

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## **AGENDA ITEM REQUEST**

for a Petition for Rulemaking

**AGENDA REQUESTED:** October 4, 2017

**DATE OF REQUEST:** September 15, 2017

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Sherry Davis, Agenda Coordinator, (512) 239-2141

**CAPTION: Docket No. 2017-1198-PET.** Consideration of a petition for rulemaking under Section 20.15 of 30 Texas Administrative Code (TAC) Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality (commission) on August 14, 2017, by the Irrigator Advisory Council (petitioner). The petitioner requests that the commission initiate rulemaking to amend Section 344.52 of 30 TAC Chapter 344, Landscape Irrigation, by modifying the acceptable methods of backflow prevention. (James Hemple, Alicia Ramirez) (Project No. 2017-042-PET-NR)

Ramiro Garcia, Jr.  
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**Deputy Director**

Anita M. Keese for David Ramirez  
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**Division Director**

Sherry L. Davis  
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**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** September 15, 2017

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

**From:** Ramiro Garcia, Jr., Deputy Director  
Office of Compliance and Enforcement

**Subject:** Consideration of a Petition for Rulemaking

**Docket No.:** 2017-1198-PET

**Project No.:** 2017-042-PET-NR

### **Who Submitted the Petition:**

On August 14, 2017, the Texas Commission on Environmental Quality (commission) received a petition from the Irrigator Advisory Council (petitioner).

### **What the Petitioner Requests:**

The petitioner requested that the commission amend 30 Texas Administrative Code (TAC) Chapter 344, Landscape Irrigation, §344.52, concerning Installation of Backflow Prevention Devices, to revise the acceptable methods for backflow prevention. The petitioner recommends eliminating authorization of “double check valves” in irrigation systems and recommends adding reference to “spill resistant vacuum breakers” as an authorized alternative. The petitioner also recommends inserting requirements for in-line filter or strainers per manufacturer’s recommendation. In addition, the petitioner requests the commission amend references from the term “backflow prevention devices” to the term “backflow prevention assemblies” to align with 30 TAC Chapter 290, Public Drinking Water.

### **Recommended Action and Justification:**

The Executive Director recommends approval of the petition to initiate rulemaking with stakeholder involvement. Through the stakeholder process, the Executive Director will further evaluate the technical merits of the proposal to ensure adequate environmental protection is achieved. This petitioner also requests amending a section of same subchapter, §344.50, as petition 2017-041-PET-NR. The Executive Director recommends considering both petitions with a single rulemaking for Chapter 344.

The Executive Director understands that the petitioner is considering submittal of additional petitions for this chapter. Therefore, the Executive Director recommends approval of opening Chapter 344 in its entirety for amendment and stakeholder involvement.

### **Applicable Law:**

- 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
- Texas Health and Safety Code, §341.033 and §341.034, which establish the minimum sanitation and health protection measures for public drinking water supplies

Re: Docket No. 2017-1198-PET

- Texas Occupations Code, §1903.053, which defines the commission's power and duties regarding irrigators
- 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 §§5.101 - 5.103 and §§37.001 - 37.015, which establish the commission's authority necessary to carry out its jurisdiction
- 30 TAC §20.15, which provides such procedures specific to the commission
- 30 TAC §344.52, Installation of Backflow Prevention Device

**Agency Contacts:**

James Hemple, Project Manager, Program Support Section, (512) 239-1935  
Alicia Ramirez, Staff Attorney, (512) 239-0133  
Sherry Davis, Agenda Coordinator, (512) 239-2141

**Attachment:**

Petition

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Erin Chancellor  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
James Hemple  
Sherry Davis

August 8, 2017



Richard A. Hyde, P.E.  
Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas, 78711-3087

Re: Petition for Rulemaking; Title 30, Texas Administrative Code (TAC)  
Chapter 344, Rules for Landscape Irrigation

Mr. Hyde,

The TCEQ Irrigator Advisory Council (IAC) is composed of nine members appointed by the Commission. Six of the members are Licensed Irrigators experienced in the field of irrigation. The remaining three members are representatives of the public, not having an interest in the irrigation industry. The purpose of the council is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience with respect to matters relating to landscape irrigation.

The IAC respectfully submits the enclosed petition for rulemaking seeking revisions to Title 30, Texas Administrative Code (TAC) Chapter 344, Rules for Landscape Irrigation, section 344.52 pertaining to backflow prevention installation. The recommended revisions serve to protect the public health.

Respectfully submitted for your consideration,

John DeCell, Chair  
Irrigator Advisory Council

## Petition for Adoption of Rules

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The Irrigator Advisory Council (IAC) hereby petitions the Texas Commission on Environmental Quality (TCEQ) for adoption of rules to revise Title 30, Texas Administrative Code (TAC) Chapter 344, Rules for Landscape Irrigation, section §344.52 - Installation of Backflow Prevention Device.

### Name of Petitioner

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Irrigator Advisory Council  
John DeCell, Chair  
25740 Century Oaks Blvd  
Hockley, Texas 77447

### Purpose of the Proposed Rule Changes

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The purpose of the proposed rule changes is to add steps to protect the health and safety of the citizens of the State of Texas and to bring consistency to the current TCEQ rules.

Language suggested for removal or change is struck through and appears in red. Proposed additions or changes are underlined and appear in blue.

### Text of Current and Proposed Rules and Explanations

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**§344.52. Installation of Backflow Prevention ~~Device~~.**

### IAC Proposed Rule Change

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Change the title to §344.52. Installation of Backflow Prevention Assemblies.

**The reason for this recommendation:** *This recommendation will change the references to a backflow prevention "device" to a backflow prevention "assembly". The TCEQ follows the University of Southern California's (USC) Manual of Cross-Connection Control Tenth Edition for testing procedures and standards. The USC manual and the Foundation for Cross-Connection Control and Hydraulic Research refer to a backflow as an assembly. Although a backflow is often referred to as a "device" within the industry, it is actually an "assembly" of components. In the TCEQ Chapter 290, Rules and Regulations for Public Water Systems, a backflow is referred to as an assembly. This change will allow the Chapter 344 rules to stay consistent in language with the Chapter 290 rules and the University of Southern California.*

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## Current Rule

- (b) If an irrigation system is connected to a potable water supply through a ~~double-check-valve~~, pressure vacuum breaker, or reduced pressure principle backflow assembly and includes an automatic master valve on the system, the automatic master valve must be installed on the discharge side of the backflow prevention assembly.

## IAC Proposed Rule Change

- (b) If an irrigation system is connected to a potable water supply through a pressure vacuum breaker, [a spill-resistant vacuum breaker](#), or reduced pressure principle backflow assembly and includes an automatic master valve on the system, the automatic master valve must be installed on the discharge side of the backflow prevention assembly.

**The reason for this recommendation:** *If irrigation is properly classified as a health hazard, the double check would no longer be an acceptable backflow prevention assembly for use as protection against an irrigation system. The purpose of this recommendation is to remove the double check valve, which is the only backflow prevention assembly not approved for use against a health hazard. In addition, this recommendation adds the spill-resistant vacuum breaker as an acceptable backflow prevention assembly for protection against an irrigation system. The spill-resistant vacuum breaker assembly is approved by the University of Southern California and is an approved assembly under the International Plumbing Code and Uniform Plumbing Codes for both health and non-health hazard protection. This will provide another option for the protection of the public water supply. Because the assembly is "spill-resistant", this will provide a good option for installing an assembly indoors in colder climates.*

## IAC Proposed Rule Change

- (c) [an inline filter/strainer with a minimum of a 120-mesh screen or disc shall be installed per manufacturer's recommendations above grade on the inlet side of the backflow prevention assembly.](#)

**The reason for this recommendation:** *The University of Southern California has indicated that the cleaner the water is entering the backflow assembly, the less likely the assembly is to fail. Water meters are known to break apart with excess flow through the meter. The parts from the meter are often lodged in the backflow assembly rendering it useless. The addition of a filter/strainer will assist in capturing any debris allowing the backflow prevention assembly to operate as designed. Installing the filter/strainer above grade versus in a valve box in the ground will eliminate a potential cross-connection. The Irrigator Advisory Council voted in favor of requiring an inline filter/strainer on August 18, 2016.*

## Current Rule

- (e) the irrigator shall ensure the backflow prevention **device** is tested prior to being placed in service and the test results provided to the local water purveyor and the irrigation system's owner or owner's representative within 10 business days of testing of the backflow prevention **device**.

## IAC Proposed Rule Change

- (d) the irrigator shall ensure the backflow prevention **assembly** is tested prior to being placed in service and the test results provided to the local water purveyor and the irrigation system's owner or owner's representative within 10 business days of testing of the backflow prevention **assembly**.

**The reason for this recommendation:** *To change the designation to the letter (d) with the addition of the inline filter/strainer recommendation becoming the new letter (c).*

*To change the reference to a backflow prevention "device" to a backflow prevention "assembly" to stay consistent with the Chapter 290 rules and the University of Southern California.*

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## Statement of Statutory Authority

The Commission has authority to promulgate these rules under Texas Water Code §§ 5.013, 5.101-103, and 37.00-.015; Texas Occupations Code § 1903.053; and Texas Health and Safety Code §§ 341.033-034.

## Injury or Inequity Resulting from Failure to Adopt the Proposed Rules

Failure to adopt the proposed amendments will continue to allow the citizens of the State of Texas to be exposed to water known and recognized as hazardous by the two plumbing codes approved by the State Plumbing Board, and virtually all other subject matter experts. Removing the double check valve as an approved backflow assembly for protection against irrigation, and adding a filter/strainer to further protect the assembly are the proper steps to begin correcting an error in the rules that has been in existence for far too long.

# Texas Commission on Environmental Quality



## **DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED BY THE IRRIGATOR ADVISORY COUNCIL**

Docket No. 2017-1198-PET  
Rule Project No. 2017-042-PET-NR

On October 4, 2017, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by the Irrigator Advisory Council (petitioner). The petitioner, filed the petition on August 14, 2017, and requested that the Commission initiate rulemaking to amend 30 TAC Chapter 344, Landscape Irrigation, Subchapter E, Backflow Prevention and Cross-Connections, § 344.52, Installation of Backflow Prevention Device. The petitioner requested that the Commission amend §344.52, Installation of Backflow Prevention Device, to revise the acceptable methods for backflow prevention. The petitioner recommends eliminating authorization of “double check valves” in irrigation system service and recommends adding reference to “spill resistant vacuum breakers” as an authorized alternative. The petitioner also recommends inserting requirements for in-line filter or strainers per manufacturer’s recommendation. In addition, the petition requests the Commission amend references from the term “backflow prevention device” to the term “backflow prevention assembly” to align with 30 TAC Chapter 290, Public Drinking Water.

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code, § 5.102 and § 5.103, to instruct the Executive Director to examine the issues raised in the petition and to initiate rulemaking. As part of the rulemaking proceeding, the Commission instructs the Executive Director to initiate stakeholder engagement (and to report back to the Commission with findings and recommended actions, if any, within 12 months of this agenda).

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., P.E., Chairman

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Date Signed