outside surface of each of the respective pieces.

(2) Potable water distribution lines and wastewater mains or laterals that form parallel utility lines shall be installed in separate trenches.

(3) No physical connection shall be made between a drinking water supply and a sewer line. Any appurtenance shall be designed and constructed so as to prevent any possibility of sewage entering the drinking water system.

(4) Where the nine-foot separation distance cannot be achieved, the following criteria shall apply.

(A) New waterline installation - parallel lines.

(i) Where a new potable waterline parallels an existing, non-pressure or pressure rated wastewater main or lateral and the licensed professional engineer licensed in the State of Texas is able to determine that the existing wastewater main or lateral is not leaking, the new potable waterline shall be located at least two feet above the existing wastewater main or lateral, measured vertically, and at least four feet away, measured horizontally, from the existing wastewater main or lateral. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater main or lateral.

(ii) Where a new potable waterline parallels an existing pressure rated wastewater main or lateral and it cannot be determined by the licensed professional engineer if the existing line is leaking, the existing wastewater main or lateral shall be replaced with at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the new wastewater line, measured vertically, and at least four feet away, measured horizontally, from the replaced wastewater main or lateral.

(iii) Where a new potable waterline parallels a new wastewater main, the wastewater main or lateral shall be constructed of at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above

the wastewater main or lateral, measured vertically, and at least four feet away, measured horizontally, from the wastewater main or lateral.

(B) New waterline installation - crossing lines.

(i) Where a new potable waterline crosses an existing, non-pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. If the existing wastewater main or lateral is disturbed or shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(ii) Where a new potable waterline crosses an existing, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of

the wastewater main or lateral. If the existing wastewater main or lateral shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(iii) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and the standard pipe segment length of the wastewater main or lateral is at least 18 feet, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(iv) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and a standard length of the wastewater pipe is less than 18 feet in length, the potable water pipe segment shall be centered over the wastewater line. The materials and method of installation shall conform to one of the following options.

(I) Within nine feet horizontally of either side of the waterline, the wastewater pipe and joints shall be constructed with pipe material having a minimum pressure rating of at least 150 psi. An absolute minimum vertical separation distance of two feet shall be provided. The wastewater main or lateral shall be located below the waterline.

(II) All sections of wastewater main or lateral within nine feet horizontally of the waterline shall be encased in an 18-foot (or longer) section of pipe. Flexible encasing pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The encasing pipe shall be centered on the waterline and shall be at least two nominal pipe diameters larger than the wastewater main or lateral. The space around the carrier pipe shall be supported at five-foot (or less) intervals with spacers or be filled to the springline with washed sand. Each end of the casing shall be sealed with watertight non-shrink cement grout or a manufactured watertight seal. An absolute minimum separation distance of six inches between the encasement pipe and the waterline shall be provided. The wastewater line shall be located below the waterline.

(III) When a new waterline crosses under a wastewater main or lateral, the waterline shall be encased as described for wastewater mains or laterals in subclause (II) of this clause or constructed of ductile iron or steel

pipe with mechanical or welded joints as appropriate. An absolute minimum separation distance of one foot between the waterline and the wastewater main or lateral shall be provided. Both the waterline and wastewater main or lateral must pass a pressure and leakage test as specified in AWWA C600 standards.

(v) Where a new potable waterline crosses a new, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater line such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the center line of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pressure rating of at least 150 psi. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(vi) Where cement stabilized sand bedding is required, the cement stabilized sand shall have a minimum of 10% cement per cubic yard of cement stabilized sand mixture, based on loose dry weight volume (at least 2.5 bags of cement per cubic yard of mixture). The cement stabilized sand bedding shall be a minimum of six inches above and four inches below the wastewater main or lateral. The use of brown

coloring in cement stabilized sand for wastewater main or lateral bedding is recommended for the identification of pressure rated wastewater mains during future construction.

(5) Waterline and wastewater main or lateral manhole or cleanout separation. The separation distance from a potable waterline to a wastewater main or lateral manhole or cleanout shall be a minimum of nine feet. Where the nine-foot separation distance cannot be achieved, the potable waterline shall be encased in a joint of at least 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five-foot intervals with spacers or be filled to the springline with washed sand. The encasement pipe shall be centered on the crossing and both ends sealed with cement grout or manufactured sealant.

(6) Location of fire hydrants. Fire hydrants shall not be installed within nine feet vertically or horizontally of any wastewater main, wastewater lateral, or wastewater service line regardless of construction.

(7) Location of potable or raw water supply or suction lines. Suction mains to pumping equipment shall not cross wastewater mains, wastewater laterals, or

wastewater service lines. Raw water supply lines shall not be installed within five feet of any tile or concrete wastewater main, wastewater lateral, or wastewater service line.

(8) Proximity of septic tank drainfields. Waterlines shall not be installed closer than ten feet to septic tank drainfields.

(f) Sanitary precautions and disinfection. Sanitary precautions, flushing, disinfection procedures, and microbiological sampling as prescribed in AWWA standards for disinfecting water mains shall be followed in laying waterlines.

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

(2) Special precautions must be taken when waterlines are laid under any flowing or intermittent stream or semipermanent body of water such as marsh, bay, or estuary. In these cases, the water main shall be installed in a separate watertight pipe encasement and valves must be provided on each side of the crossing with facilities to allow the underwater portion of the system to be isolated and tested to determine that there are no leaks in the underwater line. Alternately, and with the permission of the executive director, the watertight pipe encasement may be omitted.

(3) New mains shall be thoroughly disinfected in accordance with AWWA Standard C651 and then flushed and sampled before being placed in service. Samples shall be collected for microbiological analysis to check the effectiveness of the disinfection procedure. Sampling shall be repeated if contamination persists. A minimum of one sample for each 1,000 feet of completed waterline will be required or at the next available sampling point beyond 1,000 feet as designated by the design engineer.

(g) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany the submitted planning material.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second

source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(h) Backflow, siphonage.

(1) No water connection from any public drinking water supply system shall be allowed to any residence or establishment where an actual or potential contamination hazard exists unless the public water facilities are protected from contamination.

(A) At any residence or establishment where an actual or potential contamination hazard exists, additional protection shall be required at the meter in the form of an air gap or backflow prevention assembly. The type of backflow prevention assembly required shall be determined by the specific potential hazard identified in §290.47(i) of this title (relating to Appendices).

(B) At any residence or establishment where an actual or potential contamination hazard exists and an adequate internal cross-connection control program is in effect, backflow protection at the water service entrance or meter is not required.

(i) An adequate internal cross-connection control program shall include an annual inspection and testing by a licensed backflow prevention assembly tester on all backflow prevention assemblies used for health hazard protection.

(ii) Copies of all such inspection and test reports must be obtained and kept on file by the water purveyor.

(iii) It will be the responsibility of the water purveyor to ensure that these requirements are met.

(2) No water connection from any public drinking water supply system shall be connected to any condensing, cooling, or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements of paragraph (1) of this subsection. Water from such systems cannot be returned to the potable water supply.

(3) Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

(4) All backflow prevention assemblies that are required according to this section and associated table located in §290.47(i) of this title shall be tested upon installation by a licensed backflow prevention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a licensed backflow prevention assembly tester.

(A) Backflow prevention assembly testers shall have completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license as a backflow prevention assembly tester.

(i) Backflow prevention assembly testers are qualified to test and repair assemblies on any domestic, commercial, industrial, or irrigation service.

(ii) Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshal's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

(B) Gauges used in the testing of backflow prevention assemblies shall be tested for accuracy annually in accordance with the University of Southern California's Manual of Cross-Connection Control or the AWWA's Recommended Practice for Backflow Prevention and Cross-Connection Control (AWWA Manual, M14). Public water systems shall require testers to include test gauge serial numbers on "Test and Maintenance" report forms and ensure testers have gauges tested for accuracy.

(C) A test report must be completed by the recognized backflow prevention assembly tester for each assembly tested. The signed and dated original must be submitted to the public water supplier for recordkeeping purposes. Any form which varies from the format specified in Appendix F located in §290.47(f) of this title must be approved by the executive director prior to being placed in use.

(5) The use of a backflow prevention assembly at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

(6) At any residence or establishment where there is no actual or potential contamination hazard, a backflow prevention assembly is not required.

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner.

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows.

(A) The tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, or the NSF. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is faced downward and located to minimize the possibility of drawing contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion-resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water only. The hoses shall conform to ANSI/NSF Standard 61 and must be certified by an entity recognized by the commission. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start-up during intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least one sample per month from each tank shall be collected and submitted for microbiological analysis to one of the commission's approved laboratories for each month of operation.

(K) A minimum free chlorine residual of 0.5 milligrams per liter (mg/L) or, if chloramines are used as the primary disinfectant, a chloramine residual of 1.0 mg/L (measured as total chlorine) shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection, and source of water shall be maintained.

(j) If a structure is connected to a public water supply system and has a rainwater harvesting system [for indoor use], the structure must have appropriate cross-connection safeguards in accordance with subsection (h)(1) of this section.

(1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that is connected to a public water system for a back-up supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the public water system [A person who intends to connect a rainwater harvesting system to a public water system for use for potable purposes must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located].

(2) At each residence or facility where water from a rainwater harvesting system is used for [indoor] potable purposes and there is a connection to a public water system, the public water system shall ensure that the rainwater harvesting system is installed and maintained by a master plumber or journeyman plumber licensed by the

Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist.

(3) A person who intends to connect a rainwater harvesting system to a public water system must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located.

(4) The public water system used as a back-up supply for the rainwater harvesting system may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

(2) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(g) A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, Article 4413(36), §1.03 (moved to Texas Occupations Code, §2301.002, effective June 1, 2003), is not eligible for title receipt or registration in an affected EAC program county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

(h) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must [shall] comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision for vehicles primarily operated in I/M program areas.

§114.83. Waivers and Extensions.

A motorist may apply to the Texas Department of Public Safety for a waiver or an extension as specified in 37 TAC Chapter 23 (relating to Vehicle Inspection), [§23.93 (relating to Vehicle Emissions Inspection Requirements),] which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

§114.84. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the Texas Department of Public Safety (DPS), unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance (I/M) requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the executive director shall consult with the DPS.

(b) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Effective March 1, 2015, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(c) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS[₅] unless the certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(d) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the

DPS, without first obtaining and maintaining DPS recognition. Requirements to become a DPS Recognized Emission Repair Technician are contained in 37 TAC Chapter 23 (relating to Vehicle Inspection) [§23.93 (relating to Vehicle Emissions Inspection Requirements)].

§114.87. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station in an affected early action compact program county. This fee must include one free retest if the vehicle fails the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed; the motorist submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed; and the retest is conducted within 15 days of the initial emissions test. In Travis and Williamson Counties beginning September 1, 2005 and ending February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must [shall] collect a fee not to exceed \$16 and [shall] remit \$4.50 to the Texas Department of Public Safety (DPS) for each on-board diagnostic and two-speed idle test. In Travis and Williamson Counties effective March 1, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title must collect a fee not to exceed \$11.50 for each on-board diagnostic and two-speed idle test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test[₅] at an inspection station designated by the DPS[₅] must be the same as the amounts specified in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections resulting from written notification that the subject vehicle failed on-road testing (remote sensing) must [shall] charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) In Travis and Williamson Counties, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 27, 2013.

TRD-201304272

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 10, 2013

For further information, please call: (512) 239-2548



CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER D. RULES AND
REGULATIONS FOR PUBLIC WATER
SYSTEMS

30 TAC §290.44

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes an amendment to §290.44.

Background and Summary of the Factual Basis for the Proposed Rule

The purpose of the proposed amendment is to reflect changes to the Texas Health and Safety Code (THSC), §341.042, made during the 83rd Legislature, 2013, in House Bill (HB) 2781. These changes relate to structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS). Some of the changes to §290.44(j) required by HB 2781 were implemented through Rule Project No. 2011-057-290-OW, which was in progress when the bill passed. Rule Project No. 2011-057-290-OW is scheduled to be considered for adoption during the August 21, 2013, agenda and may be published in the *Texas Register* on September 6, 2013.

Section Discussion

§290.44, *Water Distribution*

The commission proposes to amend §290.44(j) and its subdivisions to implement THSC, §341.042, as amended by HB 2781, for structures that have RWHSs and are connected to a PWS. The proposed rulemaking would: remove the phrase "for indoor use" from §290.44(j), requiring all structures that are connected to a PWS and have a RWHS to have appropriate cross-connection safeguards; add §290.44(j)(1) to require that a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a back-up supply must have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater; remove the word "indoor" from the phrase "for indoor potable purposes" in §290.44(j)(2), which refers to a RWHS that is connected to a PWS and must be installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist; add §290.44(j)(3), by renumbering existing §290.44(j)(1), which requires a person who intends to connect a RWHS to a PWS to give written notice to the municipality in which the RWHS is located or the owner or operator of the PWS, as amended to remove the phrase "for use for potable purposes," to improve the rule's organizational structure; and, add §290.44(j)(4) to require that the PWS used as a back-up supply for the RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure. HB 2781 uses the term "auxiliary water supply" to refer to a PWS that is being used as the back-up supply for a privately owned RWHS, however, throughout Chapter 290, the term "auxiliary" is used to describe a source that is connected to the PWS, such as a well that provides additional water for a surface water system. In order to maintain consistency with Chapter 290's established terminology, the executive director's staff proposes to refer to a back-up supply instead of an auxiliary water supply or an auxiliary water source as referenced in the legislation.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule implements the provisions of HB 2781 relating to RWHSs that have auxiliary water sources. If a RWHS uses a PWS as an auxiliary water source, the proposed rule would allow connection of the PWS only to the water storage tank. The PWS, when used as an auxiliary water supply to a RWHS, could not be connected to the plumbing of a structure under the proposed rule. The proposed rule also requires a backflow prevention assembly or an air gap to be installed for a privately owned RWHS with a capacity of more than 500 gallons when it has an auxiliary water supply to ensure a physical separation between the RWHS and the auxiliary water supply.

The proposed rule is not expected to have a fiscal impact on state agencies or units of local government. If there are any state agencies or units of local government that have facilities that use RWHSs that are connected to auxiliary water supplies, they would be expected to already have backflow protection in place. But if they do not, then the installation of an air gap or a backflow prevention assembly can be installed for minimal costs. An owner of a RWHS could pay as much as \$300 to \$500 for one time installation costs and \$100 per year for annual inspections of the control.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law and a decreased risk of waterborne disease when RWHSs are used.

The proposed rule would not have a significant fiscal impact on individuals since they would make the decision whether it is in their interest to install a RWHS connected to an auxiliary water supply. Costs to connect directly to a storage tank instead of the plumbing of a structure are not expected to be significant. Costs for an air gap are expected to be minimal, and the costs for a backflow prevention assembly are not expected to be significant (\$300 to \$500 for one time installation costs and \$100 per year for annual inspections of the control).

The proposed rule is not expected to have a fiscal impact on large businesses unless they choose to install a RWHS with an auxiliary water source. Costs to install controls required by this rule are expected to have a minimal fiscal impact (and are expected to cost the same as that incurred by individuals) if such a system is installed.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. If a small business chooses to install a RWHS with an auxiliary water source, it would experience the same types of costs as those incurred by individuals or a large business. These costs are expected to have a minimal fiscal impact.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to comply with state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not re-

quired because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have a RWHS and are connected to a PWS. The bill also contains language that states that a municipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rule is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing RWHSs in Texas. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking is not proposed solely under the general powers of the agency, but specifically under THSC, §341.042, which allows the commission to adopt and enforce rules related to harvested rainwater.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rule and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have RWHSs and are connected to a PWS. The bill also contains language that states that a munic-

ipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS. The proposed rulemaking would substantially advance these purposes by amending Chapter 290 to incorporate the statutory requirements.

Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This proposed rulemaking will primarily affect those persons who have a structure that has a RWHS and is connected to a PWS; this would not be an effect on real property. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on November 5, 2013, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-043-290-OW. The comment period closes November 12, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Cindy Haynie, Water Supply Division, Plan and Technical Review Section, (512) 239-3465.

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.042, which allows the commission to adopt rules relating to the domestic use of harvested rainwater. Therefore, the TWC and THSC authorize rulemaking that amend §290.44, which relates to structures that have rainwater harvesting systems (RWHS) and are connected to a public water system (PWS).

The proposed amendment implements the language set forth in House Bill (HB) 2781, which requires the commission to amend the existing rule for structures that have RWHSs and are connected to a PWS by requiring such structures to have appropriate cross-connection safeguards and to be installed by a specially-licensed plumber. Additionally, HB 2781 requires that a RWHS that is connected to a PWS for use as a back-up supply may not also have the plumbing of the structure connected to the PWS. HB 2781 also removes the phrase "for indoor use" when referring to such structures.

§290.44. Water Distribution.

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed, and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial, and other recognized standards utilized by licensed professional engineers.

(1) All newly installed pipes and related products must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(2) All plastic pipes for use in public water systems must also bear the National Sanitation Foundation Seal of Approval (NSF-pw) and have an ASTM design pressure rating of at least 150 pounds per square inch (psi) or a standard dimension ratio of 26 or less.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted or relocated for use in any public drinking water supply.

(4) Water transmission and distribution lines must be installed in accordance with the manufacturer's instructions. However, the top of the waterline must be located below the frost line and in no case shall the top of the waterline be less than 24 inches below ground surface.

(5) The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

(A) for installation or repair of any public water supply; and

(B) for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(c) Minimum waterline sizes. The minimum waterline sizes are for domestic flows only and do not consider fire flows. Larger pipe sizes shall be used when the licensed professional engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new waterline less than two inches in diameter will be allowed to be installed in a public water system distribution system. These minimum line sizes do not apply to individual customer service lines.

Figure: 30 TAC §290.44(c) (No change.)

(d) Minimum pressure requirement. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide fire fighting capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. The distribution system of public water systems that are also affected utilities must be designed to meet the requirements of §290.45(h) of this title (relating to Minimum Water System Capacity Requirements).

(1) Air release devices shall be installed in the distribution system at all points where topography or other factors may create air locks in the lines. Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(2) When service is to be provided to more than one pressure plane or when distribution system conditions and demands are such that low pressures develop, the method of providing increased pressure shall be by means of booster pumps taking suction from storage tanks. If an exception to this requirement is desired, the designing engineer must furnish for the executive director's review all planning material for booster pumps taking suction from other than a storage tank. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls, and other pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 psi must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures, less than 20 psi, adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Service connections that require booster pumps taking suction from the public water system lines must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. Where these types of installations are necessary, the preferred method of pressure maintenance consists of an air gapped connection with a storage tank and subsequent repressurization facilities.

(4) Each community public water system shall provide accurate metering devices at each residential, commercial, or industrial service connection for the accumulation of water usage data. A wa-

ter system that furnishes the services or commodity only to itself or its employees when that service or commodity is not resold to or used by others is exempt from this requirement.

(5) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design.

(6) The system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines less than two inches in diameter will not require flush valves if they end at a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged to ultimately connect the ends to provide circulation.

(e) Location of waterlines. The following rules apply to installations of waterlines, wastewater mains or laterals, and other conveyances/appurtenances identified as potential sources of contamination. Furthermore, all ratings specified shall be defined by ASTM or AWWA standards unless stated otherwise. New mains, service lines, or laterals are those that are installed where no main, service line, or lateral previously existed, or where existing mains, service lines, or laterals are replaced with pipes of different size or material.

(1) When new potable water distribution lines are constructed, they shall be installed no closer than nine feet in all directions to wastewater collection facilities. All separation distances shall be measured from the outside surface of each of the respective pieces.

(2) Potable water distribution lines and wastewater mains or laterals that form parallel utility lines shall be installed in separate trenches.

(3) No physical connection shall be made between a drinking water supply and a sewer line. Any appurtenance shall be designed and constructed so as to prevent any possibility of sewage entering the drinking water system.

(4) Where the nine-foot separation distance cannot be achieved, the following criteria shall apply.

(A) New waterline installation - parallel lines.

(i) Where a new potable waterline parallels an existing, non-pressure or pressure rated wastewater main or lateral and the licensed professional engineer licensed in the State of Texas is able to determine that the existing wastewater main or lateral is not leaking, the new potable waterline shall be located at least two feet above the existing wastewater main or lateral, measured vertically, and at least four feet away, measured horizontally, from the existing wastewater main or lateral. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater main or lateral.

(ii) Where a new potable waterline parallels an existing pressure rated wastewater main or lateral and it cannot be determined by the licensed professional engineer if the existing line is leaking, the existing wastewater main or lateral shall be replaced with at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the new wastewater line, measured vertically, and at least four feet away, measured horizontally, from the replaced wastewater main or lateral.

(iii) Where a new potable waterline parallels a new wastewater main, the wastewater main or lateral shall be constructed of at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the wastewater main or lateral, measured

vertically, and at least four feet away, measured horizontally, from the wastewater main or lateral.

(B) New waterline installation - crossing lines.

(i) Where a new potable waterline crosses an existing, non-pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. If the existing wastewater main or lateral is disturbed or shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(ii) Where a new potable waterline crosses an existing, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. If the existing wastewater main or lateral shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(iii) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and the standard pipe segment length of the wastewater main or lateral is at least 18 feet, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(iv) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and a standard length of the wastewater pipe is less than 18 feet in length, the potable water pipe segment shall be centered over the wastewater line. The materials and method of installation shall conform to one of the following options.

(I) Within nine feet horizontally of either side of the waterline, the wastewater pipe and joints shall be constructed with pipe material having a minimum pressure rating of at least 150 psi. An absolute minimum vertical separation distance of two feet shall be provided. The wastewater main or lateral shall be located below the waterline.

(II) All sections of wastewater main or lateral within nine feet horizontally of the waterline shall be encased in an 18-foot (or longer) section of pipe. Flexible encasing pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The encasing pipe shall be centered on the waterline and shall be at least two nominal pipe diameters larger than the wastewater main or lateral. The space around the carrier pipe shall be supported at five-foot (or less) intervals with spacers or be filled to the springline with washed sand. Each end of the casing shall be sealed with watertight non-shrink cement grout or a manufactured watertight seal. An absolute minimum separation distance of six inches between the encasement pipe and the waterline

shall be provided. The wastewater line shall be located below the waterline.

(III) When a new waterline crosses under a wastewater main or lateral, the waterline shall be encased as described for wastewater mains or laterals in subclause (II) of this clause or constructed of ductile iron or steel pipe with mechanical or welded joints as appropriate. An absolute minimum separation distance of one foot between the waterline and the wastewater main or lateral shall be provided. Both the waterline and wastewater main or lateral must pass a pressure and leakage test as specified in AWWA C600 standards.

(v) Where a new potable waterline crosses a new, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater line such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the center line of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pressure rating of at least 150 psi. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(vi) Where cement stabilized sand bedding is required, the cement stabilized sand shall have a minimum of 10% cement per cubic yard of cement stabilized sand mixture, based on loose dry weight volume (at least 2.5 bags of cement per cubic yard of mixture). The cement stabilized sand bedding shall be a minimum of six inches above and four inches below the wastewater main or lateral. The use of brown coloring in cement stabilized sand for wastewater main or lateral bedding is recommended for the identification of pressure rated wastewater mains during future construction.

(5) Waterline and wastewater main or lateral manhole or cleanout separation. The separation distance from a potable waterline to a wastewater main or lateral manhole or cleanout shall be a minimum of nine feet. Where the nine-foot separation distance cannot be achieved, the potable waterline shall be encased in a joint of at least 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five-foot intervals with spacers or be filled to the springline with washed sand. The encasement pipe shall be centered on the crossing and both ends sealed with cement grout or manufactured sealant.

(6) Location of fire hydrants. Fire hydrants shall not be installed within nine feet vertically or horizontally of any wastewater main, wastewater lateral, or wastewater service line regardless of construction.

(7) Location of potable or raw water supply or suction lines. Suction mains to pumping equipment shall not cross wastewater mains, wastewater laterals, or wastewater service lines. Raw water supply lines shall not be installed within five feet of any tile or concrete wastewater main, wastewater lateral, or wastewater service line.

(8) Proximity of septic tank drainfields. Waterlines shall not be installed closer than ten feet to septic tank drainfields.

(f) Sanitary precautions and disinfection. Sanitary precautions, flushing, disinfection procedures, and microbiological sampling as prescribed in AWWA standards for disinfecting water mains shall be followed in laying waterlines.

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

(2) Special precautions must be taken when waterlines are laid under any flowing or intermittent stream or semipermanent body of water such as marsh, bay, or estuary. In these cases, the water main shall be installed in a separate watertight pipe encasement and valves must be provided on each side of the crossing with facilities to allow the underwater portion of the system to be isolated and tested to determine that there are no leaks in the underwater line. Alternately, and with the permission of the executive director, the watertight pipe encasement may be omitted.

(3) New mains shall be thoroughly disinfected in accordance with AWWA Standard C651 and then flushed and sampled before being placed in service. Samples shall be collected for microbiological analysis to check the effectiveness of the disinfection procedure. Sampling shall be repeated if contamination persists. A minimum of one sample for each 1,000 feet of completed waterline will be required or at the next available sampling point beyond 1,000 feet as designated by the design engineer.

(g) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany the submitted planning material.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(h) Backflow, siphonage.

(1) No water connection from any public drinking water supply system shall be allowed to any residence or establishment where an actual or potential contamination hazard exists unless the public water facilities are protected from contamination.

(A) At any residence or establishment where an actual or potential contamination hazard exists, additional protection shall be required at the meter in the form of an air gap or backflow prevention assembly. The type of backflow prevention assembly required shall be determined by the specific potential hazard identified in §290.47(i) of this title (relating to Appendices).

(B) At any residence or establishment where an actual or potential contamination hazard exists and an adequate internal cross-connection control program is in effect, backflow protection at the water service entrance or meter is not required.

(i) An adequate internal cross-connection control program shall include an annual inspection and testing by a licensed backflow prevention assembly tester on all backflow prevention assemblies used for health hazard protection.

(ii) Copies of all such inspection and test reports must be obtained and kept on file by the water purveyor.

(iii) It will be the responsibility of the water purveyor to ensure that these requirements are met.

(2) No water connection from any public drinking water supply system shall be connected to any condensing, cooling, or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements

of paragraph (1) of this subsection. Water from such systems cannot be returned to the potable water supply.

(3) Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

(4) All backflow prevention assemblies that are required according to this section and associated table located in §290.47(i) of this title shall be tested upon installation by a licensed backflow prevention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a licensed backflow prevention assembly tester.

(A) Backflow prevention assembly testers shall have completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license as a backflow prevention assembly tester.

(i) Backflow prevention assembly testers are qualified to test and repair assemblies on any domestic, commercial, industrial, or irrigation service.

(ii) Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshal's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

(B) Gauges used in the testing of backflow prevention assemblies shall be tested for accuracy annually in accordance with the University of Southern California's Manual of Cross-Connection Control or the AWWA's Recommended Practice for Backflow Prevention and Cross-Connection Control (AWWA Manual, M14). Public water systems shall require testers to include test gauge serial numbers on "Test and Maintenance" report forms and ensure testers have gauges tested for accuracy.

(C) A test report must be completed by the recognized backflow prevention assembly tester for each assembly tested. The signed and dated original must be submitted to the public water supplier for recordkeeping purposes. Any form which varies from the format specified in Appendix F located in §290.47(f) of this title must be approved by the executive director prior to being placed in use.

(5) The use of a backflow prevention assembly at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

(6) At any residence or establishment where there is no actual or potential contamination hazard, a backflow prevention assembly is not required.

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner.

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows.

(A) The tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, or the NSF. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is faced downward and located to minimize the possibility of drawing contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion-resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water only. The hoses shall conform to ANSI/NSF Standard 61 and must be certified by an entity recognized by the commission. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start-up during intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least one sample per month from each tank shall be collected and submitted for microbiological analysis to one of the commission's approved laboratories for each month of operation.

(K) A minimum free chlorine residual of 0.5 milligrams per liter (mg/L) or, if chloramines are used as the primary disinfectant, a chloramine residual of 1.0 mg/L (measured as total chlorine) shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection, and source of water shall be maintained.

(j) If a structure is connected to a public water supply system and has a rainwater harvesting system [for indoor use], the structure must have appropriate cross-connection safeguards in accordance with subsection (h)(1) of this section.

(1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that is connected to a public water system for a back-up supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the public water system. [A person who intends to connect a rainwater harvesting system to a public water system for use for potable

purposes must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located.]

(2) At each residence or facility where water from a rainwater harvesting system is used for [indoor] potable purposes and there is a connection to a public water system, the public water system shall ensure that the rainwater harvesting system is installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist.

(3) A person who intends to connect a rainwater harvesting system to a public water system must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located.

(4) The public water system used as a back-up supply for the rainwater harvesting system may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 27, 2013.

TRD-201304275

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 10, 2013

For further information, please call: (512) 239-0779



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §9.177, concerning certification principles: staff member and service provider requirements; §9.185, concerning certification process; §9.577, concerning corrective action and program provider sanctions; and §9.579, concerning certification principles: qualified personnel, in Subchapter D, Home and Community-based Services (HCS) Program, and Subchapter N, Texas Home Living (TxHmL) Program, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement the 2014 - 2015 General Appropriations Act (Article II, Special Provisions, §61, Senate Bill 1, 83rd Legislature, Regular Session, 2013) by requiring HCS and TxHmL program providers to pay a base wage

to service providers of supervised living, residential support, supported home living, and community support. The required base wages are at least \$7.50 per hour as of the effective date of the proposed amendments and at least \$7.86 per hour effective September 1, 2014.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.177 adds new subsections (p) - (r). Proposed subsection (p) requires an HCS program provider to pay a service provider of supported home living services a base wage of at least \$7.50 per hour as of the effective date of the amendments and, beginning September 1, 2014, at least \$7.86 per hour. The program provider must pay the base wage to a service provider who is employed by or contracting with the program provider. Proposed subsection (q) requires a program provider to notify an affected service provider about the new base wages by January 15, 2014, if the service provider is employed by or contracting with the program provider on January 1, 2014. The program provider must notify any affected service provider hired after January 1, 2014, within three days after hire about the base wage requirement. Proposed subsection (r) requires a program provider to ensure that a contractor of the program provider complies with proposed subsections (p) and (q) as if the contractor were the program provider.

The proposed amendment to §9.185 adds new subsection (i) which states that if DADS finds that an HCS program provider is out of compliance with the §9.177(p) or (r), corrective action may be taken by DADS that includes requiring the program provider to pay or to ensure payment of the difference between the required base wage and the amount paid to the service provider. The proposed subsection also states that DADS may refer a program provider to the Office of the Inspector General for failure to follow §9.177(p) or (r).

The proposed amendment to §9.577 adds subsection (i) which states that if DADS finds that a TxHmL program provider is out of compliance with §9.579(r) or (t), corrective action may be taken by DADS that includes requiring the program provider to pay or to ensure payment of the difference between the required base wage and the amount paid to the service provider. The proposed subsection also states that DADS may refer a program provider to the Office of the Inspector General for failure to follow §9.579(r) or (t).

The proposed amendment to §9.579 adds new subsections (r) - (t). Proposed subsection (r) requires a TxHmL program provider to pay a service provider of community support a base wage of at least \$7.50 per hour as of the effective date of the amendments and, beginning September 1, 2014, to pay the service provider at least \$7.86 per hour. The program provider must pay the base wage to a service provider who is employed by or contracting with the program provider. Proposed subsection (s) requires a program provider to notify an affected service provider about the new base wages by January 15, 2014, if the service provider is employed by or contracting with the program provider on January 1, 2014. The program provider must notify any affected service provider hired after January 1, 2014, within three days after hire about the base wage requirement. Proposed subsection (t) requires a program provider to ensure that a contractor of the program provider complies with proposed subsections (r) and (s) as if the contractor were the program provider.

The proposed amendment also replaces outdated terminology with person-first respectful language in §§9.185, 9.577, and

AN ACT

relating to rainwater harvesting and other water conservation initiatives.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 447.004(c-1), Government Code, is amended to read as follows:

(c-1) The procedural standards adopted under this section must require that:

(1) on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for potable and nonpotable indoor and outdoor water use [~~and landscape watering~~] be incorporated into the design and construction of:

(A) each new state building with a roof area measuring at least 10,000 square feet; and

(B) any other new state building for which the incorporation of such systems is feasible; and

(2) rainwater harvesting system technology for potable and nonpotable indoor and outdoor water use [~~and landscape watering~~] be incorporated into the design and construction of each new state building with a roof area measuring at least 50,000 square feet that is located in an area of this state in which the average annual rainfall is at least 20 inches.

SECTION 2. Section 341.042(b), Health and Safety Code, as

1 amended by Chapters 1311 (H.B. 3391) and 1240 (S.B. 1073), Acts of
2 the 82nd Legislature, Regular Session, 2011, is reenacted and
3 amended to read as follows:

4 (b) The commission by rule shall provide that if a structure
5 ~~[is connected to a public water supply system and]~~ has a rainwater
6 harvesting system and uses a public water supply for an auxiliary
7 water source ~~[for indoor use]~~, the structure must have appropriate
8 cross-connection safeguards.

9 SECTION 3. Sections 341.042(b-1) and (b-3), Health and
10 Safety Code, as added by Chapter 1240 (S.B. 1073), Acts of the 82nd
11 Legislature, Regular Session, 2011, are amended to read as follows:

12 (b-1) A privately owned rainwater harvesting system with a
13 capacity of more than 500 gallons that has an auxiliary water supply
14 shall have a backflow prevention assembly or an air gap installed at
15 the storage facility for the harvested rainwater to ensure physical
16 separation between the rainwater harvesting system and the
17 auxiliary water supply. A rainwater harvesting system that meets
18 the requirements of this subsection is considered connected to a
19 public water supply system only for purposes of compliance with
20 minimum water system capacity requirements as determined by
21 commission rule. ~~[The commission shall work with the department to~~
22 ~~develop rules regarding the installation and maintenance of~~
23 ~~rainwater harvesting systems that are used for indoor potable~~
24 ~~purposes and connected to a public water supply system. The rules~~
25 ~~must contain criteria that are sufficient to ensure that:~~

26 ~~[(1) safe sanitary drinking water standards are met,~~
27 ~~and~~

1 ~~[(2) harvested rainwater does not come into~~
2 ~~communication with a public water supply system's drinking water at~~
3 ~~a location off of the property on which the rainwater harvesting~~
4 ~~system is located.]~~

5 (b-3) A person who intends to use ~~[connect a rainwater~~
6 ~~harvesting system to]~~ a public water supply system as an auxiliary
7 water source ~~[for use for potable purposes]~~ must give written
8 notice of that intention to the municipality in which the rainwater
9 harvesting system is located or the owner or operator of the public
10 water supply system ~~[before connecting the rainwater harvesting~~
11 ~~system to the public water supply system]~~. The public water supply
12 system used as an auxiliary water source may be connected only to
13 the water storage tank and may not be connected to the plumbing of a
14 structure.

15 SECTION 4. Section 341.042(b-3), Health and Safety Code, as
16 added by Chapter 1311 (H.B. 3391), Acts of the 82nd Legislature,
17 Regular Session, 2011, is redesignated as Section 341.042(b-5),
18 Health and Safety Code, and amended to read as follows:

19 (b-5) ~~[(b-3)]~~ A municipality or the owner or operator of a
20 public water supply system may not be held liable for any adverse
21 health effects allegedly caused by the consumption of water
22 collected by a rainwater harvesting system that uses ~~[is connected~~
23 ~~to]~~ a public water supply system or an auxiliary water source and is
24 used for potable purposes if the municipality or the public water
25 supply system is in compliance with the sanitary standards for
26 drinking water adopted by the commission and applicable to the
27 municipality or public water supply system.

1 SECTION 5. Section 580.004(b), Local Government Code, is
2 amended to read as follows:

3 (b) The Texas Water Development Board shall ensure that
4 training on rainwater harvesting is available for the members of
5 the permitting staffs of municipalities and counties at least
6 quarterly. Each member of the permitting staff of each county and
7 municipality located wholly or partly in an area designated by the
8 Texas Commission on Environmental Quality as a priority groundwater
9 management area under Section 35.008, Water Code, whose work
10 relates directly to permits involving rainwater harvesting and each
11 member of the permitting staff of each county and municipality with
12 a population of more than 10,000 [~~100,000~~] whose work relates
13 directly to permits involving rainwater harvesting must receive
14 appropriate training regarding rainwater harvesting standards and
15 their relation to permitting at least once every five
16 years. Members of the permitting staffs of counties and
17 municipalities not located wholly or partly in an area designated
18 by the Texas Commission on Environmental Quality as a priority
19 groundwater management area under Section 35.008, Water Code, whose
20 work relates directly to permits involving rainwater harvesting and
21 members of the permitting staffs of counties and municipalities
22 with a population of 10,000 [~~100,000~~] or less whose work relates
23 directly to permits involving rainwater harvesting are encouraged
24 to receive the training. The Texas Water Development Board may
25 provide appropriate training by seminars or by videotape or
26 functionally similar and widely available media without cost.

27 SECTION 6. Section 5.008(b), Property Code, is amended to

1 read as follows:

2 (b) The notice must be executed and must, at a minimum, read
3 substantially similar to the following:

4 SELLER'S DISCLOSURE NOTICE

5 CONCERNING THE PROPERTY AT _____
6 (Street Address and City)

7 THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF
8 THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY
9 SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
10 WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT
11 A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

12 Seller ___ is ___ is not occupying the Property.

13 If unoccupied, how long since Seller has occupied the Property?

14 _____

15 1. The Property has the items checked below:

16 Write Yes (Y), No (N), or Unknown (U).

- | | | |
|------------------------|----------------------|--------------------|
| 17 ___ Range | ___ Oven | ___ Microwave |
| 18 ___ Dishwasher | ___ Trash Compactor | ___ Disposal |
| 19 ___ Washer/Dryer | ___ Window | ___ Rain Gutters |
| 20 Hookups | ___ Screens | |
| 21 ___ Security | ___ Fire Detection | ___ Intercom |
| 22 System | ___ Equipment | ___ System |
| 23 | ___ Smoke Detector | |
| 24 | ___ Smoke Detector - | |
| 25 | ___ Hearing Impaired | |
| 26 | ___ Carbon Monoxide | |
| 27 | ___ Alarm | |
| 28 | ___ Emergency Escape | |
| 29 | ___ Ladder(s) | |
| 30 ___ TV Antenna | ___ Cable TV | ___ Satellite |
| 31 | ___ Wiring | ___ Dish |
| 32 ___ Ceiling Fan(s) | ___ Attic Fan(s) | ___ Exhaust |
| 33 | | ___ Fan(s) |
| 34 ___ Central A/C | ___ Central Heating | ___ Wall/Window |
| 35 | | ___ Air |
| 36 | | ___ Conditioning |
| 37 ___ Plumbing System | ___ Septic System | ___ Public Sewer |
| 38 | | ___ System |
| 39 ___ Patio/Decking | ___ Outdoor Grill | ___ Fences |
| 40 ___ Pool | ___ Sauna | ___ Spa |
| 41 | | ___ Hot Tub |
| 42 ___ Pool Equipment | ___ Pool Heater | ___ Automatic Lawn |

1 more information. A buyer may require a seller to install smoke
2 detectors for the hearing impaired if: (1) the buyer or a member of
3 the buyer's family who will reside in the dwelling is hearing
4 impaired; (2) the buyer gives the seller written evidence of the
5 hearing impairment from a licensed physician; and (3) within 10
6 days after the effective date, the buyer makes a written request for
7 the seller to install smoke detectors for the hearing impaired and
8 specifies the locations for installation. The parties may agree
9 who will bear the cost of installing the smoke detectors and which
10 brand of smoke detectors to install.

11 3. Are you (Seller) aware of any known defects/malfunctions in any
12 of the following?

13 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- | | | | |
|----|--|---|---|
| 14 | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Ceilings | <input type="checkbox"/> Floors |
| 15 | <input type="checkbox"/> Exterior Walls | <input type="checkbox"/> Doors | <input type="checkbox"/> Windows |
| 16 | <input type="checkbox"/> Roof | <input type="checkbox"/> Foundation/
Slab(s) | <input type="checkbox"/> Basement |
| 17 | | | |
| 18 | <input type="checkbox"/> Walls/Fences | <input type="checkbox"/> Driveways | <input type="checkbox"/> Sidewalks |
| 19 | <input type="checkbox"/> Plumbing/Sewers/
Septics | <input type="checkbox"/> Electrical
Systems | <input type="checkbox"/> Lighting
Fixtures |

21 Other Structural Components (Describe): _____
22 _____
23 _____

24 If the answer to any of the above is yes, explain. (Attach
25 additional sheets if necessary): _____
26 _____
27 _____

28 4. Are you (Seller) aware of any of the following conditions?

29 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- | | | |
|----|--|--|
| 30 | <input type="checkbox"/> Active Termites | <input type="checkbox"/> Previous Structural |
|----|--|--|

- 1 (includes or Roof Repair
- 2 wood-destroying insects)
- 3 Termite or Wood Rot Damage Hazardous or Toxic Waste
- 4 Needing Repair
- 5 Previous Termite Damage Asbestos Components
- 6 Previous Termite Urea formaldehyde
- 7 Treatment Insulation
- 8 Previous Flooding Radon Gas
- 9 Improper Drainage Lead Based Paint
- 10 Water Penetration Aluminum Wiring
- 11 Located in 100-Year Previous Fires
- 12 Floodplain
- 13 Present Flood Insurance Unplatted Easements
- 14 Coverage
- 15 Landfill, Settling, Soil Subsurface
- 16 Movement, Fault Lines Structure or Pits
- 17 Single Blockable Main Previous Use of Premises
- 18 Drain in Pool/Hot for Manufacture of
- 19 Tub/Spa* Methamphetamine

20 If the answer to any of the above is yes, explain. (Attach
21 additional sheets if necessary):_____

22 _____
23 _____

24 *A single blockable main drain may cause a suction entrapment
25 hazard for an individual.

26 5. Are you (Seller) aware of any item, equipment, or system in or
27 on the property that is in need of repair? Yes (if you are
28 aware) No (if you are not aware). If yes, explain (attach
29 additional sheets as necessary). _____

30 6. Are you (Seller) aware of any of the following?
31 Write Yes (Y) if you aware, write No (N) if you are not aware.

- 32 Room additions, structural modifications, or other
- 33 alterations or repairs made without necessary permits or not
- 34 in compliance with building codes in effect at that time.
- 35 Homeowners' Association or maintenance fees or assessments.
- 36 Any "common area" (facilities such as pools, tennis courts,
- 37 walkways, or other areas) co-owned in undivided interest with
- 38 others.
- 39 Any notices of violations of deed restrictions or
- 40 governmental ordinances affecting the condition or use of the
- 41 Property.

- 1 ___ Any lawsuits directly or indirectly affecting the Property.
- 2 ___ Any condition on the Property which materially affects the
- 3 physical health or safety of an individual.
- 4 ___ Any rainwater harvesting system located on the property that
- 5 is larger than 500 gallons and that uses a public water supply
- 6 as an auxiliary water source [~~connected to the property's~~
- 7 ~~public water supply that is able to be used for indoor potable~~
- 8 ~~purposes~~].

9 If the answer to any of the above is yes, explain. (Attach
 10 additional sheets if necessary): _____
 11 _____
 12 _____

13 7. If the property is located in a coastal area that is seaward of
 14 the Gulf Intracoastal Waterway or within 1,000 feet of the mean high
 15 tide bordering the Gulf of Mexico, the property may be subject to
 16 the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63,
 17 Natural Resources Code, respectively) and a beachfront
 18 construction certificate or dune protection permit may be required
 19 for repairs or improvements. Contact the local government with
 20 ordinance authority over construction adjacent to public beaches
 21 for more information.

22 _____
 23 Date Signature of Seller

24 The undersigned purchaser hereby acknowledges receipt of the
 25 foregoing notice.

26 _____
 27 Date Signature of Purchaser

28 SECTION 7. Not later than January 1, 2014, the Texas
 29 Commission on Environmental Quality shall adopt rules to implement
 30 Section 341.042, Health and Safety Code, as amended by this Act.

31 SECTION 8. Sections 341.042(b-1) and (b-2), Health and
 32 Safety Code, as added by Chapter 1311 (H.B. 3391), Acts of the 82nd

1 Legislature, Regular Session, 2011, are repealed.

2 SECTION 9. Section 5.008(b), Property Code, as amended by
3 this Act, applies only to a transfer of property that occurs on or
4 after the effective date of this Act. A transfer of property that
5 occurs before the effective date of this Act is governed by the law
6 applicable to the transfer immediately before that date, and the
7 former law is continued in effect for that purpose. For the
8 purposes of this section, a transfer of property occurs before the
9 effective date of this Act if the contract binding the purchaser to
10 purchase the property is executed before that date.

11 SECTION 10. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 2781 was passed by the House on May 8, 2013, by the following vote: Yeas 137, Nays 10, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2781 was passed by the Senate on May 22, 2013, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor

Texas Commission on Environmental Quality



ORDER ADOPTING AN AMENDED RULE

Docket No. 2013-1110-RUL

On January 29, 2014, the Texas Commission on Environmental Quality (Commission) adopted an amended rule in 30 TAC Chapter 290, concerning Public Drinking Water. The proposed rule was published for comment in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7083).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rule is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rule necessary to comply with *Texas Register* requirements. The adopted rule and the preamble to the adopted rule are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: January 10, 2014

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2013-1110-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
HB 2781: Rainwater Harvesting
Rule Project No. 2013-043-290-OW

Background and reason(s) for the rulemaking:

The adopted rulemaking is required to implement the changes to the Texas Health and Safety Code (THSC), §341.042, from House Bill (HB) 2781, 83rd Legislature, 2013, by Representative Allen Fletcher. These changes relate to structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS). Some of the changes required by HB 2781 were implemented through Rule Project No. 2011-057-290-OW, which was in progress when the bill passed. Rule Project No. 2011-057-290-OW was effective on September 12, 2013.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking amends Chapter 290 to:

- remove the phrase "for indoor use" from §290.44(j);
- require a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a back-up supply to have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater in §290.44(j)(1)
- remove the word "indoor" from the phrase "for indoor potable purposes" in §290.44(j)(2);
- remove the phrase "for use for potable purposes" from renumbered §290.44(j)(3) (existing §290.44(j)(1)); and
- require that the PWS used as a back-up supply for a RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure in adopted §290.44(j)(4).

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

There are no federal changes. The adopted rulemaking implements HB 2781.

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

To maintain consistency with Chapter 290's established terminology, the executive director's staff adopted rulemaking refers to a back-up supply instead of an auxiliary water supply or an auxiliary water source as referenced in the legislation. Also, the executive

Re: Docket No. 2013-1110-RUL

director's staff renumbered existing §290.44(j)(1) to (j)(3) to improve organizational structure.

Statutory authority:

Texas Water Code, §§5.102, 5.103, and 5.105; and THSC, §341.042.

Effect on the:

A.) Regulated community:

The adopted rulemaking does not impact the regulated community.

B.) Public:

The adopted rule would not have a significant fiscal impact on individuals as they would make the decision whether it is in their interest to install a RWHS connected to an auxiliary water supply. No adverse fiscal implications are anticipated for small or micro-businesses as a result of the adopted rule. The adopted rule is not expected to have a fiscal impact on large businesses unless they choose to install a RWHS with a back-up supply.

C.) Agency programs:

The adopted rulemaking does not impact agency programs.

Stakeholder meetings:

The TCEQ did not hold a stakeholder meeting; however, the TECQ held a public hearing for this rule on November 5, 2013, in Austin, Texas. At the November 5, 2013, public hearing no one offered comments on the proposed rule.

Public comment:

This rule's comment period began on October 11, 2013, and closed on November 12, 2013. The commission received written comments from Innovative Water Solutions, LLC (IWS); Pair Plumbing and Septic; Texas Rainwater Catchment Association; and one individual.

No commenters expressed opposition to the entire rule as proposed. IWS suggested alternative rule language. Texas Rainwater Catchment Association requested the commission amend the statute. IWS and Texas Rainwater Catchment Association commented that the legislation was ambiguous.

The written comments are summarized in the Response to Comments section of the preamble.

Significant changes from proposal:

There are no changes from proposal to adoption. When responding to comments, the executive director's staff referred the commenters to existing definitions within Chapter 290.

Re: Docket No. 2013-1110-RUL

Potential controversial concerns and legislative interest:

There continues to be heightened interest in rainwater harvesting. Stakeholders may seek to clarify language they feel to be ambiguous through legislative action.

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

No.

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

Without approval, Chapter 290 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date:	October 11, 2013
Anticipated Texas Register adoption publication date:	February 14, 2014
Anticipated effective date:	February 20, 2014
Six-month Texas Register filing deadline:	April 11, 2014

Agency contacts:

Cindy Haynie, Rule Project Manager, (512) 239-3465, Water Supply Division
Kayla Murray, Staff Attorney, (512) 239-4761
Patricia Durón, Texas Register Coordinator, (512) 239-6087

Attachments

HB 2781

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Office of General Counsel
Cindy Haynie
Patricia Durón

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendment to §290.44 *without change* to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7083) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The purpose of the adopted amendment is to reflect changes to the Texas Health and Safety Code (THSC), §341.042, from House Bill (HB) 2781, 83rd Legislature, 2013.

These changes relate to structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS). Some of the changes to §290.44(j) required by HB 2781 were implemented through Rule Project No. 2011-057-290-OW, which was effective on September 12, 2013.

Section Discussion

§290.44, Water Distribution

The commission adopts §290.44(j) and its subdivisions to implement THSC, §341.042, as amended by HB 2781, for structures that have RWHSs and are connected to a PWS.

The adopted rulemaking: removes the phrase "for indoor use" from §290.44(j), requiring all structures that are connected to a PWS and have an RWHS to have appropriate cross-connection safeguards; adds §290.44(j)(1) to require that a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a

back-up supply must have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater; removes the word "indoor" from the phrase "for indoor potable purposes" in §290.44(j)(2), which refers to a RWHS that is connected to a PWS and must be installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist; adds §290.44(j)(3), by renumbering existing §290.44(j)(1), which requires a person who intends to connect a RWHS to a PWS to give written notice to the municipality in which the RWHS is located or the owner or operator of the PWS, as amended to remove the phrase "for use for potable purposes," to improve the rule's organizational structure; and, adds §290.44(j)(4) to require that the PWS used as a back-up supply for the RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure. HB 2781 uses the term "auxiliary water supply" to refer to a PWS that is being used as the back-up supply for a privately owned RWHS, however, throughout Chapter 290, the term "auxiliary" is used to describe a source that is connected to the PWS, such as a well that provides additional water for a surface water system. In order to maintain consistency with Chapter 290's established terminology, the executive director's staff refers to a back-up supply instead of an auxiliary water supply or an auxiliary water source as referenced in the legislation.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have a RWHS and are connected to a PWS. The bill also contains language that states that a municipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing RWHSs in Texas. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking is not adopted solely under the general powers of the agency, but specifically under THSC, §341.042, which allows the commission to adopt and enforce rules related to harvested rainwater.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007.

The primary purpose of the adopted rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have RWHSs and are connected to a PWS. The bill also contains language that states that a municipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS. The adopted rulemaking would substantially advance these purposes by amending Chapter 290 to incorporate the statutory requirements.

Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This adopted rulemaking will primarily affect those persons who have a structure that has a RWHS and is connected to a PWS; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code,

Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the Coastal Management Program.

Public Comment

The commission held a public hearing on November 5, 2013. At the November 5, 2013, public hearing no one offered comments on the proposed rule. The comment period closed on November 12, 2013. The commission received written comments from Innovative Water Solutions, LLC (IWS); Pair Plumbing and Septic; Texas Rainwater Catchment Association; and one individual. No commenters expressed opposition to the entire rule as proposed. IWS suggested alternative rule language. Texas Rainwater

Catchment Association requested the commission amend the statute. The written comments are summarized in the Response to Comments section of the preamble.

Response to Comments

An individual requested that the commission protect the brown pelicans.

The commission responds that the adopted rule addresses RWHSs that are connected to a PWS and does not pertain to brown pelicans. This comment is outside the scope of this rulemaking. No change has been made in response to this comment.

Pair Plumbing and Septic expressed interest "in seeing how the harvesting of rain water can economically be done without cross-connecting to raw sewerage/Septic systems and Domestic Potable water systems."

The commission responds that Chapter 290 addresses RWHSs that are connected to a PWS. The adopted rule prohibits RWHSs from being connected to a PWS without proper cross-connection protection. The commission's stated mission is to "protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." Allowing

a RWHS to be connected to a raw sewerage/septic system would be counter to that objective as raw sewage contains various pathogens (bacteria, parasites, and viruses) and may contain chemical toxins (heavy metals, pesticides, and pharmaceuticals). No change has been made in response to this comment.

Pair Plumbing and Septic also commented that conventional septic systems should be installed, instead of aerobic septic systems, in order to replenish ground water.

The commission responds that the adopted rule addresses RWHSs that are connected to a PWS and does not pertain to septic systems. This comment is outside the scope of this rulemaking; therefore, no change has been made in response to this comment.

IWS commented that the term "connection" in §290.44(j) is ambiguous and can be interpreted in different ways. Depending on the context, it could be construed to mean a metered residence or a physical connection between RWHS piping and PWS piping and that any residence with a RWHS that is also supplied by a PWS would be required to install a reduced-pressure principle backflow prevention assembly device, regardless of the size, design, or use of the privately owned RWHS. Additionally, the commission's requirement to install a reduced-pressure principle backflow prevention assembly

device would increase the RWHSs cost of installation. Texas Rainwater Catchment Association commented that they seek a clear and universal understanding of the language found in the laws, rules, and regulations relating to rainwater harvesting. Texas Rainwater Catchment Association also requested the commission "amend the code language" in response to their comment.

The commission responds that the words and terms used within Chapter 290 have the meanings defined in §290.38, unless otherwise indicated. Those terms are clearly defined and consistently used by the commission in this rulemaking. The commission has established a definition for "connection" in existing §290.38(15) as, "A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system ... For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if: (A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption); (B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or (C) the executive

director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards." Based upon that definition, the presence of a backflow prevention device or an air gap does not mean that the customer's water service is then disconnected from the PWS, thus creating a stand-alone private water system. The commission also responds that, according to §290.47(i), the specific type of backflow prevention device required for a RWHS is either an air gap or a reduced-pressure principle backflow prevention assembly. While the commission requires the use of a backflow prevention device, it is up to the local municipality to determine whether a reduced-pressure principle backflow prevention assembly device or an air gap is required. Further, the commission responds that this rule implements only the changes made by HB 2781, 83rd Legislature, 2013, which amended THSC, §341.042. If additional legislative changes are implemented, the commission will evaluate those changes and if necessary, consider implementing a rulemaking. No changes have been made in response to these comments.

Texas Rainwater Catchment Association commented that the term "connection" appears in several sections of the proposed rule and it is their position that once a backflow

prevention assembly device is installed downstream of the water meter, the metered water supply is appropriately protected.

The commission requires appropriate cross-connection control protections for structures that are connected to PWSs and have a RWHS. The commission agrees that the appropriate backflow prevention assembly, if properly maintained and tested, does appropriately protect the PWS. No change has been made in response to this comment.

IWS commented that in §290.44(j)(1), the use of "connected" refers to the physical relationship between the RWHS and the PWS supply when the PWS is intended to provide back-up water to the RWHS tank. IWC further commented that it takes no issue with the language as proposed.

The commission acknowledges this comment. No change has been made in response to this comment.

IWS commented that if the term "connection" as used in §290.44(j)(2) is meant to mirror the term's use in §290.44(j), the rule language places restrictions on all RWHSs installed within the jurisdiction of a PWS (if the property is a metered residence) where the collected water is suitable for drinking, making it illegal for a private residence

(other than the residences of master or journeyman plumbers) to capture, store, and treat rainwater for any use, regardless of a physical separation from the PWS and the RWHS's piping. IWS also commented that in §290.44(j)(2), "connection" could mean that a RWHS must be installed and maintained by a master plumber only when there is a physical connection between the RWHS and the PWS and that "the only interpretation of this language that would be consistent with the rest of Chapter 290 would be one that made clear that the term 'connection' points to the nature of the physical relationship between PWS piping and RWHS piping."

The commission responds that the words and terms used within Chapter 290 have the meanings defined in §290.38. The commission has established a definition for "connection" in existing §290.38(15), as stated in this section of the preamble. No change has been made in response to this comment.

IWS commented that in §290.44(j)(4) the term "potable" is not present and this subsection does not clearly define how the use of the rainwater relates to the plumbing of a structure. IWS provided a drawing with their submitted rule comments and asked whether §290.44(j)(4) be interpreted to mean that installation of RWHSs used for irrigation supply would be prohibited if it includes a back-up water connection to a PWS, regardless of the cross-connection safeguards in place. In referring to their

provided drawing, IWS questioned: 1) whether a reduced-pressure principle backflow prevention assembly device or air gap breaks the connection from the PWS; and 2) if so, why there is a need to prohibit the connection to a structure when the connection is made after the appropriate cross-connection safeguards.

The commission responds that HB 2781 was silent regarding the use of potable versus non-potable when amending THSC, §341.042(b-3). HB 2781 amended THSC, §341.042(b-3), to specify that "the public water supply system used as an auxiliary water source may be connected only to the water storage tank and may not be connected to the plumbing of a structure." The legislation does not prohibit the installation of a RWHS as long as appropriate cross-connection safeguards are in place. Based upon the definition of a connection in §290.38(15), the presence of a backflow prevention device or an air gap does not mean that the customer's water service is disconnected from the PWS. Moreover, the commission is not prohibiting the connection to a structure when the connection is made after appropriate cross-connection safeguards are in place; however, the commission is prohibiting the connection to the internal plumbing of a structure to implement the provisions of HB 2781, as passed by the 83rd Legislature. No changes have been made in response to this comment.

**SUBCHAPTER D: RULES AND REGULATIONS FOR PUBLIC WATER
SYSTEMS
§290.44**

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.042, which allows the commission to adopt rules relating to the domestic use of harvested rainwater. Therefore, the TWC and THSC authorize rulemaking that amend §290.44, which relates to structures that have rainwater harvesting systems (RWHS) and are connected to a public water system (PWS).

The adopted amendment implements the language set forth in House Bill (HB) 2781, 83rd Legislature, 2013, which requires the commission to amend the existing rule for structures that have RWHSs and are connected to a PWS by requiring such structures to have appropriate cross-connection safeguards and to be installed by a specially-licensed plumber. Additionally, HB 2781 requires that a RWHS that is connected to a PWS for use as a back-up supply may not also have the plumbing of the structure connected to the PWS. HB 2781 also removes the phrase "for indoor use" when referring to such structures.

§290.44. Water Distribution.

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed, and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial, and other recognized standards utilized by licensed professional engineers.

(1) All newly installed pipes and related products must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(2) All plastic pipes for use in public water systems must also bear the National Sanitation Foundation Seal of Approval (NSF-pw) and have an ASTM design pressure rating of at least 150 pounds per square inch (psi) or a standard dimension ratio of 26 or less.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted or relocated for use in any public drinking water supply.

(4) Water transmission and distribution lines must be installed in accordance with the manufacturer's instructions. However, the top of the waterline must be located below the frost line and in no case shall the top of the waterline be less than 24 inches below ground surface.

(5) The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

(A) for installation or repair of any public water supply; and

(B) for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(c) Minimum waterline sizes. The minimum waterline sizes are for domestic flows only and do not consider fire flows. Larger pipe sizes shall be used when the licensed professional engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new waterline less than two inches in diameter will be allowed to be installed in a public water system distribution system. These minimum line sizes do not apply to individual customer service lines.

Figure: 30 TAC §290.44(c) (No change to the figure as it currently exists in TAC.)

(d) Minimum pressure requirement. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide

fire fighting capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. The distribution system of public water systems that are also affected utilities must be designed to meet the requirements of §290.45(h) of this title (relating to Minimum Water System Capacity Requirements).

(1) Air release devices shall be installed in the distribution system at all points where topography or other factors may create air locks in the lines. Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(2) When service is to be provided to more than one pressure plane or when distribution system conditions and demands are such that low pressures develop, the method of providing increased pressure shall be by means of booster pumps taking suction from storage tanks. If an exception to this requirement is desired, the designing engineer must furnish for the executive director's review all planning material for booster pumps taking suction from other than a storage tank. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls, and other

pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 psi must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures, less than 20 psi, adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Service connections that require booster pumps taking suction from the public water system lines must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. Where these types of installations are necessary, the preferred method of pressure maintenance consists of an air gapped connection with a storage tank and subsequent repressurization facilities.

(4) Each community public water system shall provide accurate metering devices at each residential, commercial, or industrial service connection for the

accumulation of water usage data. A water system that furnishes the services or commodity only to itself or its employees when that service or commodity is not resold to or used by others is exempt from this requirement.

(5) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design.

(6) The system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines less than two inches in diameter will not require flush valves if they end at a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged to ultimately connect the ends to provide circulation.

(e) Location of waterlines. The following rules apply to installations of waterlines, wastewater mains or laterals, and other conveyances/appurtenances identified as potential sources of contamination. Furthermore, all ratings specified shall be defined by ASTM or AWWA standards unless stated otherwise. New mains, service lines, or laterals are those that are installed where no main, service line, or lateral previously

existed, or where existing mains, service lines, or laterals are replaced with pipes of different size or material.

(1) When new potable water distribution lines are constructed, they shall be installed no closer than nine feet in all directions to wastewater collection facilities. All separation distances shall be measured from the outside surface of each of the respective pieces.

(2) Potable water distribution lines and wastewater mains or laterals that form parallel utility lines shall be installed in separate trenches.

(3) No physical connection shall be made between a drinking water supply and a sewer line. Any appurtenance shall be designed and constructed so as to prevent any possibility of sewage entering the drinking water system.

(4) Where the nine-foot separation distance cannot be achieved, the following criteria shall apply.

(A) New waterline installation - parallel lines.

(i) Where a new potable waterline parallels an existing, non-pressure or pressure rated wastewater main or lateral and the licensed professional engineer licensed in the State of Texas is able to determine that the existing wastewater main or lateral is not leaking, the new potable waterline shall be located at least two feet above the existing wastewater main or lateral, measured vertically, and at least four feet away, measured horizontally, from the existing wastewater main or lateral. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater main or lateral.

(ii) Where a new potable waterline parallels an existing pressure rated wastewater main or lateral and it cannot be determined by the licensed professional engineer if the existing line is leaking, the existing wastewater main or lateral shall be replaced with at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the new wastewater line, measured vertically, and at least four feet away, measured horizontally, from the replaced wastewater main or lateral.

(iii) Where a new potable waterline parallels a new wastewater main, the wastewater main or lateral shall be constructed of at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above

the wastewater main or lateral, measured vertically, and at least four feet away, measured horizontally, from the wastewater main or lateral.

(B) New waterline installation - crossing lines.

(i) Where a new potable waterline crosses an existing, non-pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. If the existing wastewater main or lateral is disturbed or shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(ii) Where a new potable waterline crosses an existing, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of

the wastewater main or lateral. If the existing wastewater main or lateral shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(iii) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and the standard pipe segment length of the wastewater main or lateral is at least 18 feet, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(iv) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and a standard length of the wastewater pipe is less than 18 feet in length, the potable water pipe segment shall be centered over the wastewater line. The materials and method of installation shall conform to one of the following options.

(I) Within nine feet horizontally of either side of the waterline, the wastewater pipe and joints shall be constructed with pipe material having a minimum pressure rating of at least 150 psi. An absolute minimum vertical separation distance of two feet shall be provided. The wastewater main or lateral shall be located below the waterline.

(II) All sections of wastewater main or lateral within nine feet horizontally of the waterline shall be encased in an 18-foot (or longer) section of pipe. Flexible encasing pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The encasing pipe shall be centered on the waterline and shall be at least two nominal pipe diameters larger than the wastewater main or lateral. The space around the carrier pipe shall be supported at five-foot (or less) intervals with spacers or be filled to the springline with washed sand. Each end of the casing shall be sealed with watertight non-shrink cement grout or a manufactured watertight seal. An absolute minimum separation distance of six inches between the encasement pipe and the waterline shall be provided. The wastewater line shall be located below the waterline.

(III) When a new waterline crosses under a wastewater main or lateral, the waterline shall be encased as described for wastewater mains or laterals in subclause (II) of this clause or constructed of ductile iron or steel

pipe with mechanical or welded joints as appropriate. An absolute minimum separation distance of one foot between the waterline and the wastewater main or lateral shall be provided. Both the waterline and wastewater main or lateral must pass a pressure and leakage test as specified in AWWA C600 standards.

(v) Where a new potable waterline crosses a new, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater line such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the center line of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pressure rating of at least 150 psi. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(vi) Where cement stabilized sand bedding is required, the cement stabilized sand shall have a minimum of 10% cement per cubic yard of cement stabilized sand mixture, based on loose dry weight volume (at least 2.5 bags of cement per cubic yard of mixture). The cement stabilized sand bedding shall be a minimum of six inches above and four inches below the wastewater main or lateral. The use of brown

coloring in cement stabilized sand for wastewater main or lateral bedding is recommended for the identification of pressure rated wastewater mains during future construction.

(5) Waterline and wastewater main or lateral manhole or cleanout separation. The separation distance from a potable waterline to a wastewater main or lateral manhole or cleanout shall be a minimum of nine feet. Where the nine-foot separation distance cannot be achieved, the potable waterline shall be encased in a joint of at least 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five-foot intervals with spacers or be filled to the springline with washed sand. The encasement pipe shall be centered on the crossing and both ends sealed with cement grout or manufactured sealant.

(6) Location of fire hydrants. Fire hydrants shall not be installed within nine feet vertically or horizontally of any wastewater main, wastewater lateral, or wastewater service line regardless of construction.

(7) Location of potable or raw water supply or suction lines. Suction mains to pumping equipment shall not cross wastewater mains, wastewater laterals, or

wastewater service lines. Raw water supply lines shall not be installed within five feet of any tile or concrete wastewater main, wastewater lateral, or wastewater service line.

(8) Proximity of septic tank drainfields. Waterlines shall not be installed closer than ten feet to septic tank drainfields.

(f) Sanitary precautions and disinfection. Sanitary precautions, flushing, disinfection procedures, and microbiological sampling as prescribed in AWWA standards for disinfecting water mains shall be followed in laying waterlines.

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

(2) Special precautions must be taken when waterlines are laid under any flowing or intermittent stream or semipermanent body of water such as marsh, bay, or estuary. In these cases, the water main shall be installed in a separate watertight pipe encasement and valves must be provided on each side of the crossing with facilities to allow the underwater portion of the system to be isolated and tested to determine that there are no leaks in the underwater line. Alternately, and with the permission of the executive director, the watertight pipe encasement may be omitted.

(3) New mains shall be thoroughly disinfected in accordance with AWWA Standard C651 and then flushed and sampled before being placed in service. Samples shall be collected for microbiological analysis to check the effectiveness of the disinfection procedure. Sampling shall be repeated if contamination persists. A minimum of one sample for each 1,000 feet of completed waterline will be required or at the next available sampling point beyond 1,000 feet as designated by the design engineer.

(g) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany the submitted planning material.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second

source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(h) Backflow, siphonage.

(1) No water connection from any public drinking water supply system shall be allowed to any residence or establishment where an actual or potential contamination hazard exists unless the public water facilities are protected from contamination.

(A) At any residence or establishment where an actual or potential contamination hazard exists, additional protection shall be required at the meter in the form of an air gap or backflow prevention assembly. The type of backflow prevention assembly required shall be determined by the specific potential hazard identified in §290.47(i) of this title (relating to Appendices).

(B) At any residence or establishment where an actual or potential contamination hazard exists and an adequate internal cross-connection control program is in effect, backflow protection at the water service entrance or meter is not required.

(i) An adequate internal cross-connection control program shall include an annual inspection and testing by a licensed backflow prevention assembly tester on all backflow prevention assemblies used for health hazard protection.

(ii) Copies of all such inspection and test reports must be obtained and kept on file by the water purveyor.

(iii) It will be the responsibility of the water purveyor to ensure that these requirements are met.

(2) No water connection from any public drinking water supply system shall be connected to any condensing, cooling, or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements of paragraph (1) of this subsection. Water from such systems cannot be returned to the potable water supply.

(3) Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

(4) All backflow prevention assemblies that are required according to this section and associated table located in §290.47(i) of this title shall be tested upon installation by a licensed backflow prevention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a licensed backflow prevention assembly tester.

(A) Backflow prevention assembly testers shall have completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license as a backflow prevention assembly tester.

(i) Backflow prevention assembly testers are qualified to test and repair assemblies on any domestic, commercial, industrial, or irrigation service.

(ii) Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshal's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

(B) Gauges used in the testing of backflow prevention assemblies shall be tested for accuracy annually in accordance with the University of Southern California's Manual of Cross-Connection Control or the AWWA's Recommended Practice for Backflow Prevention and Cross-Connection Control (AWWA Manual, M14). Public water systems shall require testers to include test gauge serial numbers on "Test and Maintenance" report forms and ensure testers have gauges tested for accuracy.

(C) A test report must be completed by the recognized backflow prevention assembly tester for each assembly tested. The signed and dated original must be submitted to the public water supplier for recordkeeping purposes. Any form which varies from the format specified in Appendix F located in §290.47(f) of this title must be approved by the executive director prior to being placed in use.

(5) The use of a backflow prevention assembly at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

(6) At any residence or establishment where there is no actual or potential contamination hazard, a backflow prevention assembly is not required.

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner.

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows.

(A) The tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, or the NSF. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is faced downward and located to minimize the possibility of drawing contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion-resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water only. The hoses shall conform to ANSI/NSF Standard 61 and must be certified by an entity recognized by the commission. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start-up during intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least one sample per month from each tank shall be collected and submitted for microbiological analysis to one of the commission's approved laboratories for each month of operation.

(K) A minimum free chlorine residual of 0.5 milligrams per liter (mg/L) or, if chloramines are used as the primary disinfectant, a chloramine residual of 1.0 mg/L (measured as total chlorine) shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection, and source of water shall be maintained.

(j) If a structure is connected to a public water supply system and has a rainwater harvesting system [for indoor use], the structure must have appropriate cross-connection safeguards in accordance with subsection (h)(1) of this section.

(1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that is connected to a public water system for a back-up supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the public water system [A person who intends to connect a rainwater harvesting system to a public water system for use for potable purposes must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located].

(2) At each residence or facility where water from a rainwater harvesting system is used for [indoor] potable purposes and there is a connection to a public water system, the public water system shall ensure that the rainwater harvesting system is installed and maintained by a master plumber or journeyman plumber licensed by the

Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist.

(3) A person who intends to connect a rainwater harvesting system to a public water system must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located.

(4) The public water system used as a back-up supply for the rainwater harvesting system may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

(2) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(g) A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, Article 4413(36), §1.03 (moved to Texas Occupations Code, §2301.002, effective June 1, 2003), is not eligible for title receipt or registration in an affected EAC program county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

(h) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must [shall] comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision for vehicles primarily operated in I/M program areas.

§114.83. Waivers and Extensions.

A motorist may apply to the Texas Department of Public Safety for a waiver or an extension as specified in 37 TAC Chapter 23 (relating to Vehicle Inspection), [§23.93 (relating to Vehicle Emissions Inspection Requirements),] which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

§114.84. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the Texas Department of Public Safety (DPS), unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance (I/M) requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the executive director shall consult with the DPS.

(b) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Effective March 1, 2015, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(c) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS[₅] unless the certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(d) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the

DPS, without first obtaining and maintaining DPS recognition. Requirements to become a DPS Recognized Emission Repair Technician are contained in 37 TAC Chapter 23 (relating to Vehicle Inspection) [§23.93 (relating to Vehicle Emissions Inspection Requirements)].

§114.87. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station in an affected early action compact program county. This fee must include one free retest if the vehicle fails the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed; the motorist submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed; and the retest is conducted within 15 days of the initial emissions test. In Travis and Williamson Counties beginning September 1, 2005 and ending February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must [shall] collect a fee not to exceed \$16 and [shall] remit \$4.50 to the Texas Department of Public Safety (DPS) for each on-board diagnostic and two-speed idle test. In Travis and Williamson Counties effective March 1, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title must collect a fee not to exceed \$11.50 for each on-board diagnostic and two-speed idle test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test[₅] at an inspection station designated by the DPS[₅] must be the same as the amounts specified in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections resulting from written notification that the subject vehicle failed on-road testing (remote sensing) must [shall] charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) In Travis and Williamson Counties, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 27, 2013.

TRD-201304272

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 10, 2013

For further information, please call: (512) 239-2548



CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER D. RULES AND
REGULATIONS FOR PUBLIC WATER
SYSTEMS

30 TAC §290.44

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes an amendment to §290.44.

Background and Summary of the Factual Basis for the Proposed Rule

The purpose of the proposed amendment is to reflect changes to the Texas Health and Safety Code (THSC), §341.042, made during the 83rd Legislature, 2013, in House Bill (HB) 2781. These changes relate to structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS). Some of the changes to §290.44(j) required by HB 2781 were implemented through Rule Project No. 2011-057-290-OW, which was in progress when the bill passed. Rule Project No. 2011-057-290-OW is scheduled to be considered for adoption during the August 21, 2013, agenda and may be published in the *Texas Register* on September 6, 2013.

Section Discussion

§290.44, *Water Distribution*

The commission proposes to amend §290.44(j) and its subdivisions to implement THSC, §341.042, as amended by HB 2781, for structures that have RWHSs and are connected to a PWS. The proposed rulemaking would: remove the phrase "for indoor use" from §290.44(j), requiring all structures that are connected to a PWS and have a RWHS to have appropriate cross-connection safeguards; add §290.44(j)(1) to require that a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a back-up supply must have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater; remove the word "indoor" from the phrase "for indoor potable purposes" in §290.44(j)(2), which refers to a RWHS that is connected to a PWS and must be installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist; add §290.44(j)(3), by renumbering existing §290.44(j)(1), which requires a person who intends to connect a RWHS to a PWS to give written notice to the municipality in which the RWHS is located or the owner or operator of the PWS, as amended to remove the phrase "for use for potable purposes," to improve the rule's organizational structure; and, add §290.44(j)(4) to require that the PWS used as a back-up supply for the RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure. HB 2781 uses the term "auxiliary water supply" to refer to a PWS that is being used as the back-up supply for a privately owned RWHS, however, throughout Chapter 290, the term "auxiliary" is used to describe a source that is connected to the PWS, such as a well that provides additional water for a surface water system. In order to maintain consistency with Chapter 290's established terminology, the executive director's staff proposes to refer to a back-up supply instead of an auxiliary water supply or an auxiliary water source as referenced in the legislation.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule implements the provisions of HB 2781 relating to RWHSs that have auxiliary water sources. If a RWHS uses a PWS as an auxiliary water source, the proposed rule would allow connection of the PWS only to the water storage tank. The PWS, when used as an auxiliary water supply to a RWHS, could not be connected to the plumbing of a structure under the proposed rule. The proposed rule also requires a backflow prevention assembly or an air gap to be installed for a privately owned RWHS with a capacity of more than 500 gallons when it has an auxiliary water supply to ensure a physical separation between the RWHS and the auxiliary water supply.

The proposed rule is not expected to have a fiscal impact on state agencies or units of local government. If there are any state agencies or units of local government that have facilities that use RWHSs that are connected to auxiliary water supplies, they would be expected to already have backflow protection in place. But if they do not, then the installation of an air gap or a backflow prevention assembly can be installed for minimal costs. An owner of a RWHS could pay as much as \$300 to \$500 for one time installation costs and \$100 per year for annual inspections of the control.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law and a decreased risk of waterborne disease when RWHSs are used.

The proposed rule would not have a significant fiscal impact on individuals since they would make the decision whether it is in their interest to install a RWHS connected to an auxiliary water supply. Costs to connect directly to a storage tank instead of the plumbing of a structure are not expected to be significant. Costs for an air gap are expected to be minimal, and the costs for a backflow prevention assembly are not expected to be significant (\$300 to \$500 for one time installation costs and \$100 per year for annual inspections of the control).

The proposed rule is not expected to have a fiscal impact on large businesses unless they choose to install a RWHS with an auxiliary water source. Costs to install controls required by this rule are expected to have a minimal fiscal impact (and are expected to cost the same as that incurred by individuals) if such a system is installed.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. If a small business chooses to install a RWHS with an auxiliary water source, it would experience the same types of costs as those incurred by individuals or a large business. These costs are expected to have a minimal fiscal impact.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to comply with state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not re-

quired because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have a RWHS and are connected to a PWS. The bill also contains language that states that a municipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rule is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing RWHSs in Texas. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking is not proposed solely under the general powers of the agency, but specifically under THSC, §341.042, which allows the commission to adopt and enforce rules related to harvested rainwater.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rule and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by HB 2781, which establish requirements for structures that have RWHSs and are connected to a PWS. The bill also contains language that states that a munic-

ipality or the owner or operator of a PWS may not be held liable for any adverse health effects allegedly caused by the consumption of water from an affected RWHS if the municipality or PWS is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or PWS. The proposed rulemaking would substantially advance these purposes by amending Chapter 290 to incorporate the statutory requirements.

Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This proposed rulemaking will primarily affect those persons who have a structure that has a RWHS and is connected to a PWS; this would not be an effect on real property. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on November 5, 2013, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-043-290-OW. The comment period closes November 12, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Cindy Haynie, Water Supply Division, Plan and Technical Review Section, (512) 239-3465.

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.042, which allows the commission to adopt rules relating to the domestic use of harvested rainwater. Therefore, the TWC and THSC authorize rulemaking that amend §290.44, which relates to structures that have rainwater harvesting systems (RWHS) and are connected to a public water system (PWS).

The proposed amendment implements the language set forth in House Bill (HB) 2781, which requires the commission to amend the existing rule for structures that have RWHSs and are connected to a PWS by requiring such structures to have appropriate cross-connection safeguards and to be installed by a specially-licensed plumber. Additionally, HB 2781 requires that a RWHS that is connected to a PWS for use as a back-up supply may not also have the plumbing of the structure connected to the PWS. HB 2781 also removes the phrase "for indoor use" when referring to such structures.

§290.44. Water Distribution.

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed, and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial, and other recognized standards utilized by licensed professional engineers.

(1) All newly installed pipes and related products must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(2) All plastic pipes for use in public water systems must also bear the National Sanitation Foundation Seal of Approval (NSF-pw) and have an ASTM design pressure rating of at least 150 pounds per square inch (psi) or a standard dimension ratio of 26 or less.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted or relocated for use in any public drinking water supply.

(4) Water transmission and distribution lines must be installed in accordance with the manufacturer's instructions. However, the top of the waterline must be located below the frost line and in no case shall the top of the waterline be less than 24 inches below ground surface.

(5) The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

(A) for installation or repair of any public water supply; and

(B) for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(c) Minimum waterline sizes. The minimum waterline sizes are for domestic flows only and do not consider fire flows. Larger pipe sizes shall be used when the licensed professional engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new waterline less than two inches in diameter will be allowed to be installed in a public water system distribution system. These minimum line sizes do not apply to individual customer service lines.

Figure: 30 TAC §290.44(c) (No change.)

(d) Minimum pressure requirement. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide fire fighting capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. The distribution system of public water systems that are also affected utilities must be designed to meet the requirements of §290.45(h) of this title (relating to Minimum Water System Capacity Requirements).

(1) Air release devices shall be installed in the distribution system at all points where topography or other factors may create air locks in the lines. Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(2) When service is to be provided to more than one pressure plane or when distribution system conditions and demands are such that low pressures develop, the method of providing increased pressure shall be by means of booster pumps taking suction from storage tanks. If an exception to this requirement is desired, the designing engineer must furnish for the executive director's review all planning material for booster pumps taking suction from other than a storage tank. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls, and other pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 psi must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures, less than 20 psi, adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Service connections that require booster pumps taking suction from the public water system lines must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. Where these types of installations are necessary, the preferred method of pressure maintenance consists of an air gapped connection with a storage tank and subsequent repressurization facilities.

(4) Each community public water system shall provide accurate metering devices at each residential, commercial, or industrial service connection for the accumulation of water usage data. A wa-

ter system that furnishes the services or commodity only to itself or its employees when that service or commodity is not resold to or used by others is exempt from this requirement.

(5) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design.

(6) The system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines less than two inches in diameter will not require flush valves if they end at a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged to ultimately connect the ends to provide circulation.

(e) Location of waterlines. The following rules apply to installations of waterlines, wastewater mains or laterals, and other conveyances/appurtenances identified as potential sources of contamination. Furthermore, all ratings specified shall be defined by ASTM or AWWA standards unless stated otherwise. New mains, service lines, or laterals are those that are installed where no main, service line, or lateral previously existed, or where existing mains, service lines, or laterals are replaced with pipes of different size or material.

(1) When new potable water distribution lines are constructed, they shall be installed no closer than nine feet in all directions to wastewater collection facilities. All separation distances shall be measured from the outside surface of each of the respective pieces.

(2) Potable water distribution lines and wastewater mains or laterals that form parallel utility lines shall be installed in separate trenches.

(3) No physical connection shall be made between a drinking water supply and a sewer line. Any appurtenance shall be designed and constructed so as to prevent any possibility of sewage entering the drinking water system.

(4) Where the nine-foot separation distance cannot be achieved, the following criteria shall apply.

(A) New waterline installation - parallel lines.

(i) Where a new potable waterline parallels an existing, non-pressure or pressure rated wastewater main or lateral and the licensed professional engineer licensed in the State of Texas is able to determine that the existing wastewater main or lateral is not leaking, the new potable waterline shall be located at least two feet above the existing wastewater main or lateral, measured vertically, and at least four feet away, measured horizontally, from the existing wastewater main or lateral. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater main or lateral.

(ii) Where a new potable waterline parallels an existing pressure rated wastewater main or lateral and it cannot be determined by the licensed professional engineer if the existing line is leaking, the existing wastewater main or lateral shall be replaced with at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the new wastewater line, measured vertically, and at least four feet away, measured horizontally, from the replaced wastewater main or lateral.

(iii) Where a new potable waterline parallels a new wastewater main, the wastewater main or lateral shall be constructed of at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the wastewater main or lateral, measured

vertically, and at least four feet away, measured horizontally, from the wastewater main or lateral.

(B) New waterline installation - crossing lines.

(i) Where a new potable waterline crosses an existing, non-pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. If the existing wastewater main or lateral is disturbed or shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(ii) Where a new potable waterline crosses an existing, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. If the existing wastewater main or lateral shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(iii) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and the standard pipe segment length of the wastewater main or lateral is at least 18 feet, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(iv) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and a standard length of the wastewater pipe is less than 18 feet in length, the potable water pipe segment shall be centered over the wastewater line. The materials and method of installation shall conform to one of the following options.

(I) Within nine feet horizontally of either side of the waterline, the wastewater pipe and joints shall be constructed with pipe material having a minimum pressure rating of at least 150 psi. An absolute minimum vertical separation distance of two feet shall be provided. The wastewater main or lateral shall be located below the waterline.

(II) All sections of wastewater main or lateral within nine feet horizontally of the waterline shall be encased in an 18-foot (or longer) section of pipe. Flexible encasing pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The encasing pipe shall be centered on the waterline and shall be at least two nominal pipe diameters larger than the wastewater main or lateral. The space around the carrier pipe shall be supported at five-foot (or less) intervals with spacers or be filled to the springline with washed sand. Each end of the casing shall be sealed with watertight non-shrink cement grout or a manufactured watertight seal. An absolute minimum separation distance of six inches between the encasement pipe and the waterline

shall be provided. The wastewater line shall be located below the waterline.

(III) When a new waterline crosses under a wastewater main or lateral, the waterline shall be encased as described for wastewater mains or laterals in subclause (II) of this clause or constructed of ductile iron or steel pipe with mechanical or welded joints as appropriate. An absolute minimum separation distance of one foot between the waterline and the wastewater main or lateral shall be provided. Both the waterline and wastewater main or lateral must pass a pressure and leakage test as specified in AWWA C600 standards.

(v) Where a new potable waterline crosses a new, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater line such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the center line of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pressure rating of at least 150 psi. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(vi) Where cement stabilized sand bedding is required, the cement stabilized sand shall have a minimum of 10% cement per cubic yard of cement stabilized sand mixture, based on loose dry weight volume (at least 2.5 bags of cement per cubic yard of mixture). The cement stabilized sand bedding shall be a minimum of six inches above and four inches below the wastewater main or lateral. The use of brown coloring in cement stabilized sand for wastewater main or lateral bedding is recommended for the identification of pressure rated wastewater mains during future construction.

(5) Waterline and wastewater main or lateral manhole or cleanout separation. The separation distance from a potable waterline to a wastewater main or lateral manhole or cleanout shall be a minimum of nine feet. Where the nine-foot separation distance cannot be achieved, the potable waterline shall be encased in a joint of at least 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five-foot intervals with spacers or be filled to the springline with washed sand. The encasement pipe shall be centered on the crossing and both ends sealed with cement grout or manufactured sealant.

(6) Location of fire hydrants. Fire hydrants shall not be installed within nine feet vertically or horizontally of any wastewater main, wastewater lateral, or wastewater service line regardless of construction.

(7) Location of potable or raw water supply or suction lines. Suction mains to pumping equipment shall not cross wastewater mains, wastewater laterals, or wastewater service lines. Raw water supply lines shall not be installed within five feet of any tile or concrete wastewater main, wastewater lateral, or wastewater service line.

(8) Proximity of septic tank drainfields. Waterlines shall not be installed closer than ten feet to septic tank drainfields.

(f) Sanitary precautions and disinfection. Sanitary precautions, flushing, disinfection procedures, and microbiological sampling as prescribed in AWWA standards for disinfecting water mains shall be followed in laying waterlines.

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

(2) Special precautions must be taken when waterlines are laid under any flowing or intermittent stream or semipermanent body of water such as marsh, bay, or estuary. In these cases, the water main shall be installed in a separate watertight pipe encasement and valves must be provided on each side of the crossing with facilities to allow the underwater portion of the system to be isolated and tested to determine that there are no leaks in the underwater line. Alternately, and with the permission of the executive director, the watertight pipe encasement may be omitted.

(3) New mains shall be thoroughly disinfected in accordance with AWWA Standard C651 and then flushed and sampled before being placed in service. Samples shall be collected for microbiological analysis to check the effectiveness of the disinfection procedure. Sampling shall be repeated if contamination persists. A minimum of one sample for each 1,000 feet of completed waterline will be required or at the next available sampling point beyond 1,000 feet as designated by the design engineer.

(g) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany the submitted planning material.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(h) Backflow, siphonage.

(1) No water connection from any public drinking water supply system shall be allowed to any residence or establishment where an actual or potential contamination hazard exists unless the public water facilities are protected from contamination.

(A) At any residence or establishment where an actual or potential contamination hazard exists, additional protection shall be required at the meter in the form of an air gap or backflow prevention assembly. The type of backflow prevention assembly required shall be determined by the specific potential hazard identified in §290.47(i) of this title (relating to Appendices).

(B) At any residence or establishment where an actual or potential contamination hazard exists and an adequate internal cross-connection control program is in effect, backflow protection at the water service entrance or meter is not required.

(i) An adequate internal cross-connection control program shall include an annual inspection and testing by a licensed backflow prevention assembly tester on all backflow prevention assemblies used for health hazard protection.

(ii) Copies of all such inspection and test reports must be obtained and kept on file by the water purveyor.

(iii) It will be the responsibility of the water purveyor to ensure that these requirements are met.

(2) No water connection from any public drinking water supply system shall be connected to any condensing, cooling, or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements

of paragraph (1) of this subsection. Water from such systems cannot be returned to the potable water supply.

(3) Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

(4) All backflow prevention assemblies that are required according to this section and associated table located in §290.47(i) of this title shall be tested upon installation by a licensed backflow prevention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a licensed backflow prevention assembly tester.

(A) Backflow prevention assembly testers shall have completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license as a backflow prevention assembly tester.

(i) Backflow prevention assembly testers are qualified to test and repair assemblies on any domestic, commercial, industrial, or irrigation service.

(ii) Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshal's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

(B) Gauges used in the testing of backflow prevention assemblies shall be tested for accuracy annually in accordance with the University of Southern California's Manual of Cross-Connection Control or the AWWA's Recommended Practice for Backflow Prevention and Cross-Connection Control (AWWA Manual, M14). Public water systems shall require testers to include test gauge serial numbers on "Test and Maintenance" report forms and ensure testers have gauges tested for accuracy.

(C) A test report must be completed by the recognized backflow prevention assembly tester for each assembly tested. The signed and dated original must be submitted to the public water supplier for recordkeeping purposes. Any form which varies from the format specified in Appendix F located in §290.47(f) of this title must be approved by the executive director prior to being placed in use.

(5) The use of a backflow prevention assembly at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

(6) At any residence or establishment where there is no actual or potential contamination hazard, a backflow prevention assembly is not required.

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner.

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows.

(A) The tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, or the NSF. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is faced downward and located to minimize the possibility of drawing contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion-resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water only. The hoses shall conform to ANSI/NSF Standard 61 and must be certified by an entity recognized by the commission. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start-up during intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least one sample per month from each tank shall be collected and submitted for microbiological analysis to one of the commission's approved laboratories for each month of operation.

(K) A minimum free chlorine residual of 0.5 milligrams per liter (mg/L) or, if chloramines are used as the primary disinfectant, a chloramine residual of 1.0 mg/L (measured as total chlorine) shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection, and source of water shall be maintained.

(j) If a structure is connected to a public water supply system and has a rainwater harvesting system [for indoor use], the structure must have appropriate cross-connection safeguards in accordance with subsection (h)(1) of this section.

(1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that is connected to a public water system for a back-up supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the public water system. [A person who intends to connect a rainwater harvesting system to a public water system for use for potable

purposes must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located.]

(2) At each residence or facility where water from a rainwater harvesting system is used for [indoor] potable purposes and there is a connection to a public water system, the public water system shall ensure that the rainwater harvesting system is installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist.

(3) A person who intends to connect a rainwater harvesting system to a public water system must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located.

(4) The public water system used as a back-up supply for the rainwater harvesting system may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 27, 2013.

TRD-201304275

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 10, 2013

For further information, please call: (512) 239-0779



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §9.177, concerning certification principles: staff member and service provider requirements; §9.185, concerning certification process; §9.577, concerning corrective action and program provider sanctions; and §9.579, concerning certification principles: qualified personnel, in Subchapter D, Home and Community-based Services (HCS) Program, and Subchapter N, Texas Home Living (TxHmL) Program, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement the 2014 - 2015 General Appropriations Act (Article II, Special Provisions, §61, Senate Bill 1, 83rd Legislature, Regular Session, 2013) by requiring HCS and TxHmL program providers to pay a base wage

to service providers of supervised living, residential support, supported home living, and community support. The required base wages are at least \$7.50 per hour as of the effective date of the proposed amendments and at least \$7.86 per hour effective September 1, 2014.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.177 adds new subsections (p) - (r). Proposed subsection (p) requires an HCS program provider to pay a service provider of supported home living services a base wage of at least \$7.50 per hour as of the effective date of the amendments and, beginning September 1, 2014, at least \$7.86 per hour. The program provider must pay the base wage to a service provider who is employed by or contracting with the program provider. Proposed subsection (q) requires a program provider to notify an affected service provider about the new base wages by January 15, 2014, if the service provider is employed by or contracting with the program provider on January 1, 2014. The program provider must notify any affected service provider hired after January 1, 2014, within three days after hire about the base wage requirement. Proposed subsection (r) requires a program provider to ensure that a contractor of the program provider complies with proposed subsections (p) and (q) as if the contractor were the program provider.

The proposed amendment to §9.185 adds new subsection (i) which states that if DADS finds that an HCS program provider is out of compliance with the §9.177(p) or (r), corrective action may be taken by DADS that includes requiring the program provider to pay or to ensure payment of the difference between the required base wage and the amount paid to the service provider. The proposed subsection also states that DADS may refer a program provider to the Office of the Inspector General for failure to follow §9.177(p) or (r).

The proposed amendment to §9.577 adds subsection (i) which states that if DADS finds that a TxHmL program provider is out of compliance with §9.579(r) or (t), corrective action may be taken by DADS that includes requiring the program provider to pay or to ensure payment of the difference between the required base wage and the amount paid to the service provider. The proposed subsection also states that DADS may refer a program provider to the Office of the Inspector General for failure to follow §9.579(r) or (t).

The proposed amendment to §9.579 adds new subsections (r) - (t). Proposed subsection (r) requires a TxHmL program provider to pay a service provider of community support a base wage of at least \$7.50 per hour as of the effective date of the amendments and, beginning September 1, 2014, to pay the service provider at least \$7.86 per hour. The program provider must pay the base wage to a service provider who is employed by or contracting with the program provider. Proposed subsection (s) requires a program provider to notify an affected service provider about the new base wages by January 15, 2014, if the service provider is employed by or contracting with the program provider on January 1, 2014. The program provider must notify any affected service provider hired after January 1, 2014, within three days after hire about the base wage requirement. Proposed subsection (t) requires a program provider to ensure that a contractor of the program provider complies with proposed subsections (r) and (s) as if the contractor were the program provider.

The proposed amendment also replaces outdated terminology with person-first respectful language in §§9.185, 9.577, and

AN ACT

relating to rainwater harvesting and other water conservation initiatives.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 447.004(c-1), Government Code, is amended to read as follows:

(c-1) The procedural standards adopted under this section must require that:

(1) on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for potable and nonpotable indoor and outdoor water use [~~and landscape watering~~] be incorporated into the design and construction of:

(A) each new state building with a roof area measuring at least 10,000 square feet; and

(B) any other new state building for which the incorporation of such systems is feasible; and

(2) rainwater harvesting system technology for potable and nonpotable indoor and outdoor water use [~~and landscape watering~~] be incorporated into the design and construction of each new state building with a roof area measuring at least 50,000 square feet that is located in an area of this state in which the average annual rainfall is at least 20 inches.

SECTION 2. Section 341.042(b), Health and Safety Code, as

1 amended by Chapters 1311 (H.B. 3391) and 1240 (S.B. 1073), Acts of
2 the 82nd Legislature, Regular Session, 2011, is reenacted and
3 amended to read as follows:

4 (b) The commission by rule shall provide that if a structure
5 ~~[is connected to a public water supply system and]~~ has a rainwater
6 harvesting system and uses a public water supply for an auxiliary
7 water source ~~[for indoor use]~~, the structure must have appropriate
8 cross-connection safeguards.

9 SECTION 3. Sections 341.042(b-1) and (b-3), Health and
10 Safety Code, as added by Chapter 1240 (S.B. 1073), Acts of the 82nd
11 Legislature, Regular Session, 2011, are amended to read as follows:

12 (b-1) A privately owned rainwater harvesting system with a
13 capacity of more than 500 gallons that has an auxiliary water supply
14 shall have a backflow prevention assembly or an air gap installed at
15 the storage facility for the harvested rainwater to ensure physical
16 separation between the rainwater harvesting system and the
17 auxiliary water supply. A rainwater harvesting system that meets
18 the requirements of this subsection is considered connected to a
19 public water supply system only for purposes of compliance with
20 minimum water system capacity requirements as determined by
21 commission rule. ~~[The commission shall work with the department to~~
22 ~~develop rules regarding the installation and maintenance of~~
23 ~~rainwater harvesting systems that are used for indoor potable~~
24 ~~purposes and connected to a public water supply system. The rules~~
25 ~~must contain criteria that are sufficient to ensure that:~~

26 ~~[(1) safe sanitary drinking water standards are met,~~
27 ~~and~~

1 ~~[(2) harvested rainwater does not come into~~
2 ~~communication with a public water supply system's drinking water at~~
3 ~~a location off of the property on which the rainwater harvesting~~
4 ~~system is located.]~~

5 (b-3) A person who intends to use ~~[connect a rainwater~~
6 ~~harvesting system to]~~ a public water supply system as an auxiliary
7 water source ~~[for use for potable purposes]~~ must give written
8 notice of that intention to the municipality in which the rainwater
9 harvesting system is located or the owner or operator of the public
10 water supply system ~~[before connecting the rainwater harvesting~~
11 ~~system to the public water supply system]~~. The public water supply
12 system used as an auxiliary water source may be connected only to
13 the water storage tank and may not be connected to the plumbing of a
14 structure.

15 SECTION 4. Section 341.042(b-3), Health and Safety Code, as
16 added by Chapter 1311 (H.B. 3391), Acts of the 82nd Legislature,
17 Regular Session, 2011, is redesignated as Section 341.042(b-5),
18 Health and Safety Code, and amended to read as follows:

19 (b-5) ~~[(b-3)]~~ A municipality or the owner or operator of a
20 public water supply system may not be held liable for any adverse
21 health effects allegedly caused by the consumption of water
22 collected by a rainwater harvesting system that uses ~~[is connected~~
23 ~~to]~~ a public water supply system or an auxiliary water source and is
24 used for potable purposes if the municipality or the public water
25 supply system is in compliance with the sanitary standards for
26 drinking water adopted by the commission and applicable to the
27 municipality or public water supply system.

1 SECTION 5. Section 580.004(b), Local Government Code, is
2 amended to read as follows:

3 (b) The Texas Water Development Board shall ensure that
4 training on rainwater harvesting is available for the members of
5 the permitting staffs of municipalities and counties at least
6 quarterly. Each member of the permitting staff of each county and
7 municipality located wholly or partly in an area designated by the
8 Texas Commission on Environmental Quality as a priority groundwater
9 management area under Section 35.008, Water Code, whose work
10 relates directly to permits involving rainwater harvesting and each
11 member of the permitting staff of each county and municipality with
12 a population of more than 10,000 [~~100,000~~] whose work relates
13 directly to permits involving rainwater harvesting must receive
14 appropriate training regarding rainwater harvesting standards and
15 their relation to permitting at least once every five
16 years. Members of the permitting staffs of counties and
17 municipalities not located wholly or partly in an area designated
18 by the Texas Commission on Environmental Quality as a priority
19 groundwater management area under Section 35.008, Water Code, whose
20 work relates directly to permits involving rainwater harvesting and
21 members of the permitting staffs of counties and municipalities
22 with a population of 10,000 [~~100,000~~] or less whose work relates
23 directly to permits involving rainwater harvesting are encouraged
24 to receive the training. The Texas Water Development Board may
25 provide appropriate training by seminars or by videotape or
26 functionally similar and widely available media without cost.

27 SECTION 6. Section 5.008(b), Property Code, is amended to

1 read as follows:

2 (b) The notice must be executed and must, at a minimum, read
3 substantially similar to the following:

4 SELLER'S DISCLOSURE NOTICE

5 CONCERNING THE PROPERTY AT _____
6 (Street Address and City)

7 THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF
8 THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY
9 SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
10 WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT
11 A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

12 Seller ___ is ___ is not occupying the Property.

13 If unoccupied, how long since Seller has occupied the Property?

14 _____

15 1. The Property has the items checked below:

16 Write Yes (Y), No (N), or Unknown (U).

- | | | |
|------------------------|----------------------|--------------------|
| 17 ___ Range | ___ Oven | ___ Microwave |
| 18 ___ Dishwasher | ___ Trash Compactor | ___ Disposal |
| 19 ___ Washer/Dryer | ___ Window | ___ Rain Gutters |
| 20 Hookups | ___ Screens | |
| 21 ___ Security | ___ Fire Detection | ___ Intercom |
| 22 System | ___ Equipment | System |
| 23 | ___ Smoke Detector | |
| 24 | ___ Smoke Detector - | |
| 25 | Hearing Impaired | |
| 26 | ___ Carbon Monoxide | |
| 27 | Alarm | |
| 28 | ___ Emergency Escape | |
| 29 | Ladder(s) | |
| 30 ___ TV Antenna | ___ Cable TV | ___ Satellite |
| 31 | Wiring | Dish |
| 32 ___ Ceiling Fan(s) | ___ Attic Fan(s) | ___ Exhaust |
| 33 | | Fan(s) |
| 34 ___ Central A/C | ___ Central Heating | ___ Wall/Window |
| 35 | | Air |
| 36 | | Conditioning |
| 37 ___ Plumbing System | ___ Septic System | ___ Public Sewer |
| 38 | | System |
| 39 ___ Patio/Decking | ___ Outdoor Grill | ___ Fences |
| 40 ___ Pool | ___ Sauna | ___ Spa |
| 41 | | Hot Tub |
| 42 ___ Pool Equipment | ___ Pool Heater | ___ Automatic Lawn |

1 more information. A buyer may require a seller to install smoke
2 detectors for the hearing impaired if: (1) the buyer or a member of
3 the buyer's family who will reside in the dwelling is hearing
4 impaired; (2) the buyer gives the seller written evidence of the
5 hearing impairment from a licensed physician; and (3) within 10
6 days after the effective date, the buyer makes a written request for
7 the seller to install smoke detectors for the hearing impaired and
8 specifies the locations for installation. The parties may agree
9 who will bear the cost of installing the smoke detectors and which
10 brand of smoke detectors to install.

11 3. Are you (Seller) aware of any known defects/malfunctions in any
12 of the following?

13 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- | | | | |
|----|--|---|---|
| 14 | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Ceilings | <input type="checkbox"/> Floors |
| 15 | <input type="checkbox"/> Exterior Walls | <input type="checkbox"/> Doors | <input type="checkbox"/> Windows |
| 16 | <input type="checkbox"/> Roof | <input type="checkbox"/> Foundation/
Slab(s) | <input type="checkbox"/> Basement |
| 17 | | | |
| 18 | <input type="checkbox"/> Walls/Fences | <input type="checkbox"/> Driveways | <input type="checkbox"/> Sidewalks |
| 19 | <input type="checkbox"/> Plumbing/Sewers/
Septics | <input type="checkbox"/> Electrical
Systems | <input type="checkbox"/> Lighting
Fixtures |

21 Other Structural Components (Describe): _____
22 _____
23 _____

24 If the answer to any of the above is yes, explain. (Attach
25 additional sheets if necessary): _____
26 _____
27 _____

28 4. Are you (Seller) aware of any of the following conditions?

29 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- | | | |
|----|--|--|
| 30 | <input type="checkbox"/> Active Termites | <input type="checkbox"/> Previous Structural |
|----|--|--|

- 1 (includes or Roof Repair
- 2 wood-destroying insects)
- 3 Termite or Wood Rot Damage Hazardous or Toxic Waste
- 4 Needing Repair
- 5 Previous Termite Damage Asbestos Components
- 6 Previous Termite Urea formaldehyde
- 7 Treatment Insulation
- 8 Previous Flooding Radon Gas
- 9 Improper Drainage Lead Based Paint
- 10 Water Penetration Aluminum Wiring
- 11 Located in 100-Year Previous Fires
- 12 Floodplain
- 13 Present Flood Insurance Unplatted Easements
- 14 Coverage
- 15 Landfill, Settling, Soil Subsurface
- 16 Movement, Fault Lines Structure or Pits
- 17 Single Blockable Main Previous Use of Premises
- 18 Drain in Pool/Hot for Manufacture of
- 19 Tub/Spa* Methamphetamine

20 If the answer to any of the above is yes, explain. (Attach
21 additional sheets if necessary):_____

22 _____
23 _____

24 *A single blockable main drain may cause a suction entrapment
25 hazard for an individual.

26 5. Are you (Seller) aware of any item, equipment, or system in or
27 on the property that is in need of repair? Yes (if you are
28 aware) No (if you are not aware). If yes, explain (attach
29 additional sheets as necessary). _____

30 6. Are you (Seller) aware of any of the following?
31 Write Yes (Y) if you aware, write No (N) if you are not aware.

- 32 Room additions, structural modifications, or other
- 33 alterations or repairs made without necessary permits or not
- 34 in compliance with building codes in effect at that time.
- 35 Homeowners' Association or maintenance fees or assessments.
- 36 Any "common area" (facilities such as pools, tennis courts,
- 37 walkways, or other areas) co-owned in undivided interest with
- 38 others.
- 39 Any notices of violations of deed restrictions or
- 40 governmental ordinances affecting the condition or use of the
- 41 Property.

- 1 ___ Any lawsuits directly or indirectly affecting the Property.
- 2 ___ Any condition on the Property which materially affects the
- 3 physical health or safety of an individual.
- 4 ___ Any rainwater harvesting system located on the property that
- 5 is larger than 500 gallons and that uses a public water supply
- 6 as an auxiliary water source [~~connected to the property's~~
- 7 ~~public water supply that is able to be used for indoor potable~~
- 8 ~~purposes~~].

9 If the answer to any of the above is yes, explain. (Attach
 10 additional sheets if necessary): _____
 11 _____
 12 _____

13 7. If the property is located in a coastal area that is seaward of
 14 the Gulf Intracoastal Waterway or within 1,000 feet of the mean high
 15 tide bordering the Gulf of Mexico, the property may be subject to
 16 the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63,
 17 Natural Resources Code, respectively) and a beachfront
 18 construction certificate or dune protection permit may be required
 19 for repairs or improvements. Contact the local government with
 20 ordinance authority over construction adjacent to public beaches
 21 for more information.

22 _____
 23 Date Signature of Seller

24 The undersigned purchaser hereby acknowledges receipt of the
 25 foregoing notice.

26 _____
 27 Date Signature of Purchaser

28 SECTION 7. Not later than January 1, 2014, the Texas
 29 Commission on Environmental Quality shall adopt rules to implement
 30 Section 341.042, Health and Safety Code, as amended by this Act.

31 SECTION 8. Sections 341.042(b-1) and (b-2), Health and
 32 Safety Code, as added by Chapter 1311 (H.B. 3391), Acts of the 82nd

1 Legislature, Regular Session, 2011, are repealed.

2 SECTION 9. Section 5.008(b), Property Code, as amended by
3 this Act, applies only to a transfer of property that occurs on or
4 after the effective date of this Act. A transfer of property that
5 occurs before the effective date of this Act is governed by the law
6 applicable to the transfer immediately before that date, and the
7 former law is continued in effect for that purpose. For the
8 purposes of this section, a transfer of property occurs before the
9 effective date of this Act if the contract binding the purchaser to
10 purchase the property is executed before that date.

11 SECTION 10. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 2781 was passed by the House on May 8, 2013, by the following vote: Yeas 137, Nays 10, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2781 was passed by the Senate on May 22, 2013, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor

Texas Commission on Environmental Quality



ORDER ADOPTING AN AMENDED RULE

Docket No. 2013 - 1110 - RUL

On January 29, 2014, the Texas Commission on Environmental Quality (Commission) adopted an amended rule in 30 TAC Chapter 290, concerning Public Drinking Water. The proposed rule was published for comment in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7083).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rule is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rule necessary to comply with *Texas Register* requirements. The adopted rule and the preamble to the adopted rule are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman