

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** November 30, 2007

Thru: LaDonna Castañuela, Chief Clerk
Glenn Shankle, Executive Director

From: Dan Eden, Deputy Director
Office of Permitting, Remediation, and Registration

Docket No.: 2006-1256-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
EPA Public Drinking Water Stage 2 Project
Rule Project No. 2006-045-290-PR

Scope of the rulemaking:

The United States Environmental Protection Agency (EPA) recently adopted new drinking water rules. The new EPA rules are: the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBP2); the Long Term 2 Enhanced Surface Water Treatment Rule (LT2); and the Ground Water Rule (GWR).

DBP2 provisions include a one-year period EPA-required increased early implementation sampling called the Initial Distribution System Evaluation (IDSE) that will be used to select new compliance monitoring sites; new compliance determination methods; operational evaluation level reporting; increased detail for currently required monitoring plans; and updated analytical methods.

LT2 provisions include a special period of increased early implementation sampling to determine the concentration of *Cryptosporidium* oocysts in source water; new required treatment levels for *Cryptosporidium* removal determined on a plant-by-plant basis; defined technologies for *Cryptosporidium* removal called the microbial toolbox; and updated analytical methods.

GWR provisions include raw water sampling at wells following any total coliform detection in a distribution system; required corrective action if fecal indicators are detected in a well; newly defined violations for presence of fecal contaminants in raw water; and updated analytical methods.

TCEQ adopted requirements of the federal PNR in 2002, but three provisions remain to be added to our rule language. First, the rules require all public water systems that must do public notice to certify in writing that the notice has been sent. Second, the rules reduce the amount of time in which a public water system must notify the TCEQ and its customers of an acute violation from one business day to 24 hours. Third, the rules ensure appropriate enforcement and tracking of public notice violations by including a reference to public notice violations under each constituent's compliance determination subsection. The revisions to the PNR are required by EPA to maintain primacy.

The new requirement of the Texas Health and Safety Code (THSC) that public water systems have a plan to contact TCEQ when emergencies occur is included in this rule package and the definition of

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“process control duties” previously within the operator licensing requirements is moved to the public water system regulations.

Reasons for the rule package:

The EPA recently adopted new drinking water rules. The new EPA rules are: the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBP2); the Long Term 2 Enhanced Surface Water Treatment Rule (LT2); and the Ground Water Rule (GWR).

In addition, this rule package includes changes to adopt portions of the EPA Public Notification Rule (PNR); changes to THSC, §341.033(i); and, the addition of the definition of the term “process control duties” from §30.387 of the commission’s rules. This rule package also proposes to adopt changes to ensure consistency of the state rules with the federal Total Coliforms (Including Fecal Coliforms and *E. Coli*) rule (TCR) and Disinfectants and Disinfection Byproducts (DBP1) rule.

Statutory Authority:

These amendments are adopted under Texas Water Code (TWC), §5.102, which establishes the commission’s general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission’s general authority to adopt rules; §5.105, which establishes the commission’s authority to set policy by rule; and THSC, §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act (SDWA), 42 United States Code, §§300f to 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

Under 40 Code of Federal Regulations (CFR) §142.10, TCEQ must adopt rules at least as stringent as the federal rules in order to maintain primary enforcement authority (primacy) over public water systems in Texas.

Potentially controversial matters:

These EPA rules will increase sampling costs to many public water systems; will increase capital expense for the few systems that must install treatment to meet new standards; and may increase operating costs for some systems. The affected systems would include both large and small surface water and groundwater systems and the systems could be either publicly or privately owned.

Additionally, public health protection issues in the rules may be of interest to consumer protection or environmental groups. The rules were developed by EPA with a significant level of stakeholder input, and there is little or no flexibility available to make changes at this stage, since the TCEQ maintains primacy by adopting rules as stringent as the EPA rules.

Public comment:

The commission received comments from Austin Water Utility (AWU), United States Environmental Protection Agency, Region 6 (EPA), International Code Council Texas Field Office (ICCTx), South Tawakoni Water Supply Corporation (STWSC), TCB Incorporated (TCB), and TRA/TCRWSS (TRA). AWU and TCB generally supported the rule. AWU, EPA, ICCTx, STWSC, TCB, and TRA suggested modifications to the proposed rules to clarify their applicability.

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Significant comments included:

- a general statement from EPA that sections of the commission's proposed rules were consistent with the federal rules. No change was made in response to this comment;
- a general statement from STWSC requesting a 5% compliance operating margin for disinfection byproducts. No change was made in response to this comment as this would have been less stringent than the federal rule;
- statements from EPA saying the EPA could not locate certain provisions of the federal rules in the proposed rule. No change was made in response to this comment;
- statements from several commentors about the meaning and readability of definitions. In response to these comments, minor changes to wording or sentence structure were made;
- statements from several commentors about outdated analytical, referential, and laboratory methods. In response to these comments, references to these methods were updated;
- statements from several commentors about general typographical, readability and publication errors. In response to these comments, minor changes in spelling, wording, or sentence structure were made;
- statements from TCB about §290.109 asking for clarification of the GWR requirements. No change was made in response to this comment;
- statements from EPA about the proposed rules where the commission incorporated the provisions of the DBP2 rule showing areas where EPA perceived that the commission's rule may be considered less stringent than the federal rule. In response to these comments, the changes described below were made; and
- statements from EPA and AWU about the proposed rules where the commission incorporated the provisions of the LT2 rule showing areas where the commission was unintentionally more stringent than the federal rule or the rule wording caused confusion. In response to these comments, the changes described below were made.

Significant changes from proposal:

Several changes were made since proposal to assure that the new rules contained language no more or less stringent than the corresponding federal rules in order for the commission to maintain primacy over its public drinking water program. These changes include:

- changing the retention requirement for monitoring plans and IDSE records to those in the federal rule;
- specifically stating the performance requirements and the records retention requirements for bin classification;
- changing the disinfection byproduct sampling requirements for certain system types to those contained in the federal rule;

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- allowing the commission to require IDSE sampling in all circumstances; allowing the use of all sample types in the determination of a 40/30 waiver;
- including a requirement of system type and population be included on the IDSE plan;
- including a requirement that all IDSE documents be available to public water supply customers; including updated analytical and laboratory methods; and clarifying monthly and quarterly to mean 30 and 90 days for total organic carbon monitoring.

Key points in adoption rulemaking schedule:

***Texas Register* proposal publication date: August 10, 2007**
Six-month *Texas Register* filing deadline: February 11, 2008
Anticipated *Texas Register* publication date: January 4, 2008
Anticipated effective date: January 10, 2008

Agency contacts:

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Attachment

cc: Chief Clerk, 5 copies
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