

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** November 20, 2009

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Richard Hyde, P.E., Deputy Director
Office of Permitting and Registration

Subject: Consideration of a Petition for Proposed Rulemaking

Docket No.: 2009-1711-RUL

Rule Project No. 2010-003-PET-NR
Reporting of Backflow Incidents, Service Agreements, and Backflow Prevention Program

Who Submitted the Petitions:

On October 20, 2009, the TCEQ received three petitions for rulemaking from Mr. Fred Baird with Bac-Flo Unlimited, Mr. Bruce Rathburn, National President of the American Backflow Prevention Association (ABPA), Mr. John Stephen Fain with the Cross-Connection Control Institute, Mr. Byron Hardin with Hardin and Associates Consulting, LLC, Mr. Danny Lytle, and Mr. Cory Harmon with the Cen-Tex ABPA Chapter (petitioners). The petitions included certifications of support from members of the Cross-Connection Control Subcommittee. This group is a subcommittee of the TCEQ Drinking Water Advisory Workgroup.

What the Petitioners Request:

The petitioners seek the following amendments to 30 TAC Chapter 290, Public Drinking Water, concerning the rules and regulations which govern cross-connection control and backflow prevention:

The petition concerning reporting of backflow incidents

1. Require public water systems to report all confirmed backflow incidents to the commission.
2. Clarify language found in §290.46(j)(2) that authorizes public water systems to terminate a customer's water service based on the presence of a health hazard(s) at the customer's residence/facility.

The petition concerning recognition as a superior or approved public water system

1. Add a requirement to the existing criteria for the "Superior Public Water System" designation found in §290.47(a)(1). The new criterion would require a public water system to have an approved backflow prevention program in order to be eligible to be recognized as a "Superior Public Water System."

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The petition concerning sample service agreement

1. Require all public water systems to adopt a customer service agreement and a state-approved plumbing code or regulations.
2. Define the term "customer" in the Sample Service Agreement found in §290.47(b) to extend the authority of the agreement to apply to all customers of a public water system.

Recommended Action and Justification:

The executive director recommends that the commission deny the petition concerning "Reporting of Backflow Incidents" on the grounds that the consequences, if any, of failing to report is unclear. In 1995, when the TCEQ promulgated its cross-connection control rules, the agency specifically declined to formulate penalties against non-compliant public water systems. Instead, the TCEQ indicated that routine sanitary surveys were meant to identify problem areas and that water suppliers were to be given sufficient time to address and correct any identified issues.

The executive director recommends that the commission deny the petition concerning "Recognition as a Superior or Approved Public Water System" on the grounds that there are approximately 715 public water systems currently recognized as superior. Adding a new requirement could adversely impact those systems if they are required to re-submit a request for such recognition.

The executive director recommends that the commission deny the petition concerning "Sample Service Agreement" on the grounds that the amendments sought exceed the TCEQ's jurisdiction, would result in a rule with which some of the TCEQ's regulated entities could not comply, are unnecessary, and could create ambiguity.

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.
- 30 TAC §20.15, which provides such procedures specific to the TCEQ
- Texas Health and Safety Code, §341.031, which grants the TCEQ authority to adopt and enforce rules governing drinking water standards.
- Texas Water Code, §5.103, which sets forth the TCEQ's general rulemaking authority.
- Texas Water Code, §5.105, which allows the TCEQ to establish and approve general policy by rule.

Affected Public:

All entities designated as a public water system. All members of the public served by a public water system.

Affected Agency Programs:

- Water Supply Division, Office of Permitting and Registration
- Regions 1-16, Office of Compliance and Enforcement

Agency Contacts:

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Attachment: Petitions

cc: 5 copies to the Chief Clerk for distribution
Executive Director's Office
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