

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** October 29, 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.: 2009-1953-RUL

Subject: Commission Approval for Proposed Rulemaking
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 proposes to incorporate the United States Environmental Protection Agency's (EPA's) Lead and Copper Short Term Regulatory Revisions and Clarification (LCSTR) rule which 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 proposes to make 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 as adopted on December 19, 2007, 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 proposes to correct those omissions.

In addition, staff proposes to reorganize portions of Chapter 290 for greater readability and consistency with other portions of Chapter 290, and update obsolete references and terminology.

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

Scope of the proposed rulemaking:

The proposed 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 proposed rules would reorganize portions of Chapter 290 for greater readability and consistency and update obsolete references and terminology. Since 1978, Texas has retained primacy for the SDWA by adopting, implementing, and enforcing rules at least as stringent as the federal rules. This rulemaking will allow continuation of that primacy by adopting rules as stringent as the federal rules.

A) Summary of what the rulemaking will do:

This rulemaking will incorporate federal revisions to the LCSTR, including:

- clarifying the definitions for compliance and monitoring periods;

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- 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 will also incorporate the EPA's identified 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 proposed changes resulting from the EPA's comments.

The TCEQ maintains primacy over public water systems in Texas by adopting, implementing, and enforcing regulations at least 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.
- 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 (40 CFR) §142.10, the TCEQ must adopt rules at least as stringent as the federal rules to maintain primacy

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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 are 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 a very 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 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 proposed rules would be implemented with similar strategies; therefore, the proposed rules do not introduce significant changes for the regulated community.

There is no significant fiscal impact from the proposed 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 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 existing and proposed 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, Field Operations Division, Field Operations Support Division, Operator Licensing, Quality Assurance Section, and Enforcement

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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 federal rule requirements have been discussed during quarterly Drinking Water Advisory Work Group meetings and the proposed state rule changes will be presented to this advisory work group during the comment period. The TCEQ will also hold a rule public hearing during the comment period.

Potential controversial concerns and legislative interest:

None.

Will 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 dates in the proposed rulemaking schedule:

Anticipated proposal date:	November 18, 2010
Anticipated Texas Register publication date:	December 10, 2010
Public hearing date:	January 6, 2011
Public comment period:	December 10, 2010 through January 14, 2011
Anticipated adoption date:	April 20, 2010

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Attachments

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