

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 16, 2015

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.: 2012-1722-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 217, Design Criteria for Domestic Wastewater Systems
Amendment to Chapter 217: Design Criteria
Rule Project No. 2012-040-217-OW

Background and reason(s) for the rulemaking:

On July 11, 2011, Eric J. Dupre filed a petition for rulemaking (Project No. 2011-049-PET-NR) that proposed amending 30 Texas Administrative Code (TAC) §217.55 (Manholes and Related Structures) and §217.60 (Lift Station, Wet Well, and Dry Well Designs) to include design criteria for rehabilitation of existing manholes, lift stations, and other wastewater treatment plant structures. On August 31, 2011, the Texas Commission on Environmental Quality (TCEQ or commission) instructed the executive director (ED) to initiate rulemaking on Chapter 217 to: 1) explore issues raised by the petitioner through a comprehensive stakeholder process; 2) explore rule changes not related to the petition; and 3) consider whether rule changes are necessary on an extended timeline.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking will:

- add new definitions and clarify existing definitions;
- add design criteria and approval requirements for rehabilitation of existing infrastructure, as requested in the petition for rulemaking;
- add design criteria for new technologies, including cloth filters and air lift pumps;
- update existing requirements or develop new requirements to reflect modern practices, standards, and trends; and
- modify rule language to improve readability and enforceability.

A separate rulemaking to readopt 30 TAC Chapter 317 (Project No. 2013-025-317-LS), which was repealed in 2008, is following a parallel rulemaking track with the goal of adopting the amendments to Chapter 217 and re-adoption of Chapter 317 concurrently.

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

None.

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

All revisions are either in response to the petition, in response to stakeholder input, or staff recommendations.

Statutory authority:

- 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 commission;
- 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, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §7.002, which authorizes the commission to enforce provisions of the TWC;
- TWC, §26.027, which authorizes the commission to issue permits;
- TWC, §26.034, which provides the commission's authority to adopt rules for the approval of disposal system plans; and
- TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges.

Effect on the:

A.) Regulated community:

This adopted rulemaking improves readability and enforceability of numerous rule provisions and adds design criteria for rehabilitation of existing infrastructure and to account for new technologies. This will allow the regulated community to use these new technologies when designing infrastructure. These changes will provide clarity and reduce non-compliance resulting from misinterpretation of existing language. Establishing design criteria for rehabilitation of existing infrastructure will ensure consistency across the state to ensure the environment is protected during these activities.

B.) Public:

There is no direct effect on the public; the public will benefit indirectly from the adopted changes as a result of improved design provisions for domestic wastewater systems.

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C.) Agency programs:

Clarification of the rules will ensure consistent implementation across the state and will reduce non-compliance related to differences of rule interpretation.

Stakeholder meetings:

The ED held stakeholder meetings on November 1, 2011, and March 6, 2012, in Austin, Texas and both meetings were webcast for the public. Water Quality staff requested that stakeholders provide comments and propose changes to the existing rules. Water Quality staff received comments from:

- The rule petitioner;
- Engineers (Houston Council of Engineering Companies, Jones & Carter, Don Vandertulip P.E.);
- A professional association (Water Environment Association of Texas - Collection Systems Subcommittee); and
- A city utility (San Antonio Water System).

Suggested changes received from TCEQ staff and stakeholders were discussed at the stakeholder meetings and incorporated into the rule revisions, where appropriate. The draft rule language was shared with the stakeholders for final review and informal comment by providing the draft rule language on the TCEQ website from August 8, 2014 to October 10, 2014.

Additionally, staff provided additional outreach at TCEQ's Environmental Trade Fair, TCEQ's Water Quality/Stormwater Seminar, TCEQ's Water Quality Advisory Work Group meetings, TCEQ's Water Quality Liaison meetings, and the Water Environment Federation's Texas Water conference.

Public comment:

Staff identified 88 comments from 9 sources, mostly related to specific technical issues. The comments include:

- 2 requests for clarification on the original effective date of Chapter 317 and grandfathering for existing facilities;
- 1 request to provide a grace period, with no summary design submittal requirements, for a facility that allows a permit to expire;
- 12 requests to add, modify, or clarify definitions;
- 4 comments related to administrative requirements; and
- 69 comments related to specific technical issues.

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Significant changes from proposal:

Staff made changes to 35 of 155 open sections in response to public comment. Significant changes include:

- adding a definition of "totalizing meter" that specifies the meter should be non-resettable (comment 20, see §217.2(74));
- clarifying that primary treatment and disinfection must be provided for all power outages, including outages that are longer than the outage predicted based on power records (comment 23, see §§217.36(j)(1)-(2) and 217.37(a), prevents conflict with §217.36(a));
- requiring return activated sludge pumps to be active immediately during a power outage, not just after four hours (comment 24, see §217.36(j)(3));
- removing cement mortar lining from the list of rehabilitation technologies (comment 28, see §217.56(c)).
- adding a requirement that motor control centers must also be protected from the entrance of corrosive gases from wet wells or piping (comment 29, see §217.60(a)(5));
- adding requirements that valve vaults and other enclosed structures must be ventilated (comments 31 and 33, see §§217.60(b)(6) and 217.60(c)(1));
- simplifying the requirements for hopper bottom clarifiers (comment 48, see §217.152(g)(3)-(4));
- lifting the prohibition on diffuser depths less than 7.0 feet, but still requiring written approval (comment 52, see §217.155(b)(5)(A)(iii));
- clarifying preconstruction sampling for soil liners in a way that reduces expensive permeability sampling and expresses the commission's interests more clearly (comment 68, see §217.203(e)(1)(C)); and
- adding a requirement that a chlorine contact basin must include a drain to facilitate removal of accumulated settled solids (comment 85, see §217.281(b)(7)).

Potential controversial concerns and legislative interest:

The petitioner contacted members of the legislature regarding the proposal, and also recommended an installer education and certification program that was not included in the original petition. The ED has not received any requests for additional information from members of the legislature. This adoption does not include an education or certification program.

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

No.

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

This rulemaking responds to a rule petition and improves enforceability of the existing rules. This rulemaking is not required by new or revised state or federal laws or regulations. As noted above, staff received extensive stakeholder input on these rules, such as clarification to improve understanding of the rule and adding design criteria for rehabilitation of existing infrastructure and new technology. Staff recommends adoption of rules to accommodate the stakeholders' recommendations.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** May 29, 2015

Anticipated *Texas Register* adoption publication date: November 20, 2015

Anticipated effective date: November 26, 2015

Six-month *Texas Register* filing deadline: November 30, 2015

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Attachments

None

cc: Chief Clerk, 2 copies
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