TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: May 11, 2016

DATE OF REQUEST: April 22, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Sherry Davis, (512) 239-2141

CAPTION: Docket No. 2015-0984-RUL. Consideration of the adoption of an amendment to 30 TAC Chapter 290, Public Drinking Water, Section 290.51.

The adopted rule would implement House Bill 1, Article IX, Section 18.01. (General Appropriations Act), 84th Texas Legislature (2015), Regular Session, which instructed the agency to raise fee rates by rule to ensure adequate revenue is available to support the agency water appropriation. The adopted rule provides the commission the ability to increase the Public Health Services fee on an annual basis in order to address future funding shortages. The proposed rule was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8731). (Greg Yturralde, Todd Galiga) (Rule Project No. 2015-031-290-AD)

John Racanelli
Deputy Director

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Division Director

Sherry L. Davis
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** April 22, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: John Racanelli, Deputy Director
Office of Administrative Services

Docket No.: 2015-0984-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
HB 1: Public Health Service Fee Increase
Project No. 2015-031-290-AD

Background and reason(s) for the rulemaking:
The Texas Commission on Environmental Quality (TCEQ) has seen the general revenue appropriated for water programs decline over the past few biennia, which has led to a greater dependence on fee revenue. The agency underwent a rule making in Fiscal Year (FY) 2009 and raised the Public Health Service (PHS), the Consolidated Water Quality (CWQ), and the Water Use Assessment fees. The increases resulted in approximately $19 million in additional revenue for FY 2010. The agency has seen funding obligations of the water resource management account increase over the past few years from increases to appropriation, fringe, and the Statewide Cost Allocation Plan. These costs have been supported by adjustments to the CWQ fee parameters, but there is a limitation on how much the agency can increase this fee in the future.

The agency requested additional General Revenue appropriations for the water program, but did not receive the amount necessary to offset the program's costs. The legislature instructed the agency in House Bill 1, Article IX, Section 18.01., (84th Texas Legislature, 2015) of the General Appropriation Act to increase fee revenue to meet funding needs. This rule will provide the agency the ability to increase the PHS fee by $17 million per year which will ensure adequate cash to support the agency's water program moving forward.

Scope of the rulemaking:
The adopted rule will replace the current fee rates for the PHS fee authorized under §290.51.

A.) Summary of what the rulemaking will do:
The current rate for Tier I (fewer than 25 connections) is $100, Tier II (25-160 connections) is $175, and Tier III (over 160 connections) is $2.15 per connection. The new rates will be Tier I up to $200, Tier II up to $300, and Tier III up to $4.00 per connection. The agency anticipates only increasing the Tier I and II rates by $25 and the Tier III rate to $2.45 in FY 2017 to meet the water program's costs.

The agency has been successful over the past few years with meeting the funding needs of various accounts using the "up to" language in fee rules. This provides the agency the

ability to adjust fees based on necessary funding needs, and gradually increase PHS fees as the water funding needs increase. It is anticipated that this rule change will provide the agency adequate flexibility to address water funding needs for multiple years.

By providing the flexibility to increase the PHS fee, the agency can spread the increase to more regulated entities. Recently, any increase to the water resource management account had to be supported by the CWQ fee and their approximately 3,500 regulated entities. Using the PHS fee to supplement some of the costs will result in an additional 7,000 entities sharing the burden, and limits the potential fee burden of each.

The method of increasing fee revenue by rule is supported by the 84th Texas Legislature and House Bill 1, Article IX, Section 18.01., of the General Appropriation Act. The new section states the agency should increase fee rates by rule to support additional program needs. The PHS fee is specifically listed as a fee to be increased to meet water funding demands.

B.) Scope required by federal regulations or state statutes:
None.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:
Texas Water Code §5.012, 5.013, 5.103, 5.105, and 5.701
Texas Health and Safety Code, §341.0315 and §341.041
House Bill 1, Article IX, Section 18.01 (General Appropriations Act), 84th Texas Legislature (2015)

Effect on the:
A.) Regulated community:
Entities that provide drinking water services will see an increase in their annual PHS fee rate. The increase will depend on the size of the public water system. Tiers I and II will see an annual increase of $25 in the first year, while Tier III will see an increase per connection. The amount of the increase will depend on the number of connections in that system, but the agency anticipates the rate for FY 2017 to increase by approximately $0.30 per connection.

B.) Public:
There is potential that the increase in the PHS fee will be passed along to the individual customer. The anticipated cost to the individual customer in FY 2017 will be approximately $0.30 per year, based on the water funding needs in FY 2017.

C.) Agency programs:

The adopted rule will provide the agency the necessary flexibility to fund the various water programs for multiple years.

Stakeholder meetings:
There were no stakeholder meetings held related to this rulemaking; however, the agency published information about the rulemaking proposal on the external website and the *Texas Register* on December 4, 2015 (40 TexReg 8731) and included an insert in the Public Health Service Fee billing regarding the proposed rulemaking. The agency will update the external website with official FY 2017 rates upon adoption of the rule.

Public comment:
The commission held a public hearing on January 5, 2016. The comment period closed on January 11, 2016. The agency did not receive any comments at the public hearing.
The commission received written comments from: the Honorable State Representative Abel Herrero, the City of Austin, the City of Houston, the City of Fort Worth, the City of Plano, the Texas Municipal League, the Texas Rural Water Association, Martin Luther Lutheran Church, and one individual.

A late comment was received with similar concerns to other commenters.

Significant changes from proposal:
The commission received comments requesting that notice be provided to public water systems to allow budget planning for increases and the commission to justify the needed increases in future rules. In response to these comments, the commission added subsection (c) which requires the agency to provide notification through an appropriate notification process, such as, but not limited to, *Texas Register* publication.

Potential controversial concerns and legislative interest:
The agency requested additional general revenue to support the agency's water programs during the 84th Texas Legislative Session. The agency did not receive the necessary funding and was instructed to raise the fee rate by rule under House Bill 1, Article IX, Section 18.01., of the General Appropriation Act. The legislature provided TCEQ the authority to adjust fees to ensure the agency has adequate funding for our water programs.

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?
The agency requested additional general revenue to support the agency's water programs during the 84th Texas Legislative Session. The agency did not receive the necessary funding and was instructed to raise the fee rate by rule under House Bill 1, Article IX,

Section 18.01. (General Appropriation Act). The legislature provided TCEQ the authority to adjust fees to ensure the agency has adequate funding for our water programs. If the agency does not adopt this rule package, the projected funding shortfall in the agency's water programs will continue to increase.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** December 4, 2015
Anticipated *Texas Register* adoption publication date: May 27, 2016
Anticipated effective date: June 2, 2016
Six-month *Texas Register* filing deadline: June 6, 2016

Agency contacts:
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Sherry Davis, Texas Register Coordinator, (512)239-2141

Attachments
House Bill 1, Article IX, Section 18.01. (General Appropriations Act), 84th Texas Legislature (2015)

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
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CONFERENCE COMMITTEE REPORT

3RD Printing

H.B. NO. 1
GENERAL APPROPRIATIONS BILL

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PART 18. CONTINGENCY AND OTHER PROVISIONS

Sec. 18.01. Contingency Appropriation: Water Resource Management Account.

(a) Amounts appropriated in this Act out of the Water Resource Management Account No. 153 include: $56,152,049 in fiscal year 2016 and $55,864,649 in fiscal year 2017 to the Commission on Environmental Quality; $2,648,770 each fiscal year to the Public Utility Commission (PUC); and $509,054 each fiscal year to the Office of Public Utility Counsel (OPUC). These appropriations are contingent on available balances in and revenues to the Water Resources Management Account No. 153 being sufficient during the 2016-17 biennium to cover the appropriations and any additional costs associated with employee benefits for FTEs paid out of the Water Resources Management Account (estimated to be $17,557,912 for the biennium). In the event that available funds out of the Water Resources Management Account No. 153 are insufficient to meet appropriations in this Act and related benefits costs, the TCEQ shall increase rates for fees deposited to the Water Resources Management Account No. 153 for which it has rulemaking authority, including the Water Quality Fee established in Water Code, Chapter 26 and the Public Health Service Fee established in Health and Safety Code, Section 341.041, at a level to ensure that sufficient balances and revenues are available.

(b) Contingent on enactment of legislation by the Eighty-fourth Legislature, Regular Session, that transfers a portion of the proceeds of fee revenues deposited to the Water Resource Management Account No. 153 in Water Code, Section 5.701 (n) to the General Revenue Fund:

(1) appropriations to the PUC in Strategy A.2.1, Utility Regulation, are increased out of the General Revenue Fund by $2,648,770 each fiscal year, and appropriations are decreased out of the Water Resources Management Account No 153 by $2,648,770 from the Water Resource Management Account No. 153 each fiscal year; and

(2) appropriations to the OPUC in Strategy A.1.1, Participation in cases, are increased out of the General Revenue Fund by $356,338 each fiscal year and appropriations are decreased out of the Water Resources Management Account No 153 by $356,338 from the Water Resource Management Account No. 153 each fiscal year; and

(3) appropriations to the OPUC in Strategy B.1.1, Utility Projects, are increased by $152,716 out of the General Revenue Fund and appropriations are decreased by $152,716 out of the Water Resource Management Account No. 153 each fiscal year.

(c) Out of amounts appropriated elsewhere in this Act, the TCEQ shall also conduct a study to determine the level of agency workload related to each group of entities paying fees deposited to the Water Resource Management Account No. 153 and the relative benefit each fee payer group receives from agency water quality permitting, water quality regulation, and safe drinking water programs. Using this analysis, the agency shall develop a methodology to determine the appropriate level of rates for water-related fees that would generate revenue in proportion to agency workload and fee payer benefits. The TCEQ shall base any future fee rate modifications made to ensure sufficient revenues to the Water Resource Management Account on the findings of that study, provided such fee rate changes do not conflict with any statutory provisions relating to water-related fees or water-related programs, and provided such fee rates do not exceed any maximum levels set in statute.

Sec. 18.02. Appropriation for a Salary Increase for General State Employees.

(a) As used in this section, "salary increase" shall mean a two and a half percent (2.5%) increase in annual salary, to begin on September 1, 2015.

(b) Contingent on enactment House Bill 9, or similar legislation to increase the member contribution to the Employees Retirement System, for the biennium the Comptroller of Public Accounts is appropriated an amount estimated to be $274,904,477 out of the General Revenue Fund, an amount estimated to be $18,781,528 out of General Revenue-Dedicated, an amount estimated to be $36,131,794 out of State Highway Fund No. 006, an amount estimated to be $3,392,652 out of Other Funds and accounts, and an amount estimated to be $55,697,356 out of Federal Funds to fund a salary increase as described in Subsection (a) of this section for employees of state agencies, including employees of the Higher Education Coordinating Board. Included in the amounts above are General Revenue Funds intended to provide the salary increase for certain FTEs currently paid from federal fund sources that would not be available for this purpose.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §290.51.

The amendment is adopted *with change* to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8731) and will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Water Resource Management Account 153 (Account 153) is the primary source of state funding for essentially all water program-related activities of the commission. In 2001, the 77th Texas Legislature passed House Bill (HB) 2912 which provided that revenues deposited to Account 153 would be available to support activities associated with ensuring the protection of the state's water resources. Account 153 supports a wide range of activities including water rights, storm water, public drinking water, total maximum daily load development, water utilities, wastewater, river compacts, water availability modeling, water assessment, concentrated animal feeding operations, sludge, Clean Rivers Program, and groundwater protection. Historically, the agency has used Account 153 as well as the majority of its general revenue appropriations to support its water programs.

General revenue appropriations to TCEQ have declined over the past few years. In addition, many of the water-related fees that the agency assesses have not increased in

at least six years. While revenue from existing fees deposited to Account 153 has remained stable, the overall financial obligations of the account have increased. Current revenue estimates for Account 153 reveal insufficient funds for TCEQ to cover the costs of its water programs in fiscal year (FY) 2016. The agency is facing an approximate $2.5 million dollar shortfall in Account 153 for FY 2016. The shortage is due to additional appropriations, an increase in cost of fringe benefits, and the Statewide Cost Allocation Plan.

The revenue estimates for Account 153 revealed that without an increase in fees there will be insufficient funds for the agency to cover the costs of its water programs in FYs 2016 - 2017. HB 1, General Appropriations Act, Article IX, Section 18.01, Contingency Appropriation: Water Resource Management Account, (84th Texas Legislature, 2015) authorized the agency to increase the public health service (PHS) fee and the consolidated water quality (CWQ) fee.

Given the declining availability of funds in Account 153, the commission reviewed the water-related fees it has the authority to change. HB 1, General Appropriations Act, Article IX, Section 18.01, Contingency Appropriation: Water Resource Management Account, (84th Texas Legislature, 2015) authorized the agency to increase the PHS fee and the CWQ fee. After a review of the commission's existing water-related fees, the commission proposed revisions to the PHS fee to generate sufficient revenue to cover the costs of its water programs beginning in FY 2017. This fee was identified for a fee

increase because, in terms of numbers and categories of fee payers, this fee represents the most broad-based water-related fee the agency assesses, revision of this fee does not require statutory changes, and the revenue stream is relatively stable and represents significant water fee collections.

The adopted rulemaking amends Chapter 290, to ensure that there are sufficient funds in FY 2017 to carry out the tasks required to protect the water resources of the state.

Section Discussion

§290.51, Fees for Services to Drinking Water System

The commission adopts the amendment to §290.51(a)(3) by increasing the maximum fee amounts in subparagraph (A) from $100 to $200 and in subparagraph (B) from $175 to $300. These increases were determined to be minimal for small systems with 160 connections or less. For systems with 161 connections or more, the commission adopts an increase to the maximum fee amount in subparagraph (C) from $2.15 per connection to $4.00 per connection to generate the necessary revenue to cover the cost of TCEQ's water programs. The assessment determined §290.51(a)(3)(C) will be applied uniformly to all fee payers with 161 connections or more and will be determined by the annual appropriations and other associated costs from Account 153. The commission adopts these changes to allow the ability to assess fees as needed to cover the costs of its water programs.

The agency's purpose in adopting the maximum fee rates is to ensure adequate water program funding for multiple biennia. The anticipated increase in 2017 will be less than 15% from the current rate. The plan is to adjust this fee based on funding needs on an annual basis in order to limit the financial impact to water systems required to pay this fee.

The commission received comments requesting that notice be provided to water systems to allow budget planning for increases and the commission to justify the needed increases in future rules. In response to these comments, the commission added subsection (c) which requires the agency to provide notification through an appropriate notification process, such as, but not limited to, *Texas Register* publication.

Final Regulatory Impact 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 action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule, the specific intent of which is 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.

The adopted rulemaking to increase fees in order to provide funding for the commission's water programs does not meet the definition of a "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to provide the commission with the additional revenue necessary to operate its water programs in a manner that is consistent with the statutory requirements set forth in the Texas Water Code (TWC) and Texas Health and Safety Code (THSC). Therefore, the commission finds that this rulemaking is not a "major environmental rule."

Furthermore, even if the adopted rulemaking did meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because the rulemaking does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a state agency's adoption of a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking does not meet any of these requirements. First, there are no applicable federal standards that this rulemaking would address. Second, the adopted rulemaking does not exceed an express requirement of state law, but rather seeks to provide the commission with the additional revenue necessary to operate its water programs in a manner that is consistent with state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or a contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by a specific house bill and state statutes which are cited in the Statutory Authority section of this preamble.

Based upon the foregoing, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

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 analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The commission determined that the adopted rulemaking does not constitute a taking. The specific purpose of the adopted rulemaking is to provide the commission with the additional revenue necessary to operate its water programs in a manner that is consistent with the statutory requirements set forth in the TWC and THSC.

This rulemaking substantially advances this stated purpose by adjusting the fees to provide funding at a level that is sufficient to support a portion of the commission's water programs.

Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation does not affect a landowner's rights in private real property because the rulemaking does not burden, restrict, or limit the owner's right to real property and does not reduce the market value of real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rulemaking will not burden private real property because it amends fee rules which relate to funding for the commission's water programs.

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 the 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. No comments were received regarding the consistency of this rulemaking with the coastal management program.

Public Comment

The commission held a public hearing on January 5, 2016. The comment period closed on January 11, 2016. The agency did not receive any comments at the public hearing. The commission received written comments from: the Honorable State Representative Abel Herrero (Representative Herrero), the City of Austin, the City of Houston, the City of Fort Worth, the City of Plano, the Texas Municipal League (TML), the Texas Rural Water Association (TRWA), Martin Luther Lutheran Church, and one individual.

A late comment was received with similar concerns to other commenters.

Response to Comments

Comment

The City of Fort Worth commented that the maximum fee per connection will almost double from $2.15 to $4.00 and will result in an 86% increase to their current payment to TCEQ of $691,308.85. The City of Plano stated that the 86% increase would negatively impact the city by $153,000. The City of Houston stated that the increase to $4.00 will result in a total increase of more than $1.7 million, and the plan for future years appears to be adjusted based on "funding needs" implying that the fees may be significantly higher in 2017 and in future years. TRWA commented that doubling the PHS fee would create a burden on small rural water systems and their customers, and the current proposal would raise the Tier 1 rate up to $200 from the current $100 and the Tier II rate up to $300 from $175. TRWA supports TCEQ's efforts to implement this increase in stages with only $25 increases to both tiers in FY 2017; however, this leaves open the possibility of much steeper increases in subsequent years, which TRWA would oppose. Martin Luther Lutheran Church commented that doubling of fees is excessive in today's economy. TML commented that the maximum fee for Tier I systems will increase by $100, Tier II will increase by $125, and Tier III will almost double, increasing from $2.15 to $4.00 per connection. TML commented that this means a city with 300,000 connections will be confronted with a potential budget increase of $555,000 each year.

Response

The commission acknowledges the comment in support of the agency's attempt to implement the fee in stages.

During the last rulemaking to increase this fee in 2009, the agency received a number of comments about gradually increasing the fee to meet the agency funding needs. The agency agreed with stakeholders from the previous rule that gradual increases would place less of a burden on water systems of various sizes. This rule gives the agency the ability to adjust rates to guarantee sufficient funding is available for the commission's water programs. Without additional revenue from this fee increase, the agency would not be able to continue the same level of water programs.

The agency set the maximum amounts to gradually increase the fee as water funding needs increase, rather than drastically raise the rates on water systems to support the agency water programs. In order to accomplish this, the agency set maximum fee rates in rule. The maximum rates were calculated to address the agency water funding needs for multiple years.

The FY 17 increase will not exceed those identified in the Proposal Fiscal Notice: Costs to State and Local Government section of the proposed

preamble. The agency has utilized this process of gradually increasing fees based on water needs for the CWQ fee since 2012. The increases have never been excessive and only generated enough revenue to cover the agency's water program funding shortages. The agency anticipates applying this same approach to the PHS fee. The agency anticipates that the $2.8 million increase between FY 16 and FY 17 to be one of the larger increases.

The agency is phasing in the increase over multiple years based on the water funding needs of the agency and will not double the fee immediately.

The commission made no change in response to these comments.

Comment

TML commented that Texas cities would prefer that, rather than forcing cities to impose a state tax increase, the legislature should provide adequate funding to TCEQ. The City of Austin commented that a more balanced approach for underwriting the cost of the commission to carry out its regulatory programs should come from the Texas general revenue funds and supplemental federal funds, such as the Safe Drinking Water Act grants rather than specific use fees. The City of Plano commented that the legislature did not provide TCEQ's request for additional funding to support the agency's water programs in the 84th Texas Legislative Session. Alternatively, the legislature recognized

a budget shortfall for TCEQ and authorized the agency to raise fee rates by rule. The City of Fort Worth commented that the purpose of this fee increase is to make up for the appropriation shortfall.

Response

The amount of general revenue and Account 153 appropriated to the commission is determined through the legislative budget process based on various agency and committee recommendations. The legislature has to make difficult funding choices each session, and some funding requests cannot be funded with general revenue.

The agency is supplementing the water programs with federal funds, and these funds were taken into consideration by the commission when developing the fee increase needs. The agency is also anticipating a reduction in federal funds which need to be supplemented with fee funds to support water programs.

The commission made no change in response to these comments.

Comment

The City of Plano commented that this is an unfunded mandate that will adversely result in higher utility rates for the citizens of Plano. The City of Fort Worth commented that while TCEQ was instructed to raise fee rates by rule to ensure adequate revenue is available to support the agency's water programs, it is not the responsibility of Texas water utilities and their customers to make up that difference, especially when the increase is not related to new programming or additional services, and this means the increase must be passed along to its ratepayers, who are already overburdened with government-imposed taxes and fees. The City of Fort Worth commented that this fee increase is nothing more than a "state tax increase" on municipal water customers. TML asks in its comments, "where does TCEQ anticipate this money will come from?...It is expected that governmental entities will pass the fee increase on to their customers in their water utility bill." In other words, the proposed fee increase is nothing more than a "state tax increase" on municipal water customers. TRWA commented that it urges TCEQ to continue to take into account the burden to small systems and their customers when implementing future increases to the PHS fee.

Response

The commission acknowledges that there is never an ideal time for fee payers to face a fee increase. However, federal and state laws, to which the commission is subject, require that the commission carry out specific tasks to protect the state's water resources. These water-related activities benefit

people across the state. All Texans benefit from clean and adequate water supplies. To undertake those tasks, the commission needs to ensure that funds exist to pay for what the agency is required to do.

Over time, the commission has generated savings through streamlined processes, enhanced use of technology that provides efficiencies, and program reviews to ensure that funds are used as efficiently as possible. For example, the commission has continually moved toward electronic processes including electronic permitting, electronic discharge monitoring reports, and automated internal processes.

TCEQ is assessing the fee against the approximately 6,900 entities classified as a water system in the state. This includes, but is not limited to, municipalities, private companies, water supply corporations, water districts, school districts, river authorities, federal facilities, and state facilities.

The commission made no change in response to these comments.

Comment

The City of Houston commented that the evolving connection-based fee structure places a disproportional burden on large utilities. The City of Houston further commented that TCEQ's workload and dedicated resources are not defined or assigned by the number of connections and asserts that the larger entities actually require less oversight due to their bigger, more experienced staff. The City of Fort Worth commented that all public water systems are impacted by this rule proposal, but large systems continue to bear the lion's share of the burden of fee increases and generally require less regulatory oversight from TCEQ.

Response

In adopting increases to the PHS fee, the agency has tried to spread the impact of the fee increase across a broad segment of fee payers so as not to unduly impact any one group of fee payers. The fee increases in this rule will be used to protect the water resources of the state and were developed as the most effective way for the agency to adjust revenue levels while spreading the financial burden as equitably as possible among those who benefit from clean and reliable water resources.

The commission made no change in response to these comments.

Comment

An individual requested no more increases, as the public already pays enough. The commenter suggests that TCEQ cut back on this agency, which is too bloated as it is. Further, the individual stated that nobody wants more water fees as the public already pays nitrate testing fees, monthly readings, lab fees, yearly inspection fees, etc.

Response

The commission acknowledges that there is never an ideal time for fee payers to face a fee increase. However, federal and state laws, to which the commission is subject, require that the commission carry out specific tasks to protect the state's water resources. These water-related activities benefit people across the state. All Texans benefit from clean and adequate water supplies. To undertake those tasks, the commission needs to ensure that funds exist to pay for what it is required to do.

Over time, the commission has generated savings through streamlined processes, enhanced use of technology that provides efficiencies, and program reviews to ensure that funds are used as efficiently as possible. For example, the commission has continually moved toward electronic processes including electronic permitting, electronic discharge monitoring reports, and automated internal processes.

The commission made no change in response to this comment.

Comment

The City of Austin commented that the rule does not stipulate how water systems such as Austin Water Utility will be informed of future increases, since rules will not be needed for raising the fees from the intended amount to the maximum of $4.00. The City of Austin suggested that the proposed rule only increase the fee to $2.45 per connection now, and future rulemaking increases the fees, as needed, above the initial recommended amount of $2.45 by the commenter. The commenter stated that this would give notice to water systems to allow budget planning for increases, and the commission should justify the needed increases in future rules.

Response

Significant portions of the budget planning process are out of the agency's direct control. The agency's budget is determined biennially by the legislature including how much the agency is authorized to spend and how much general revenue or fee revenue the agency will receive. The fee rates will be set at a rate that will generate sufficient revenue to meet the agency's operating needs. The commission recognizes the need for advance notice in the budgeting process and will work to let fee payers know what their rates will be as early as possible each year.

The commission added §290.51(c) in response to comments. Subsection (c) requires the agency to provide notification through an appropriate notification process, such as, but not limited to, *Texas Register* publication.

Comment

Representative Herrero commented regarding his concern over the proposed fee increase by TCEQ in §290.51. Representative Herrero understood that §290.51 would raise fees for large water systems to fund TCEQ inspection, analysis, and review of public water systems. Representative Herrero commented that the City of Corpus Christi is implementing a long-term strategy to protect and invest in water resources and the proposed fee increases could jeopardize the city's plan.

Response

TCEQ is facing a $2.5 million shortage in FY 16 and $5.1 million shortage in FY 17 without implementing a fee increase in the Account 153. TCEQ is adopting the revisions to the fee now to cover costs of its water programs beginning in FY 2017. The fee increase will be assessed against approximately 6,900 entities classified as public water systems in the state. Every public water system will experience an increase from $25 - $300,000

depending on the size. Any changes to the rule need to be in effect by late summer of 2016.

The commission made no change in response to this comment.

Comment

The City of Austin commented that the water study was not referenced or mentioned in the rule proposal, and if the water study has been done then it should be included in the justification for the fee increases and provided to the regulated water utility industry. The City of Fort Worth commented that the water study should include the benefit each payer receives and the methodology used for assessing fees based on agency workload and fee payer benefits. Also, the City of Fort Worth commented that this information should be included in the justification alongside any proposal supporting a PHS fee for the regulated water utility industry.

Response

The commission is currently conducting a study on the agency's water program funding, as required by HB 1. The study will not be completed prior to the adoption of the rule package, and the agency water funding shortage had to be addressed prior to the 85th Texas Legislative Session.

The commission determined that the rule package has been developed in a manner intended by the study. HB 1 stated, "The TCEQ shall base any future fee rate modifications made to ensure sufficient revenues to the Water Resource Management Account on the findings of that study, provided such fee rate changes do not conflict with any statutory provisions relating to water-related fees or water-related programs, and provided such fee rates do not exceed any maximum levels set in statute."

The commission made no change in response to these comments.

Comment

TRWA commented that the regulated community may be confused about the statement in the preamble in the "Background and Summary of the Factual Basis for the Proposed Rule" section, stating the executive director of TCEQ has the authority to authorize a tariff change based on this fee increase when presumably this authority has transferred to the Public Utility Commission of Texas.

Response

The commission agrees with the commenter and removed the text from the adoption preamble.

Comment

Martin Luther Lutheran Church commented that the proposed rule is specifically discriminating against small country churches.

Response

The fee increase will be assessed against approximately 6,900 entities classified as public water systems in the state. This includes, but is not limited to municipalities, private companies, water supply corporations, water districts, school districts, river authorities, federal facilities, and state facilities. Each entity will experience an increase from $25 - $300,000 depending on the size.

The commission made no change in response to this comment.

SUBCHAPTER E: FEES FOR PUBLIC WATER SYSTEMS

§290.51

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over various statutory programs, including water programs; TWC, §5.102, concerning general powers of the commission; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §5.701, which provides statutory direction regarding the uses of fees collected for deposit to the water resource management account; Texas Health and Safety Code (THSC), §341.0315, which establishes the commission's authority over public drinking water supply systems; and THSC, §341.041, which authorizes the commission to assess fees for public drinking water supply systems.

The adopted amendment implements House Bill 1, General Appropriations Act, Article IX, Section 18.01 (84th Texas Legislature, 2015); and THSC, §341.0315 and §341.041.

§290.51. Fees for Services to Drinking Water System.

(a) Purpose and scope.

(1) The purpose of this section is to establish fees for services provided by the commission to public water systems.

(2) The commission will provide services to public water systems, as follows:

(A) scheduling of analysis of drinking water for chemical content;

(B) collection of samples of drinking water for chemical analyses;

(C) review system data for evaluation of sampling waivers;

(D) inspect public water systems;

(E) review plans for new systems and major improvements to existing systems; and

(F) provide technical assistance as needed.

(3) The fees which the commission will charge for services provided to community and nontransient noncommunity water systems under this subsection will be according to the following schedule.

(A) For a system with fewer than 25 connections, the fee will be <u>an amount up to a maximum of $200</u> [$100].

(B) For systems with 25 - 160 connections, the fee will be <u>an amount up to a maximum of $300</u> [$175].

(C) For a system with greater than or equal to 161 connections, the fee will be an amount up to a maximum of <u>$4.00</u> [$2.15] per connection.

(i) The number of connections will be determined from data collected from the latest agency inspection report.

(ii) All nontransient noncommunity systems, state, federal, and other community water system installations determined by the commission to serve

large populations through a few connections will have the number of connections for fee purposes determined by dividing the population served by a value of ten.

(iii) Examples of such installations include, but are not limited to, universities, children's homes, correctional facilities, and military facilities which generally do not bill customers for water service.

(4) New public water systems will not be assessed a fee for services until water is supplied to the first connection.

(5) The commission will charge a fee of $100 for services provided to noncommunity water systems which are not addressed in paragraph (3) of this subsection.

(6) All fees are due by January 1 of each year, shall be paid by check, money order, electronic funds transfer, or through the agency's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. Penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees).

(b) Failure to make payments as required under this section will subject the violator to the penalty provisions of the Texas Health and Safety Code, Chapter 341, Subchapter C.

(c) The commission may adjust the fee rates in subsection (a) of this section through an appropriate notification process, such as, but not limited to, *Texas Register* publication, based on the agency's cost of administering the water programs.

(f) An eligible spouse who remarries is eligible for death benefits for life if the employee was a first responder, as defined by Labor Code §504.055, who suffered death in the course and scope of employment or while providing services as a volunteer. Subsections (b) - (e) of this section do not apply to an eligible spouse under this subsection. This subsection only applies to claims based on a compensable injury that occurs on or after September 1, 2015.

§132.13. Burial Benefits.

(a) When an employee has died as the result of a compensable injury, a person claiming burial benefits shall file a request for payment of burial benefits and the bills showing the amount of burial and transportation costs incurred. The request and the documentation shall be filed with the insurance carrier within 12 months of the date of death of the employee.

(b) The person who incurred liability for the costs of burial is entitled to receive the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500--if burial benefits are paid based on a compensable injury that occurs before September 1, 1999; or

(3) $6,000--if burial benefits are paid based on a compensable injury that occurs on or after September 1, 1999 and before September 1, 2015; or[.]

(4) $10,000--if burial benefits are paid based on a compensable injury that occurs on or after September 1, 2015.

(c) The person who incurred liability for the costs of transporting the body of the employee is entitled to be reimbursed for the reasonable cost of transportation if the employee died away from the usual place of employment. The insurance carrier's liability for transportation costs under this subsection shall not exceed the cost equivalent to transporting the body from the place the employee died to the employee's usual place of employment.

(d) The insurance carrier shall review each claim for burial benefits. The insurance carrier must either pay or deny the claim within seven days of the date the claim was received by the carrier. If the claim is denied, the insurance carrier must notify the person claiming burial benefits and the division [~~Commission~~] in writing of its denial and the facts supporting the denial.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 18, 2015.

TRD-201505051
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 3, 2016
For further information, please call: (512) 804-4703

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER

SUBCHAPTER E. FEES FOR PUBLIC WATER SYSTEMS

30 TAC §290.51

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §290.51.

Background and Summary of the Factual Basis for the Proposed Rule

Water Resource Management Account 153 (Account 153) is the primary source of state funding for essentially all water program-related activities of the commission. In 2001, the 77th Texas Legislature passed House Bill 2912 which provided that revenues deposited to Account 153 would be available to support activities associated with ensuring the protection of the state's water resources. Account 153 supports a wide range of activities including water rights, storm water, public drinking water, total maximum daily load development, water utilities, wastewater, river compacts, water availability modeling, water assessment, concentrated animal feeding operations, sludge, Clean Rivers Program, and groundwater protection. Historically, the agency has used Account 153 as well as the majority of its general revenue appropriations to support its water program activities.

General revenue appropriations to the TCEQ have declined over the past few years. In addition, many of the water-related fees that the agency assesses have not increased in at least six years. While revenue from existing fees deposited to Account 153 has remained stable, the overall financial obligations of the account have increased. Current revenue estimates for Account 153 reveal insufficient funds for the TCEQ to cover the costs of its water program activities in fiscal year (FY) 2016. The agency is facing an approximate $1 million dollar shortfall in Account 153 for FY 2016. The shortage is due to additional appropriations, an increase in cost of fringe benefits, and the Statewide Cost Allocation Plan.

The revenue estimates for Account 153 revealed that without an increase in fees there will be insufficient funds for the agency to cover the costs of its water program activities in FYs 2016 - 2017. Article IX of the General Appropriation Act, 84th Texas Legislative Session, Section 18.01, Contingency Appropriation: Water Resource Management Account, authorized the agency to increase the public health service (PHS) fee and the consolidated water quality (CWQ) fee.

Given the declining availability of funds in Account 153, the commission reviewed the water-related fees it has the authority to change. Article IX of the General Appropriation Act, 84th Texas Legislative Session, Section 18.01, Contingency Appropriation: Water Resource Management Account, authorized the agency to increase the PHS fee or the CWQ fee. After a review of the commission's existing water-related fees, the commission is proposing revisions to the PHS fee to generate sufficient revenue to cover the costs of its water program activities beginning in FY 2017. This fee was identified for a fee increase because, in terms of numbers and categories of fee payers, it represents the most broad-based water-related fee the agency assesses, revision of this fee does not require statutory changes, and the revenue stream is relatively stable and represents significant water fee collections.

This proposed rulemaking amends Chapter 290 to ensure that there are sufficient funds in FY 2017 to carry out the tasks re-

quired to protect the water resources of the state. It is anticipated that to the extent affected fee payers need to increase rates to their customers through a tariff change, such a change could be requested pursuant to 30 TAC §291.21(b)(2)(A)(iv), which authorizes the executive director to approve minor tariff changes in certain instances based on governmental requirements beyond the utility's control.

Section Discussion

§290.51, Fees for Services to Drinking Water System

The commission proposes to amend §290.51(a)(3) by increasing the maximum fee amount in subparagraph (A) from $100 to $200 and in subparagraph (B) from $175 to $300. These increases were determined to be minimal for small systems with 160 connections or less. For system equal to or more than 161 connections, the commission proposes to increase the maximum fee amount in subparagraph (C) from $2.15 per connection to $4.00 per connection to generate the necessary revenue to cover the cost of the TCEQ's water program activities. The assessment determined under §290.51(a)(3)(C) will be applied uniformly to all fee payers with equal to or greater than 161 connections and will be determined by the annual appropriations and other associated costs from Account 153. The commission proposes these changes to allow the ability to assess fees as needed to cover the costs of its water program activities.

The agency purpose in proposing maximum fee rates is to ensure adequate water program funding for multiple biennia. The anticipated increase in 2017 will be less than 15% from the current rate. The plan is to adjust this fee based on funding needs on an annual basis in order limit the financial impact to water systems required to pay this fee.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that, for the first five-year period the proposed rule is in effect, significant fiscal implications are anticipated for the agency and for other units of state or local government as a result of the administration or enforcement of the proposed rule. The proposed rule increases the PHS fee which is assessed to public water systems. The PHS fee is assessed and collected by the TCEQ in order to provide services to community and nontransient noncommunity water systems.

The rule is proposed in order to allow the agency to manage the increasing demands and associated costs of administering its water program activities which are funded out of Account 153. This account is projected to have a negative fund balance in FY 2016 - 2017. Article IX of the General Appropriations Act, 84th Texas Legislature, 2015, Section 18.01 provides that, "In the event that available funds out of the Water Resources Management Account No. 153 are insufficient to meet appropriations in this Act and related benefits costs, the TCEQ shall increase rates for fees deposited to the Water Resources Management Account No. 153 for which it has rulemaking authority, including the Water Quality Fee established in Water Code, Chapter 26 and the Public Health Service Fee established in Health and Safety Code, §341.041, at a level to ensure that sufficient balances and revenues are available...." At this time, the agency has determined that the PHS fee is the most appropriate fee to increase because it is the most broad-based water-related fee the agency assesses, and the revenue stream is relatively stable.

Fees are assessed for services provided by the agency to community and nontransient, noncommunity water systems. The proposed fee increase will affect three classes of public water systems. The fee increase is proposed as follows: 1) for a system with fewer than 25 connections, the maximum for the fee will be increased from $100 to $200; 2) for systems with 25 - 160 connections, the maximum for the fee will be increased from $175 to $300; and 3) for a system with greater than or equal to 161 connections, the maximum for the fee will be increased from a maximum of $2.15 per connection to $4.00 per connection.

Even though the proposed rule would increase the maximum fee assessment for public water systems, at this time the commission does not intend to increase any of the fees to the maximum amounts allowed by the proposed rule. The rule is proposed in order to allow the commission flexibility for future rate increases should they be necessary.

For a Tier I system (those with fewer than 25 connections) the fee would be increased from $100 to $125. Tier II systems (25 - 160 connections) the fee would be increased from $175 to $200. For a Tier III system (those with 161 connections or more), the commission intends to increase the fee from $2.15 per connection to $2.45 per connection. The proposed change in fees is projected to increase agency revenue to Account 153 by an estimated $2.8 million each year. It is anticipated that the additional fee revenue will allow Account 153 to maintain a positive fund balance for the foreseeable future.

There are an estimated 6,948 water systems that will be affected by the proposed rule. Agency staff estimates that of this total number of systems, there are approximately 2,143 entities that are publically owned or classified as districts and 4,805 are privately owned. Of the 2,143 publically owned water systems, approximately 94% of them have 160 or more connections and will be subject to the per connection fee increase. Of these systems, over 90% have 2,000 or fewer connections. The anticipated first year cost increase based on a proposed $2.45 rate is estimated to be $600 per year for each of the systems with 2,000 or fewer connections.

The 30 systems with the largest increase under the proposed rule are cities with over 37,000 connections. The City of Houston would see the largest increase under the proposed rule. The City of Houston has over 800,000 connections. The agency anticipates that assessing $2.45 per connection in the first year of this rulemaking would result in an increase of $265,000 above the current assessment for the City of Houston. The City of San Antonio would see an estimated increase of $160,000 each year, Dallas Water Utility would see an estimated increase of $137,417, the City of Fort Worth would see an estimated increase of $96,462, and the City of Austin would see an estimated increase of $63,864. It is expected that governmental entities will pass the fee increase on to their customers in their water utility bill.

Public Benefits and Costs

Mr. Horvath has 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 would be compliance with state law and adequately funded water program activities to meet the increasing water-related demands from a growing population.

Fiscal implications are anticipated for businesses and individuals as a result of the administration and enforcement of the proposed rule, though these fiscal implications are not expected to

be significant. Even though the proposed rule would increase the maximum fee assessment for public water systems, at this time, the commission does not intend to increase any of the fees to the maximum amounts allowed by the proposed rule.

All systems that currently pay the PHS fee will be affected. The fee amount is determined by the number of connections from the most recent agency field inspection report.

There are an estimated 6,948 water systems that will be affected by the proposed rule. Agency staff estimates that of this total number of systems, there are approximately 4,805 entities that are privately owned. Of the 4,805 privately owned water systems, the vast majority, or about 89%, has less than 160 connections. Fees for these systems are expected to increase approximately $25 in the first year. Over 90% of the water systems have 2,000 or fewer connections. For these systems, the anticipated first year cost increase based on a proposed $2.45 rate is estimated to be $600 per year. It is anticipated that privately owned systems will pass any cost increase on to their customers in the water utility bill. The first year cost per connection for systems with 161 connections or more will be $2.45 per connection or $0.30 more per year than customers are currently paying.

Small Business and Micro-Business Assessment

Adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule, though they are not expected to be significant. The proposed rule would have the same effect on a small business as it does on a large business. It is not known how many water systems are small or micro-businesses, but it is estimated that most of the smaller water systems that are privately owned are small and micro-businesses. The proposed rule would increase the maximum fee assessment for public water systems, but at this time, the commission does not intend to increase any of the fees to the maximum amounts allowed by the proposed rule.

For systems with fewer than 25 connections and for systems with greater than 25 connections and less than or equal to 160 connections, the commission expects to increase the fee $25 in the first year. For drinking water systems with fewer than 1,500 connections, the increase would be up to approximately $72 in the first year. The cost for connections for small or micro-businesses with systems greater than or equal to 161 connections will be $2.45 for the first year. It is anticipated that small or micro-businesses will pass the increase on to the customers. The first year cost per connection for system 161 connection or greater will be $2.45 per connection or $0.20 cents per month.

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 necessary in order to comply with state law and does not adversely affect small or micro-businesses 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 required 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 the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of the proposed rulemaking is to provide the commission with the additional revenue necessary to carry out the tasks required under the Texas Health and Safety Code (THSC) and the Texas Water Code (TWC) to protect the water resources of the state.

In addition, 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). Texas Government Code, §2001.0225 only applies to a state agency's adoption of a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. In this case, the proposed rulemaking does not meet any of these requirements. There are no federal standards that this rulemaking would address. Second, the proposed rulemaking does not exceed an express requirement of state law but, rather, seeks to provide the commission with the additional revenue necessary to operate its water program activities in a manner that is consistent with 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 pursuant to the general powers of the commission but is instead authorized by specific sections which are cited in the Statutory Authority section of this preamble.

The commission invites public comment of the draft regulatory impact analysis determination. 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 rulemaking and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The commission determined that the proposed rulemaking does not constitute a taking. The specific purpose of the proposed rulemaking is to provide the commission with the additional revenue necessary to operate agency water program activities in a manner that is consistent with the statutory requirements set forth in the TWC and THSC.

This rulemaking substantially advances this stated purpose by adjusting the PHS fee to provide funding at a level that is sufficient to support the commission's water program activities.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because the rulemaking does not burden, restrict, or limit the owner's right to real property and does not reduce the market value of real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rulemaking will not burden private real property because it amends a fee rule which relates to funding for the commission's water program activities.

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 the 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 January 5, 2016, at 10 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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Sherry Davis, 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://www1.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 2015-031-290-AD. The comment period closes on January 11, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Greg Yturralde, Revenue Operations Section at (512) 239-1951.

Statutory Authority

The amendment is proposed under the Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over various statutory programs, including water programs; TWC, §5.102, concerning general powers of the commission; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §5.701, which provides statutory direction regarding the uses of fees collected for deposit to the water resource management account; Texas Health and Safety Code (THSC), §341.0315, which establishes the commission's authority over public drinking water supply systems; and THSC, §341.041, which authorizes the commission to assess fees for public drinking water supply systems.

The proposed amendment implements Article IX of the General Appropriation Act, Section 18.01.

§290.51. Fees for Services to Drinking Water System.

(a) Purpose and scope.

(1) The purpose of this section is to establish fees for services provided by the commission to public water systems.

(2) The commission will provide services to public water systems, as follows:

(A) scheduling of analysis of drinking water for chemical content;

(B) collection of samples of drinking water for chemical analyses;

(C) review system data for evaluation of sampling waivers;

(D) inspect public water systems;

(E) review plans for new systems and major improvements to existing systems; and

(F) provide technical assistance as needed.

(3) The fees which the commission will charge for services provided to community and nontransient noncommunity water systems under this subsection will be according to the following schedule.

(A) For a system with fewer than 25 connections, the fee will be an amount up to a maximum of $200 [~~$100~~].

(B) For systems with 25 - 160 connections, the fee will be an amount up to a maximum of $300 [~~$175~~].

(C) For a system with greater than or equal to 161 connections, the fee will be an amount up to a maximum of $4.00 [~~$2.15~~] per connection.

(i) The number of connections will be determined from data collected from the latest agency inspection report.

(ii) All nontransient noncommunity systems, state, federal, and other community water system installations determined by the commission to serve large populations through a few connections will have the number of connections for fee purposes determined by dividing the population served by a value of ten.

(iii) Examples of such installations include, but are not limited to, universities, children's homes, correctional facilities, and military facilities which generally do not bill customers for water service.

(4) New public water systems will not be assessed a fee for services until water is supplied to the first connection.

(5) The commission will charge a fee of $100 for services provided to noncommunity water systems which are not addressed in paragraph (3) of this subsection.

(6) All fees are due by January 1 of each year, shall be paid by check, money order, electronic funds transfer, or through the agency's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. Penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees).

(b) Failure to make payments as required under this section will subject the violator to the penalty provisions of the Texas Health and Safety Code, Chapter 341, Subchapter C.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2015.

TRD-201505060
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 3, 2016
For further information, please call: (512) 239-2613

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER G. GENERAL PROVISIONS

The Texas Juvenile Justice Department (TJJD) proposes amendments to the following rules in Chapter 380, Subchapter G: §§380.9909 (Access to Youth Information and Records), 380.9931 (Student Trust Fund), 380.9933 (Spending Money for Released Youth), 380.9951 (Juvenile Correctional Officer Training), and 380.9955 (JCO Staffing Requirements).

TJJD also proposes the repeal of §380.9901 (Confidentiality Regarding Youth Alcohol and Drug Abuse) and §380.9911 (Youth Masterfile Records).

Throughout Subchapter G, minor clarifications, grammatical corrections, and terminology updates have been made. Specific changes made throughout the subchapter are listed in the following paragraphs.

SECTION-BY-SECTION SUMMARY

The repeal of §380.9901 will allow for information from this rule to be consolidated into the amended §380.9909.

The amended §380.9909 will: 1) clarify that this rule applies to all youth committed to TJJD; 2) remove a statement that indicated TJJD would not provide records in response to a request from a confined youth or his/her agent; 3) remove requirements concerning access to youth orders of adjudication and sealing of youth records as this information is addressed in state law; 4) add circumstances under which TJJD may allow access to records that have been designated as restricted access, such as when the juvenile court gives permission to provide the records to a party in a civil suit when the person who is the subject of the records has put facts relating to the person's records at issue, or when the person who is the subject of the records is an applicant for enlistment in the military and gives permission to provide the records to military personnel; 5) clarify that TJJD will allow access to records that have been designated as restricted access by the person who is the subject of the records *on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records;* and 6) remove the requirement for TJJD to reply that no record exists when TJJD receives a request for information about records that have been designated by court order as restricted access, as this is no longer required under Texas Family Code §58.207.

The amended §380.9909 will also add requirements currently found in §380.9911, such as provisions relating to custody, transportation, and storage of youth records and information. Additionally, the amended rule will add requirements currently found in §380.9901, such as provisions relating to identifying the types of drug and alcohol information that are confidential and requirements for notifying youth of the confidential nature of this information.

The repeal of §380.9911 will allow for certain information from this rule to be consolidated into the amended §380.9909.

The amended §380.9931 will: 1) clarify that TJJD is not responsible for funds that are lost or stolen after being transferred to a youth's possession upon release or discharge; 2) clarify that the 15-day hold TJJD places on money orders does not apply to US Postal Service money orders; 3) clarify that youth in high-restriction facilities are not permitted to handle withdrawn funds; 4) add a requirement to notify the youth when TJJD must withdraw funds from a youth's account when TJJD is charged for a problem with a deposit, such as a charge for insufficient funds; 5) clarify that TJJD will establish a savings account for a youth who has a balance of at least $5,100 and the youth is expected to stay at the current facility for at least six months; 6) add a requirement for youth who establish savings accounts to maintain at least $100 in their student trust fund accounts; 7) clarify that when a youth is moved to a contract residential facility that does not have a banking system, TJJD does not forward the student trust fund balance to the new facility. Instead, TJJD holds the funds until the youth designates a third party to receive the funds or personally requests the funds once he/she is released from the facility; 8) clarify that when a youth is paroled to a home location, the total amount of his/her trust fund is provided unless the youth has a balance over $50, in which case the youth is provided up to $50 in cash and a check for the remainder is mailed to the parole officer to be picked up by the youth at the first parole meeting; 9) add requirements for forwarding the balance of a youth's student trust fund when a youth is discharged from TJJD and is sent to any type of residential placement, such as adult prison, an Immigration and Customs Enforcement detention fa-

Texas Commission on Environmental Quality

ORDER ADOPTING AMENDED RULE

Docket No. 2015-0984-RUL

Rule Project No. 2015-031-290-AD

On May 11, 2016, the Texas Commission on Environmental Quality (Commission) adopted an amended rule in 30 Texas Administrative Code Chapter 290, concerning Public Drinking Water. The proposed rule was published for comment in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8731).

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 rules 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 Tex. Gov't Code Ann., Chapter 2001 (West 2008).

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 Signed:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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

DRAFT