

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 5, 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.: 2013-1110-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 290, Public Drinking Water
HB 2781: Rainwater Harvesting
Rule Project No. 2013-043-290-OW

Background and reason(s) for the rulemaking:

The proposed rulemaking is required to implement the changes to the Texas Health and Safety Code (THSC), §341.042, made during the 83rd Legislature, 2013, in House Bill (HB) 2781 by Representative Allen Fletcher. These changes relate to structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS).

Some of the changes required by HB 2781 will be implemented through Rule Project No. 2011-057-290-OW, which was in progress when the bill passed. The proposed rule language of Rule Project No. 2011-057-290-OW that was inconsistent with the changes made to statute by HB 2781 was removed from that rule package. Rule Project No. 2011-057-290-OW is scheduled to be considered for adoption during the August 21, 2013, agenda and may be published in the *Texas Register* on September 6, 2013.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would amend Chapter 290 to:

- remove the phrase "for indoor use" from §290.44(j);
- require a privately owned RWHS with a capacity of more than 500 gallons that is connected to a PWS for a back-up supply to have a backflow prevention assembly or an air gap at the storage facility for the harvested rainwater in §290.44(j)(1)
- remove the word "indoor" from the phrase "for indoor potable purposes" in §290.44(j)(2);
- remove the phrase "for use for potable purposes" from renumbered §290.44(j)(3); and
- require that the PWS used as a back-up supply for a RWHS may be connected only to the water storage tank and may not be connected to the plumbing of a structure in new §290.44(j)(4).

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

There are no federal changes. The proposed rulemaking implements HB 2781.

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

In order to maintain consistency with Chapter 290's established terminology, the executive director's staff proposes to refer to a back-up supply instead of an auxiliary water supply or an auxiliary water source as referenced in the legislation. The executive director's staff also recommends renumbering existing §290.44(j)(1) to (j)(3) to improve organizational structure.

Statutory authority:

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

Effect on the:

A.) Regulated community:

The proposed rulemaking does not impact the regulated community.

B.) Public:

The proposed rule would not have a significant fiscal impact on individuals as they would make the decision whether it is in their interest to install a RWHS connected to an auxiliary water supply. No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule is not expected to have a fiscal impact on large businesses unless they choose to install a RWHS with a back-up supply.

C.) Agency programs:

The proposed rulemaking does not impact agency programs.

Stakeholder meetings:

There are no proposed stakeholder meetings associated with this rulemaking. There will be a public hearing for this rulemaking on November 5, 2013, in Austin, Texas.

Potential controversial concerns and legislative interest:

The executive director's staff does not expect there will be controversial concerns or legislative interest with the proposed rulemaking.

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?

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

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Key points in the proposal rulemaking schedule:

Anticipated proposal date:	September 24, 2013
Anticipated <i>Texas Register</i> publication date:	October 11, 2013
Anticipated public hearing date (if any):	November 5, 2013
Anticipated public comment period:	October 11, 2013 - November 12, 2013
Anticipated adoption date:	January, 2014

Agency contacts:

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Kayla Murray, Staff Attorney, 239-4761
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Attachments

HB 2781

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