

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 2, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Docket No.: 2011-1227-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
HB 3372, HB 3391, and SB 1073: Rainwater
Rule Project No. 2011-057-290-OW

Background and reason(s) for the rulemaking:

The adopted rulemaking implements changes to the Texas Health and Safety Code (THSC), §341.042, made during the 82nd Legislature, 2011, in House Bill (HB) 3372, filed by Representative Tracy O. King; §3 of HB 3391, filed by Representative Doug Miller; and Senate Bill (SB) 1073, filed by Senator Mike Jackson. These changes require the commission to amend its existing rules for structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS).

Additionally, the 83rd Legislature, 2013, passed HB 2781 by Representative Allen Fletcher. It will be effective on September 1, 2013. HB 2781 repeals some of the changes required by the 2011 legislation referenced above and which was addressed in the proposed version of these rules. Thus, in this version of the rules, the proposed rule language that was inconsistent with the changes made to statute by HB 2781 was removed from the rule package. Furthermore, some of the requirements that were removed were items that commenters asked the TCEQ to consider not including in the rules during the public comment period on the proposed rule language. Examples are minimum treatment of filtration and disinfection and consent from an affected public water system.

Other changes required by HB 2781 will be considered in the future under Rule Project No. 2013-043-290-OW, currently scheduled for proposal during the September 24, 2013, agenda. HB 2781 requires the TCEQ to adopt rules to implement changes required by the legislation before January 1, 2014.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rules will amend Chapter 290 of the TCEQ rules to:

- allow a RWHS that is connected to a PWS to be used for indoor potable purposes,
- require that a person who intends to connect an affected RWHS to a PWS for potable purposes give written notice to the municipality or the owner or operator of the PWS, and

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- require that at each residence or facility where water from a RWHS is used for potable purposes and where there is a connection to a PWS, the PWS must ensure that the RWHS is installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds a Water Supply Protection Specialist endorsement issued by the Texas State Board of Plumbing Examiners.

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

There are no changes required by federal rule. The adopted rulemaking implements: 1) HB 3372, §3 of HB 3391, and SB 1073, 82nd Legislature, 2011; and 2) §§2, 3, and 8 of HB 2781, 83rd Legislature, 2013.

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

In addition to implementation of the state laws discussed previously, the commission adopts administrative changes throughout the rulemaking to reflect the agency's existing practices, conform with *Texas Register* and agency guidelines, and correct typographical and grammatical errors.

Statutory authority:

Texas Water Code, §§5.102, 5.103, and 5.105; and THSC, §341.042.

Effect on the:

A.) Regulated community:

The adopted rulemaking will have minimum impact on PWSs because each PWS addresses RWHS as part of its existing cross-connection control program. The rulemaking does not create a new group of affected regulated entities. A PWS owned or operated by a local government that is notified of the installation of these types of RWHSs could incur some revenue loss or additional costs for administration if the number of installations increases substantially above current levels of installation; however, the fiscal impact of the adopted rules on local government is expected to be minimal.

B.) Public:

The adopted rules are not expected to have a significant fiscal impact on individuals since individuals can choose whether to incur the expense of installing and maintaining a RWHS to comply with PWS requirements when the rainwater collection system is for indoor potable use and is connected to a PWS. RWHSs vary widely in cost and sophistication, and individuals are expected to choose a system that best fits their needs.

The adopted rules are not expected to have a significant fiscal impact on businesses. Businesses that own or operate PWSs are also not expected to experience significant fiscal impacts under the adopted rules because they would have the same options and flexibility afforded to PWSs owned or operated by a local government.

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Some small or micro-businesses would have to incur the additional expense of obtaining the proper licensure, including additional costs to attend continuing education classes, or contract for a licensed master plumber or journeyman plumber with a Water Supply Protection Specialist endorsement from the Texas State Board of Plumbing Examiners.

C.) Agency programs:

No impact on agency programs.

Stakeholder meetings:

Prior to the passage of HB 2781, 83rd Legislature, 2013, as directed by the 2011 legislation, the executive director's staff worked with the Texas Department of State Health Services to develop the adopted rules regarding the installation and maintenance of affected RWHS. Additionally, two stakeholder meetings were held. The statutory changes were presented at the Drinking Water Advisory Work Group meeting on October 25, 2011, and were discussed by the stakeholders at the Cross-Connection Control subcommittee meeting on December 6, 2011.

Public comment:

The comment period began on March 15, 2013. The commission held a public hearing on April 9, 2013, in Austin, Texas. The comment period closed on April 15, 2013.

The commission received oral and written comments from: the City of Abilene (Abilene); the City of Amarillo (Amarillo); American Rainwater Catchment Systems Association (ARCSA); the City of Arlington (Arlington); the City of Austin (Austin); Bastrop County Water Control and Improvement District No. 2 (Bastrop County WCID 2); Brushy Creek Municipal Utility District (Brushy Creek MUD); Building Officials Association of Texas (BOAT); the City of Cedar Park (Cedar Park); Cimarron Park Water Company, Inc. (Cimarron Park); Cow Creek Groundwater Conservation District (Cow Creek GCD); Duval County Conservation and Reclamation District (DCCRD); El Paso Water Utilities; Hill Country Alliance; Independent Water and Sewer Companies of Texas (IWSCOT); Innovative Water Solutions, LLC (Innovative Water Solutions); the City of Irving (Irving); Jarrell-Schwertner Water Supply Corporation (Jarrell-Schwertner WSC); Lloyd, Gosselink, Rochelle & Townsend, P.C., on behalf of a number of its PWS clients (LGRT); MacBee Special Utility District (MacBee SUD); the City of Midland (Midland); the City of Missouri City (Missouri City); Rain Harvest Resources; San Antonio Water System (SAWS); the City of San Marcos (San Marcos); Texas Municipal League (TML); Texas Water Savers Company; Texas Water Utilities Association (TWUA); the City of Victoria (Victoria); the City of Waxahachie (Waxahachie); and four individuals.

TML, Abilene, and Midland requested reconsideration of the proposed rules. Cimarron Park, and one individual, expressed opposition to the rulemaking. Austin, Arlington, Brushy Creek MUD, and Irving supported the proposed notification requirement.

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Abilene, Arlington, Austin, Brushy Creek MUD, BOAT, Cedar Park, Cow Creek GCD, El Paso Water Utilities, IWSCOT, Innovative Water Solutions, Irving, LGRT, SAWS, Victoria, Waxahachie, and three individuals suggested modifications to the proposed rules as described in the RESPONSE TO COMMENTS section of the preamble.

HB 2781, 83rd Legislature, 2013, repealed some of the changes made during the 82nd Legislative Session. These statutory changes addressed most of the stakeholders' concerns. Rather than adopt rule language based on statutory provisions that will be repealed on September 1, 2013, proposed rule language that was inconsistent with the changes made by HB 2781 was removed from the rule package.

Significant changes from proposal:

In response to THSC, §341.042, as amended by §§2, 3, and 8 of HB 2781, 83rd Legislature, 2013, the adopted rule:

- removed the requirement for the PWS to ensure that the microbiological quality of the treated water is monitored at least annually,
- removed the proposed language that had granted PWSs the authority to require additional levels of treatment at each residence or facility where water from a RWHS is used for indoor potable purposes and where there is a connection to a PWS,
- removed the requirement that a person who intends to connect an affected RWHS to a PWS for potable purposes receive consent from the municipality or the owner or operator of the PWS prior to installation,
- removed the requirement that at each residence or facility where water from a RWHS is used for indoor potable purposes and where there is a connection to a PWS, the PWS must also ensure that minimum treatment consists of filtration and disinfection, and
- removed the requirement that the make-up supply line to the rainwater storage tank is provided with an air-gap that has been inspected and approved upon installation by a licensed backflow prevention assembly tester.

Potential controversial concerns and legislative interest:

Water conservation continued to be a priority issue during the 83rd Legislature, 2013. Rainwater harvesting continues to be controversial as there is a wide range of opinions among the public and regulated community about how rainwater should be classified, whether it should be regulated, and to what extent and how much treatment should be required.

Does this rulemaking affect any current policies or require development of new policies?

As part of the routine Comprehensive Compliance Inspection, TCEQ investigators examine the Cross-Connection Control Program of a PWS and ensure its proper administration. The adopted rules for rainwater harvesting will be monitored as part of a PWS's Cross-Connection Control Program, however the adopted rulemaking will require no changes in policies or the development of any new policies.

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What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Without approval, Chapter 290 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

<i>Texas Register</i> proposal publication date:	March 15, 2013
Anticipated <i>Texas Register</i> adoption publication date:	September 6, 2013
Anticipated effective date:	September 12, 2013
Six-month <i>Texas Register</i> filing deadline:	September 15, 2013

Agency contacts:

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Attachments

HB 3372; §3 of HB 3391; and SB 1073, 82nd Legislature, 2011; and §§2, 3, and 8 of HB 2781, 83rd Legislature, 2013

cc: Chief Clerk, 2 copies
Executive Director's Office
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