

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 7, 2014

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.: 2013-1383-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 290, Public Drinking Water
Chapter 291, Utility Regulations
HB 1814, §2 (2011) and HB 252, HB 1973, and SB 1086, §1 and §2 (2013):
Water Shortage Reporting and Fire Flow
Rule Project No. 2013-047-290-OW

Background and reason(s) for the rulemaking:

The proposed rulemaking would implement House Bill (HB) 252, relating to amendments to the Texas Water Code (TWC), §13.148, requiring retail public utilities and the system(s) that provides the utility's wholesale water service to provide the commission a report on the status of their water supply once the supply is less than 180 days. This proposed rulemaking would also implement amendments to the Texas Health and Safety Code (THSC), §341.0358 and §341.0359, as amended by HB 1814, §2, 82nd Legislature, 2011, and HB 1973 and Senate Bill (SB) 1086, §1 and §2, 83rd Legislature, 2013, regarding the development of standards for municipalities to require a utility to maintain a sufficient water flow and pressure to fire hydrants located in the municipality or the municipality's extraterritorial jurisdiction (ETJ) for purposes of emergency fire suppression.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would amend Chapters 290 and 291 to develop provisions for requiring retail public utilities and the system(s) that provides the utility's wholesale water service to report on the status of their water supply once the supply is less than 180 days to the commission.

The proposed rulemaking would also amend Chapter 290 to:

- expand the applicability of requirements establishing standards for sufficient fire flow and the installation of fire hydrants to:
 - a municipality with a population of more than 36,000 and less than 41,000 located in two counties, one of which is a county with a population of more than 1.8 million (Cities of Burleson, Coppell, and Lancaster). The applicability requirement listed above was added as §2, of HB 1814 during 82nd Legislature (2011), after the agency reviewed two previous versions of the bill that did not contain these provisions;
 - a municipality or the municipality's ETJ including any industrial district within the municipality or its ETJ with a population of more than 7,000 and less than 30,000

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- located in a county with a population of more than 155,000 and less than 180,000 (Cities of Buda and Kyle); or
- a municipality or the municipality's ETJ including any industrial district within the municipality or its ETJ with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000 (Cities of Cibolo, Crowley and Glenn Heights); and
 - establish a minimum standard for a municipality with a population of less than 1.9 million to adopt, requiring a utility within its jurisdictional boundary to maintain a minimum sufficient water flow and pressure to fire hydrants in residential areas. The rule applies statewide except for the City of Houston; however, the City of Houston has established its own fire flow requirements in accordance with the requirements of HB 1391, 80th Legislature, 2007, and HB 3661, 81st Legislature, 2009. The proposed rule would allow a municipality to notify the commission of a utility's failure to comply with an adopted standard, and the commission would be charged with enforcing the violation of the standard.

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

There are no federal changes. The proposed rulemaking implements HB 1814, §2, 82nd Legislature, 2011, and HB 252, HB 1973, and SB 1086, §1 and §2, 83rd Legislature, 2013.

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

The executive director's staff proposes to amend §290.45 and its subdivisions to clarify that the commission will require additional capacity if a system is unable to meet the capacity requirements of sufficient water flow and pressure found in THSC, §341.0358 and §341.0359, as amended by HB 1814, §2 (2011) and HB 1973 (2013).

Statutory authority:

TWC, §§5.102, 5.103, 5.105 and 13.148; and THSC, §341.0358 and §341.0359.

Effect on the:

A.) Regulated community:

HB 252 (2013)

The proposed rulemaking will impact all retail public utilities and their wholesale water service providers. Retail public utilities and their wholesale water service providers have been self-reporting on a voluntary basis. The rule proposal will require mandatory reporting on the status of their water supply once the supply is less than 180 days.

HB 1814, §2 (2011) and HB 1973 and SB 1086, §1 and §2 (2013)

Public utilities in certain parts of the State have been required to adhere to requirements set by the municipality to provide sufficient water flow and pressure for the purposes of emergency fire suppression and the installation of fire hydrants. The rule proposal will expand the requirement to additional specific areas of the State and give all municipalities in the State the option to use the minimum flow and pressure standards developed by the

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commission. The rule proposal will also require water supply corporations to adhere to the commission's water flow and pressure standards.

B.) Public:

Water utility customers may see their water rates increase to fund additional equipment, contract services, or staff to determine the available water supply remaining. Water utility customers may also see a water rate increase to fund the construction of additional water pressure, production and storage facilities or the purchase of additional water capacity to meet the water flow and pressure requirements for providing emergency fire suppression.

The Chapter 290 and 291 rule proposal, as it relates to HB 252, will provide some public benefit by providing retail water utilities across the State assistance in water supply planning to address future water supply needs.

The Chapter 290 rule proposal, as it relates to HB 1814, §2, and HB 1973 and SB 1086, §1 and §2, will provide the potential for increased public safety protection with increased availability of capacity to provide sufficient water supply and fire hydrants to meet the fire flow demands.

C.) Agency programs:

The proposed Chapter 290 and 291 rulemakings do not impact agency programs. However, the Office of Compliance and Enforcement may experience an increase in complaints regarding public utilities and water supply corporation compliance with the requirements for providing sufficient water flow and pressure for the purposes of emergency fire suppression and the installation of fire hydrants.

Stakeholder meetings:

A stakeholder meeting was held on September 18, 2013, with members of the Drinking Water Advisory Workgroup (DWAAG) and members of the general public to discuss the potential impact of HB 1814, §2 (2011) and HB 252, HB 1973, and SB 1086 (2013). The meeting notice was posted on the TCEQ's Web site and emailed to the members of the DWAAG and the municipalities required to pass an ordinance under the provisions of HB 1814, §2 (2011), and HB 1973 and SB 1086 (2013). The main stakeholder feedback was concern with how the requirements of the fire flow bills will be implemented, including discussion on HB 1973 regarding:

- the definition of "residential area" as stakeholders expressed the concern that a clear legislative definition was important because densities of service connections are taken into account when setting a fire flow standard,
- what qualifies as "new construction," which would exempt utilities from retrofitting existing infrastructure, and
- the role of fire departments in the practical application of the bill.

Subsequent to the stakeholders meeting, the executive director's staff determined that rulemaking for SB 1086, §3 was not required as §3 is self-implementing. Unlike HB 1973,

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SB 1086, §3 did not require the commission to adopt standards nor did that legislation give the commission enforcement discretion against the municipalities.
There will be a public hearing for this rulemaking on April 8, 2014, in Austin, Texas.

Potential controversial concerns and legislative interest:

Because the Texas drought is of concern to many including media, the mandatory water shortage reporting could become controversial as more and more utilities are impacted by the drought. In addition, the stakeholders expressed concern with municipalities issuing different standards for the amount of flow required and the municipalities interpretation of a residential area as defined by HB 1973 compared to the definition of a residential area in existing §290.46(x)(1)(C).

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

The Chapter 290 rule proposal will require revisions to the evaluation and investigation of utilities required to comply with an ordinance passed as specified in HB 1973 and SB 1086, §1 and §2.

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

Without approval, Chapters 290 and 291 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date:	February 26, 2014
Anticipated <i>Texas Register</i> publication date:	March 14, 2014
Anticipated public hearing date (if any):	April 8, 2014
Anticipated public comment period:	March 14, 2014 through April 14, 2014
Anticipated adoption date:	July, 2014

Agency contacts:

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Attachments

HB 1814, §2, 82nd Legislature, 2011
HB 252, HB 1973, and SB 1086, §1 and §2, 83rd Legislature, 2013

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