

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 24, 2015

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

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

**Docket No.:** 2012-1722-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 217, Design Criteria for Domestic Wastewater Systems  
Amendment to Chapter 217: Design Criteria  
Rule Project No. 2012-040-217-OW

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

On July 11, 2011, Eric J. Dupre filed a petition for rulemaking (Project No. 2011-049-PET-NR) that proposed amending 30 Texas Administrative Code (TAC) §217.55 (Manholes and Related Structures) and §217.60 (Lift Station, Wet Well, and Dry Well Designs) to include design criteria for rehabilitation of existing manholes, lift stations, and other wastewater treatment plant structures. On August 31, 2011, the Texas Commission on Environmental Quality (TCEQ or commission) instructed the executive director (ED) to initiate rulemaking on Chapter 217: 1) to explore issues raised by the petitioner through a comprehensive stakeholder process; 2) to explore rule changes not related to the petition; and 3) to consider whether rule changes are necessary on an extended timeline.

The ED held stakeholder meetings on November 1, 2011, and March 6, 2012, in Austin, Texas. Both meetings were webcast for the public. Water Quality staff requested that stakeholders provide comments and propose changes to the existing rules. Water Quality staff received comments from:

- The rule petitioner;
- Engineers (Houston Council of Engineering Companies, Jones & Carter, Don Vandertulip P.E.);
- A professional association (Water Environment Association of Texas - Collection Systems Subcommittee); and
- A city utility (San Antonio Water System).

Suggested changes received from TCEQ staff and stakeholders were discussed at the stakeholder meetings and incorporated into these rule revisions, where appropriate. Staff provided additional outreach over the past two years at TCEQ's Environmental Trade Fair, TCEQ's Water Quality/Stormwater Seminar, Texas Water, Water Quality Advisory Work Group meetings, and Water Quality Liaison meetings.

Re: Docket No. 2012-1722-RUL

Additionally, draft rule language was shared with the stakeholders for final review and informal comment by providing the draft rule language on the TCEQ website from August 8, 2014 - October 10, 2014.

**Scope of the rulemaking:**

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

The proposed rulemaking will:

- add new definitions and clarify existing definitions;
- add design criteria and approval requirements for rehabilitation of existing infrastructure, as requested in the petition for rulemaking;
- add design criteria for new technologies, including cloth filters and air lift pumps;
- update existing requirements or develop new requirements to reflect modern practices, standards and trends; and
- modify rule language to improve readability and enforceability.

A separate rulemaking to readopt 30 TAC Chapter 317, which was repealed in 2008, is being proposed to follow a parallel rulemaking track with the goal of adopting the amendments to Chapter 217 and re-proposal of Chapter 317 concurrently.

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

None.

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

All proposed revisions are either in response to the petition, in response to stakeholder input, or staff recommendations.

**Statutory authority:**

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule;
- 30 TAC §20.15, which provides such procedures specific to the commission;
- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §7.002, which authorizes the commission to enforce provisions of the TWC;
- TWC, §26.027, which authorizes the commission to issue permits;
- TWC, §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and

Re: Docket No. 2012-1722-RUL

- TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges.

**Effect on the:**

**A.) Regulated community:**

This proposed rulemaking improves readability and enforceability of numerous rule provisions and adds design criteria for rehabilitation of existing infrastructure and to account for new technologies. This will allow the regulated community to use these new technologies when designing infrastructure. These changes will assist the regulated community in knowing what is expected and reduce non-compliance resulting from misinterpretation of existing language. Establishing design criteria for rehabilitation of existing infrastructure will ensure consistency across the state and will ensure the environment is protected during these activities.

**B.) Public:**

There is no direct effect on the public; the public will benefit indirectly from the proposed changes as a result of improved design provisions for domestic wastewater systems.

**C.) Agency programs:**

Clarification to the rules will ensure consistent implementation across the state and will reduce non-compliance related to differences of rule interpretation.

**Planned stakeholder involvement:**

As previously noted, staff has engaged stakeholders extensively during this rulemaking process. In addition to conducting a public hearing during the public comment period, staff will continue to keep stakeholders informed about this rulemaking during quarterly Water Quality Advisory Work Group meetings.

**Potential controversial concerns and legislative interest:**

This rulemaking is likely to generate a substantial number of public comments because of the numerous proposed revisions and the number of entities potentially affected. The petitioner also contacted members of the legislature regarding the proposal, and also recommended an installer education and certification program that was not included in the original petition. The executive director has not received any requests for additional information from members of the legislature. This proposal addresses installation and re-inspection requirements for corrosion prevention technologies, but does not include an education or certification program.

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

No.

Commissioners

Page 4

April 24, 2015

Re: Docket No. 2012-1722-RUL

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

This rulemaking responds to a rule petition and improves enforceability of the existing rules. This rulemaking is not required by new or revised state or federal laws or regulations. As noted above, staff received extensive stakeholder input on ways to improve these rules, such as clarification to improve understanding of the rule and adding design criteria for rehabilitation of existing infrastructure and new technology. Staff recommends proceeding with the proposed rulemaking to accommodate the stakeholders' requested improvements and other changes.

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

**Anticipated proposal date:** May 13, 2015

**Anticipated *Texas Register* publication date:** May 29, 2015

**Anticipated public hearing date (if any):** June 23, 2015

**Anticipated public comment period:** May 29, 2015 – June 29, 2015

**Anticipated adoption date:** November 4, 2015

**Agency contacts:**

Dex Dean, Rule Project Manager, (512) 239-4570, Water Quality Division

Kathy Humphreys, Staff Attorney, (512) 239-3417

Robert Brush, Staff Attorney, (512) 239-5600

Kris Hogan, Texas Register Coordinator, (512) 239-6812

**Attachments**

None

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Pattie Burnett  
Stephen Tatum  
Office of General Counsel  
Dex Dean  
Kris Hogan