

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** June 19, 2009  
**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director  
**From:** Carlos Rubinstein, Deputy Executive Director  
**Docket No.:** 2008-1866-RUL  
**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 21, Water Quality Fees  
Chapter 290, Public Drinking Water  
Consolidated Water Quality, Public Health Services, and Water Use Assessment Fees  
Rule Project No. 2009-007-021-PR

## Scope of the rulemaking:

These adopted rule changes amend Chapter 21, Water Quality Fees, and Chapter 290, Public Drinking Water. There are no changes required by federal rules. Although this rulemaking was not originally proposed in order to meet a requirement of state law, it will allow the agency to be consistent with recent changes to state law.

## Reasons for the rule package:

This adoption would amend Chapter 21 and Chapter 290 to ensure that there are sufficient funds in fiscal years (FYs) 2010 - 2011 to maintain the current level of agency activity for its existing water programs.

## Statutory Authority:

The amendments are adopted under 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; §5.013, which establishes the commission's authority over various statutory programs, including water programs; §5.102, concerning general powers of the commission; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §5.701, which provides statutory direction regarding the use of fees collected for deposit to the water resource management account; §26.011, which requires the commission to control water quality in the state; §26.0135, which directs the commission to apportion, assess, and recover reasonable costs of administering the water quality management program under that section; §26.0291, which establishes a water quality and water use assessment fee (WUF) for wastewater permit holders and water rights holders; §26.0292, which addresses the manner in which the commission assesses fees for aquaculture facilities; 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.

## Potentially controversial matters:

Fee increases tend to be controversial.

Re: Docket No. 2008-1866-RUL

**Public comment:**

The proposal was published in the March 13, 2009, issue of the *Texas Register* (34 TexReg 1780). The commission held a public hearing for this rule on April 7, 2009 in Austin, Texas. At the hearing the commission received comments from the City of Austin; the City of Houston; El Paso Water Utilities; Luminant Power; and the San Antonio Water System. The comment period closed on April 13, 2009.

The commission received written comments from: Agua Special Utility District; American Electric Power; the Association of Electric Companies of Texas, Inc.; Bethesda Water Supply Corporation; the Honorable Ronald F. Branson, Mayor of Carrollton; Calpine Corporation; City of Arlington Water Utilities Department; City of Brownwood; City of Carrollton, Public Works Department; City of Cleburne; City of Denton; City of Grandview, City of Hughes Springs, including the Honorable Reba Simpson, Mayor of City of Hughes Springs; the Honorable James Samples, Mayor Pro Tem, City of Hughes Springs, the Honorable William V. Jones, City Council Member, City of Hughes Springs, and the Honorable Lee Newsom, City Official, City of Hughes Springs; City of Jefferson; City of Lone Star; City of Odessa; City of Ore City; City of Pittsburg; City of Plainview, Public Works Department; City of Pleasanton; City of Rosenberg; City of Sugar Land; City of Taylor Landing; City of Wylie; El Paso Water Utilities; Guadalupe-Blanco River Authority; Hardin County Water Control and Improvement District No. 1; Kamira Water System; Kempner Water Supply Corp.; L&L Engineers and Planners, Inc.; Lake Corpus Christi RV Park and Marina ; Lone Star Chapter of the Sierra Club; Lower Colorado River Authority; Luminant Generation Company LLC; New Ulm Water Supply Corp.; Northeast Texas Municipal Water District; NRG Texas Power LLC; SEC Energy Products; Shin-Etsu Silicones of America; the Honorable Reba Simpson, Mayor of Hughes Springs; Talty Water Supply Corporation; Texas Association of Business; Texas Chemical Council; Texas Municipal League; The Shilk Co., Inc.; Upper Guadalupe River Authority; Valley Mobile Home Properties; Water Environment Association of Texas; and 5 individuals.

The commission also received a joint comment letter from Arlington Water Utilities; Beaumont Water Utilities; El Paso Water Utilities; Houston Public Works & Engineering; Austin Water Utility; City of Dallas Water Utilities; the Fort Worth Water Department; and the San Antonio Water System.

The majority of commenters did not support the proposed rule. The concerns expressed by the commenters fell into several categories:

- the increases are too drastic; they should be phased in over a period of time;
- this is the wrong time to raise fees given the current state of the economy and the other burdens being placed upon municipalities and utilities;
- the commission should have considered all 30 water fees it assesses in order to spread out the impact of the increase;
- the commission should find other ways to address the funding shortfall, e.g. use general revenue funds or federal funds as the primary source of funding and use fees only to supplement its water fund; tighten its belt; streamline its operations;
- the methodology the commission used to generate the numbers in the rule proposal is unclear;
- the uncertainty regarding how the commission will apply the multiplier and what rate it will assess for the factors in the consolidated water quality fee make it difficult for fee payers to budget;
- small systems or large systems, depending on the commenter, were unfairly targeted by the rule proposal; and,
- the fee increases amounted to a tax.

Commissioners

Page 3

June 19, 2009

Re: Docket No. 2008-1866-RUL

**Significant changes from proposal:**

Two changes were made from proposal to adoption.

- In §21.3(b)(6)(D)(iii), the word "maximum" was added to make the rule language of this provision consistent with the rule language in §21.3(b)(2).
- In §21.3(c)(5), "above 2,500 acre feet per year" was added to the rule language for administrative efficiency.

**Key points in adoption rulemaking schedule:**

<b><i>Texas Register</i> proposal publication date:</b>	March 13, 2009
<b>Six-month <i>Texas Register</i> filing deadline:</b>	September 14, 2009
<b>Anticipated <i>Texas Register</i> publication date:</b>	July 24, 2009
<b>Anticipated effective date:</b>	July 30, 2009

**Agency contacts:**

Kathleen Ramirez, Rule Project Manager, 239-6757, Water Supply Division  
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Attachments

cc: Chief Clerk, 5 copies  
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