

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** April 1, 2011

**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G. Executive Director

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

**Docket No.:** 2009-1953-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 290, Public Drinking Water  
Federal Lead Copper Revisions and Federal Corrections for Surface Water,  
Disinfection, and Groundwater  
Rule Project No. 2009-020-290-OW

### **Background and reason(s) for the rulemaking:**

This rulemaking adopts the United States Environmental Protection Agency's (EPA's) Lead and Copper Short Term Regulatory Revisions and Clarification (LCSTR) rule. LCSTR provides enhanced public education on the effects of lead and copper and makes minor changes for consistency with the adopted federal rules to retain primacy for the Safe Drinking Water Act and its amendments (SDWA). The LCSTR rule will require public water systems that exceed the lead action level to provide expanded public notice and allow the smallest public water systems the option of reduced sampling, consistent with federal requirements.

This rulemaking also adopts minor changes to Chapter 290 for consistency with the EPA's Long Term 2 Enhanced Surface Water Treatment Rule (LT2), Stage 2 Disinfectants and Disinfection Byproducts Rule (DBP2), and Ground Water Rule (GWR). Rule Project Number 2006-045-290-PR was adopted on December 19, 2007, and incorporated the major requirements of the federal LT2, DBP2, and GWR. Since that adoption, as part of the EPA Region 6's primacy enforcement authority (primacy) review, the EPA identified elements inadvertently omitted from that rulemaking. This rulemaking adopts those omissions.

In addition, staff adopts reorganized portions of Chapter 290 for greater readability and consistency with other portions of Chapter 290, and updates obsolete references and terminology.

The adopted rulemaking's impact to public water systems is minimal.

### **Scope of the rulemaking:**

The adopted rules would implement the EPA's LCSTR. This rulemaking would also implement a number of changes to ensure consistency with the federal LT2, DBP2, and GWR. Further, the adopted rules reorganize portions of Chapter 290 for greater

Re: Docket No. 2009-1953-RUL

readability and consistency and update obsolete references and terminology. Since 1978, Texas has retained primacy for the SDWA by adopting, implementing, and enforcing rules as stringent as the federal rules. This rulemaking allows continuation of that primacy by adopting rules as stringent as the federal rules.

**A.) Summary of what the rulemaking will do:**

This rulemaking incorporates federal revisions to the LCSTR, including:

- clarifying the definitions for compliance and monitoring periods;
- specifying when reduced monitoring must end and when increased monitoring must begin and more clearly setting conditions under which a system may remain on reduced monitoring;
- adding specificity to the requirements for compliance calculations and sampling locations;
- adding new requirements on the type, contents, and timing of reports;
- adding reporting requirements on systems that do lead service line replacements;
- changing the mandatory language on the health effects of elevated lead and copper in all consumer confidence reports;
- making the definition of the term "detected" more specific; and
- requiring the TCEQ to approve changes to corrosion control treatment prior to their use.

This rulemaking incorporates the EPA's identified minor omissions regarding LT2, DBP2, and GWR including:

- correcting footnote references;
- adding footnotes references where missing;
- deleting incorrect references;
- adding missing references; and
- amending the rule language to match the federal rules.

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

There are no changes required by state statutes. The bulk of this rulemaking is required by federal regulations and includes changes resulting from the EPA's comments.

The TCEQ maintains primacy over public water systems in Texas by adopting, implementing, and enforcing regulations as stringent as those made by the federal government, and by implementing a Public Water System Supervision (PWSS) Program. The TCEQ's PWSS Program currently implements the DBP2, LT2, and GWR as well as the existing requirements for lead and copper in drinking water.

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

- Reorganize the lead and copper regulations to help the regulated community readily locate the language for a given requirement.

Re: Docket No. 2009-1953-RUL

- Reformat the Sample Backflow Prevention Assembly Test and Maintenance Report form.
- Correct the Sample Sanitary Control Easement Document for a Public Water Well so that it conforms to the existing rules.
- Amend the example Service Agreement by adding the word "retail" to distinguish the Retail Service Agreement from any wholesale contracts that may be required.
- Amend references from certified labs to instead refer to accredited labs.
- Correct typographical or syntax errors, formatting mistakes, missing catch lines, or citation changes.

**Statutory authority:**

Texas has authority under the Texas Health and Safety Code, Chapter 341 to adopt drinking water rules, including those required to retain primacy. Under 40 Code of Federal Regulations, §142.10, the TCEQ must adopt rules as stringent as the federal rules to maintain primacy over public water systems in Texas. The EPA allows two years for states to adopt rules, with an additional two-year extension provided upon request. The federal DBP2 and LT2 rules were adopted January 4 and 5, 2006, respectively, so the four-year deadlines for those corrections was January 4 and 5, 2010, respectively. The LCSTR rule was adopted on October 10, 2007, so the four-year deadline is October 10, 2011.

**Effect on the:**

**A.) Regulated community:**

This rule will impact public water systems. The rule does not create a new group of affected regulated entities. The impact to public water systems is minimal.

In 1991, the first federal Lead and Copper Rule (LCR) became effective for public water systems in Texas. Under the current program, since 1991, the TCEQ has taken an active role in implementing this rule. The TCEQ assists public water systems with the lead and copper requirements at the time they are required to sample by mailing them annual schedule reminder letters, and having a contractor send them sample bottles, instruction packets, and public education materials. Free, on-site technical assistance is provided to any systems that potentially have compliance issues. This strategy has been successful in helping the state obtain its compliance goal and will be continued as resources allow. Under the current rule, 99.2% of the Texas public water systems that are required to meet the existing LCRs are compliant.

The changes to the rules are minor, and will be clearly communicated to the regulated community by the TCEQ to assist with compliance. Further, the changes from the adopted rules will be implemented with similar strategies; therefore, the adopted rules do not introduce significant changes for the regulated community.

There is no significant fiscal impact from the adopted LCRs. Less than 1% of systems that exceed the lead action level may experience a one-time cost of \$2,315 to revise their contact lists and disseminate public education materials. Systems with fewer than five taps

Re: Docket No. 2009-1953-RUL

available for human consumption may experience a one-time cost of \$28.23 to request a reduction in sampling if they choose to avail themselves of this optional opportunity. Under the adopted lead and copper requirements, public water systems must sample in the summer of a single year during each rule-defined three-year period. During that year systems are expected to experience a cost of between \$35.39 and \$72.73 per system to provide analytical results to customers at the houses where sampling occurs, in the year during which they perform sampling. The cost of mailing this notification varies with system size, because the number of samples varies by system size, so that small systems experience less costs than larger systems.

**B.) Public:**

This rulemaking will affect drinking water consumers in public water systems. Customers who participate in the lead and copper sampling program will now be provided with the results of any analysis of their tap water. More types of entities will be provided with public education materials in the 0.8% of public water systems, which are required to comply with the rule that have a lead action level exceedance.

**C.) Agency programs:**

This rulemaking will slightly impact the TCEQ programs that perform work related to the federally required PWSS program, including: Water Supply Division, Area and Regional Offices, Field Operations Support Division, Operator Licensing, Quality Assurance Section, and Enforcement Division. Procedural changes under the LCSTR will impact the Water Supply Division, which will accomplish these changes without a request for additional resources; the other programs will be minimally affected.

**Stakeholder meetings:**

The TCEQ did not hold a stakeholder meeting; however, the TECQ held a rule public hearing for this rule on January 6, 2011 in Austin, Texas.

**Public comment:**

This rule's comment period began on December 10, 2010. At the January 6, 2011 rule public hearing no one offered comments on the proposed rule. This rule's comment period closed on January 14, 2011. The commission received written comments from the EPA and the City of Houston (Houston).

The EPA's comments primarily related to minor changes in the DBP2 rule language; none of the comments were substantive but instead were minor wording changes requested to ensure close adherence of the state rule to the federal rule. EPA also provided comments related to primacy review, which will be evaluated when primacy review occurs after this rule's adoption. Houston provided comments related to the requirements for lead and copper recordkeeping and notification. No commenters expressed major concerns.

Commissioners

Page 5

April 1, 2011

Re: Docket No. 2009-1953-RUL

**Significant changes from proposal:**

Several changes were made from proposal to adoption in response to comment. In response to the EPA's comments regarding provision of reduced disinfection byproduct monitoring, changes were made to ensure that the total organic carbon rules are applied appropriately based on the type of surface water treatment used, that systems must have a source water total organic carbon level less than 4.0 milligrams per liter (mg/L) to be scheduled for reduced monitoring under State 1 Disinfectants and Disinfection Byproducts rule and DBP2, and that other elements of the DBP2 are applied appropriately. In response to EPA's comment regarding lead-specific health information required in the consumer confidence report under the LCSTR, the inadvertent omission of this federal requirement was corrected in the state rules. In response to Houston's comments, changes were made to ensure that the state rule is consistent with the federal rule on recordkeeping and notification for the lead and copper requirements.

**Potential controversial concerns and legislative interest:**

None.

**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 consequences may include the TCEQ losing primacy to the EPA for the SDWA, or for the SDWA requirements related to LT2, DBP2, lead and copper if this rulemaking does not go forward. The alternative to this rulemaking would be for the EPA to maintain primary enforcement authority in Texas.

**Key points in the adoption rulemaking schedule:**

**Texas Register proposal publication date:** December 10, 2010

**Anticipated Texas Register publication date:** May 6, 2011

**Anticipated effective date:** May 12, 2011

**Six-month Texas Register filing deadline:** June 10, 2011

**Agency contacts:**

Michael Lentz, Rule Project Manager, 239-1650, Water Supply Division

Ruth Takeda, Staff Attorney, 239-6635

Patricia Duron, Texas Register Coordinator, 239-6087

**Attachments**

**Commissioners**

**Page 6**

**April 1, 2011**

**Re: Docket No. 2009-1953-RUL**

**cc: Chief Clerk, 2 copies  
Executive Director's Office  
Susana M. Hildebrand, P.E.  
Anne Idsal  
Curtis Seaton  
Ashley Morgan  
Office of General Counsel  
Michael Lentz  
Patricia Duron**