

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 21, 2015

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2015 AUG 21 AM 10:50
CHIEF CLERKS OFFICE

Ms. Bridget Bohac, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2015-1163-RES; A Resolution Delegating to the Executive Director the Authority to Certify Certain Water or Wastewater Service Providers as Providing Regional Water and/or Wastewater Service.

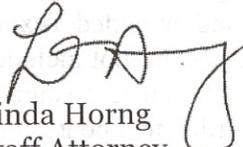
Dear Ms. Bohac:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus seven copies of the following backup materials for the September 9, 2015 agenda item on the above referenced matter:

1. Proposed Order; and
2. Staff Memorandum.

Please do not hesitate to contact me at (512) 239-0676 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,


Linda Horng
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Texas Commission on Environmental Quality

Through: Bridget Bohac
Chief Clerk

From: Linda Horng
Staff Attorney
Environmental Law Division

Date: August 21, 2015

Subject: Docket No. 2015-1163-RES. A Resolution Delegating to the Executive Director the Authority to Certify Certain Water or Wastewater Service Providers as Providing Regional Water and/or Wastewater Service.

TYPE OF REQUEST: A resolution delegating to the Executive Director the Commission's authority to certify water and/or wastewater service providers as providing regional service for the purpose of eligibility to receive a tax exemption.

AUTHORITY: Texas Tax Code, Section 151.355(5) and Texas Water Code, Section 5.122.

BACKGROUND: Texas Tax Code, Section 151.355(5) provides a tax exemption for equipment, services or supplies used solely to construct or operate a water supply or wastewater system certified by the Texas Commission on Environmental Quality as a regional system. Section 151.355 was originally enacted by SB 2 and SB 312 in 2001. SB 2 limited regional certification to political subdivisions only, while SB 312 did not. The Commission's 2002 Resolution specified that the authority of the ED to grant requests for regional certification applied to requests from political subdivisions. In 2003, HB 2424 reenacted and amended Texas Tax Code, Section 151.355. The version of Section 151.355 adopted by HB 2424 did not include SB 2's limitation of certification to only political subdivisions. As a result, the current statute does not limit regional provider certification to political subdivisions. In order to update the Resolution to apply to entities that are not political subdivisions, the proposed resolution will delegate the Commission's authority to certify regional providers to the Executive Director in accordance with Texas Water Code, Section 5.122.

LEGAL CRITERIA: The Texas Water Code, Section 5.122 authorizes the Commission to delegate to the Executive Director the Commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration, or other authorization or approval if the conditions contained within the section are satisfied. The Commission may delegate the authority to review,

issue, approve, and act on the certification requests because such requests will meet the following three conditions required under Section 5.122(a):

1. no notice is required;
2. the applicant for the authorization or approval agrees in writing to the action to be taken by the executive director; and
3. the request is uncontested and does not require an evidentiary hearing.

The Executive Director will apply the following criteria to determine whether a water or wastewater provider should be certified as a regional provider for the purpose of receiving a tax exemption. An applicant is a regional provider if it meets one of the following:

1. one owner and one large system serves several different communities or subdivisions;
2. one owner and several isolated systems each provide service to one or more communities or subdivisions;
3. several owners, each with individual systems operated through a centrally coordinated operating system; or
4. several owners, each with an isolated system, all served by a central wholesale provider.

STAFF RECOMMENDATION: Staff recommends that the Commission approve the resolution delegating to the Executive Director the Commission's authority to review, issue, approve, and act on certification of regional service providers as authorized by Texas Tax Code, Section 151.355(5).

STAFF CONTACTS: Linda Horng, Staff Attorney, Environmental Law Division
Justin Taack, Manager, District Section

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



A RESOLUTION Delegating to the Executive Director the Authority to Certify Certain Water or Wastewater Service Providers as Providing Regional Water and/or Wastewater Service.
Docket No. 2015-1163-RES

WHEREAS, Subchapter H, Chapter 151, of the Texas Tax Code exempts from taxes contained therein equipment, services, or supplies used solely to construct or operate a water or wastewater system or component of a system sponsored by a provider certified by the Texas Commission on Environmental Quality ("Commission") as providing regional water or wastewater service; and

WHEREAS, the Texas Tax Code, Section 151.355(5) authorizes the Commission to certify certain entities as providing regional water or wastewater service for of eligibility for a tax exemption; and

WHEREAS, the Texas Tax Code, Section 151.355(5) was originally enacted in 2001 by SB 2, which limited certification to political subdivisions only, and SB 312, which did not limit certification to political subdivisions; and

WHEREAS, in 2002 the Commission adopted a Resolution Delegating to the Executive Director the Authority to Certify Certain Political Subdivisions as Providing Regional Water and/or Wastewater Service; and

WHEREAS, in 2003, HB 2424 reenacted and amended Texas Tax Code, Section 151.355(5) without the limitation of certification to political subdivisions; and

WHEREAS, the Texas Water Code, Section 5.102 provides the Commission the powers to perform any acts whether specifically authorized or implied by the Texas Water Code or any other law, necessary and convenient to the exercise of its jurisdiction and powers as provided by the Legislature of the State of Texas, including the determination of findings of fact; and

WHEREAS, the Commission will use the following criteria to determine whether a water or wastewater provider is a regional provider:

1. one owner and one large system serves several different communities or subdivisions or,
2. one owner and several isolated systems each provide service to one or more communities or subdivisions or,
3. several owners, each with individual systems operated through a centrally coordinated operating system or,
4. several owners, each with an isolated system, all served by a central wholesale provider; and

WHEREAS, the Texas Water Code, Section 5.122 provides the Commission the power to delegate to the Executive Director the Commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration, or other authorization or approval if the conditions contained within the section are satisfied; and

WHEREAS, a substantial number of water or wastewater service providers may seek certification as providing regional water and/or wastewater service; and

WHEREAS, in order to streamline the certification of providers as providing regional water and/or wastewater service, the Commission has elected to delegate its authority to review, issue, approve and act on such certification requests as authorized by Texas Tax Code, Section 151.355(5) to the Executive Director in accordance with Tex. Water Code, Section 5.122;

NOW THEREFORE, BE IT RESOLVED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- 1) The Executive Director is delegated the Texas Commission on Environmental Quality's authority to review, issue, approve and act on such certification requests as authorized by Texas Tax Code, Section 151.355(5);
- 2) The Executive Director must act on such request within ninety days of receipt of the request effective upon issuance of this resolution; and
- 3) An entity may appeal the Executive Director's action by a motion to overturn according to the procedures set out in Texas Administrative Code, Chapter 30, Section 50.139.

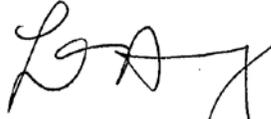
Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2015 a true and correct copy of "A Resolution Delegating to the Executive Director the Authority to Certify Certain Water or Wastewater Service Providers as Providing Regional Water and/or Wastewater Service " was filed with the Chief Clerk of the Texas Commission on Environmental Quality and sent by first class mail, agency mail, electronic mail, and/or facsimile to the persons on the attached mailing list.



Linda Horng, Staff Attorney
Environmental Law Division

MAILING LIST
Docket No. 2015-1163-RES
A Resolution Delegating to the Executive Director
the Authority to Certify Certain Water or Wastewater Service Providers as
Providing Regional Water and/or Wastewater Service

Mr. Derek Seal
Winstead P.C.
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Austin, TX 78701

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Vic McWherter, Office of Public Interest Counsel, MC-103
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