

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** November 19, 2010

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.: 2010-0939-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 291, Utility Regulations
Disconnection of Submetered or Allocated Service
Rule Project No. 2010-030-291-OW

Background and reason(s) for the rulemaking:

Chapter 291, Utility Regulations, Subchapter H, Utility Submetering and Allocation, §291.126, Discontinuance of Service, provides that a tenant's water utility service may be disconnected if payment was not received by the due date, and the owner issues a disconnection notice after the due date at least ten days prior to a stated date of disconnection.

Texas Property Code, §92.008(b) states that a landlord may not interrupt water service furnished to a tenant by the landlord as an incident of tenancy or by other agreement unless the interruption results from bona fide repairs, construction, or an emergency. Non-payment is not a reason for interruption of service under this statute.

The reason for the rulemaking is to ensure that the commission's rules conform with the Texas Property Code. Representative Scott Hochberg brought the conflict in §291.126 and the Texas Property Code to the Texas Commission on Environmental Quality's attention.

Scope of the rulemaking:

A) Summary of what the rulemaking will do: This rulemaking adopts the repeal of §291.126.

B) Scope required by federal regulations or state statutes: The rulemaking is not implementing any federal regulations or state statutes.

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

Statutory authority:

The repeal is adopted under Texas Water Code (TWC) §5.102, which provides the commission the general powers to carry out its duties under the TWC; §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and, TWC §13.503 states that the commission shall adopt rules and standards under which owners of properties that are not individually metered for water may install submetering equipment for each rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption.

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Effect on the:

A) Regulated community: Landlords will no longer be able to disconnect a tenant's water service for nonpayment of that service. Fiscal impacts to property owners are possible if submetered/allocated bills are not paid. Landlords may have to utilize the eviction process to address non-payment situations.

B) Public: Tenants who receive submetered or allocated service will no longer be subject to disconnection of their water service for nonpayment of service.

C) Agency programs: There will be no change in the business operations of the Water Supply Division. There will be no fiscal impact to the agency.

Stakeholder meetings:

Staff informed stakeholders about this rulemaking during the August 2010 Drinking Water Advisory Workgroup meeting. Additionally, the Water Supply Division held a rule public hearing on October 5, 2010.

Public comment:

The commission held a public hearing for this rule on October 5, 2010 in Austin, Texas and received a comment from the Texas Apartment Association in support of the rule. The comment period closed on October 11, 2010. The commission received no written comments.

Significant changes from proposal:

There are no changes from proposal to adoption.

Potential controversial concerns and legislative interest remaining after proposal and public comment:

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 agency could choose to not repeal the rule. Not repealing the rule would allow the conflict to remain between the commission's rules and the Texas Property Code.

Key points in adoption rulemaking schedule:

<i>Texas Register</i> proposal publication date:	September 10, 2010
Anticipated <i>Texas Register</i> publication date:	December 31, 2010
Anticipated effective date:	January 6, 2011
Six-month <i>Texas Register</i> filing deadline:	March 10, 2011

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