



**DISPENSING EQUIPMENT ALLIANCE**

18927 Hickory Creek Drive, Suite 220  
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Richard A. Hyde, P.E.  
P.O. Box 13087  
Austin, Texas 78711-3087

December 14, 2017

**RE: PETITION: Rule Making**

Mr. Hyde, P.E.,

I am submitting this petition for a rule change after some questions were raised regarding exactly what defines an air gap for the purposes of the Texas Commission on Environmental Quality (TCEQ). As a resident of Texas, but also an employee of a company that provides services that includes the use of equipment that contain air gaps for backflow prevention, it is come to our attention that the current definition used by TCEQ does not utilized a standardized definition.

The attached petition requests the TCEQ use the ASME A112.1.3 standard based on several reasons including the standard is designated an American National Standard by ANSI which guarantees it has been reviewed by an impartial third party and the process was open and included all interested parties. In addition, the ASME standard is utilized by manufacturers to produce equipment with air gaps and can reasonably rely on acceptance by jurisdictions for products containing an air gap that conforms to that standard.

I would respectfully request the TCEQ review the petition and act upon it favorably.

Thank you.

Jason Walton  
General Manager  
Hilyard Industries

A handwritten signature in black ink, appearing to read "Jason Walton", is written over the typed name and title.

8447 Painted Wagon  
San Antonio, Texas 78254



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### PETITION: Rule Making

#### Petitioner is an interested person

As a resident of Texas, I qualify as an interested person according to 30 TAC 20.15 (a)(1).

#### Explanation of the proposed rule

The Texas Commission on Environmental Quality rules for Public Water Systems, Subsection 290.38(2) defines what an air gap should be. However, it is not using language that is based on a standard. Utilizing ASME A112.1.3 will provide a clearer definition by a standards writing organization along with being an American National Standard by ANSI.

Currently, Subsection 290.38(2) defines as: Air Gap – The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

#### Proposed Rule Language

Proposed language change to reflect the American National Standard ASME A112.1.3 – 2000 definition, the new language would be as follows:

*Air Gap – The ~~unobstructed~~ vertical distance through the ~~free~~ atmosphere between the lowest ~~from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle~~ opening potable water outlet and the highest level of the source of fluid contamination, but never less than 1.0 inch.*

The reasoning behind this proposed language change is simple. The ASME A112.1.3 is an industry wide agreed definition that has passed the rigors of third party review by ANSI. Public comment is required in an ANSI process and all interested parties have had a chance to voice their concerns. In addition, manufacturers rely on this standard when manufacturing products that include air gaps in their products. Having an alternative definition gives rise to confusion and disagreements regarding what terms mean and thus could have a negative effect on the use of those products within a jurisdiction.

#### Statutory Authority

The Texas Commission on Environmental Quality under 30 TAC Part 1, Chapter 1, Section 1.1: The purpose of the commission's rules is to implement the powers and duties under the Texas Water Code, the Texas Health and Safety Code, and other laws, to establish the general policies of the commission, and to set forth procedures to be followed in agency proceedings. In addition, 30 TAC 290.39 (a) states: Authority for requirements. Texas Health and Safety Code (THSC), Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulations and control of public

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drinking water systems in the state. Further, THSC Title 5 341.002 (1) states: 'The executive commissioner may: (1) adopt rules consistent with the purposes of this chapter;' In addition to that section, 341.031 states: PUBLIC DRINKING WATER. (a) Public drinking water must be free from deleterious matter and must comply with the standards established by the commission or the United States Environmental Protection Agency. The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). And section 341.033 (f) states: A public drinking water supply may not be connected to a sprinkling, condensing, cooling, plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage of sewage or contaminated water into the drinking water supply.

**Injury from Failure to Adopt Proposed Change**

To remedy any instance of a product being refused or declined based on a misunderstanding over a definition, a manufacturer would have to go through a costly redesign of products attempting to match the definition rather than on a standard which is created by a non-profit industry organizations with the added review of the American National Standard Institute and their third-party review. Utilizing ASME standard A112.1.3 provides just that level of protection not only to the public and public water systems as well as to manufacturers.

**Conclusion**

We respectfully request the Texas Commission on Environmental Quality to review this petition and act favorably in accepting the change. By utilizing a standard that is reviewed by ANSI guarantees all interested parties have had a chance not only to review but to make public comments and have meaningful input on how that standard was created. In addition, it has terms that are well known to the manufacturers and installers alike.