

# 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:** Caroline M. Sweeney, Deputy Director  
Office of Legal Services

**Docket No.:** 2015-0249-RUL

**Subject:** Commission Approval for Adopted Rulemaking  
Chapter 317, Design Criteria Prior to 2008  
Re-adoption of 30 TAC 317: Sewage Systems  
Rule Project No. 2013-025-317-LS

### **Background and reason(s) for the rulemaking:**

Effective August 28, 2008, 30 Texas Administrative Code (TAC) Chapter 317 was repealed and replaced with the adoption of 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems (Rule Project No. 2006-044-217-PR). The repeal of Chapter 317 created regulatory uncertainty for the owners and operators of those existing wastewater collection and treatment facilities not subject to Chapter 217 requirements. Chapter 217 applies to facilities constructed or renovated after its adoption, but does not otherwise apply to existing facilities. Although those existing facilities are subject to permit requirements, because Chapter 317 was repealed and no savings clause was included in Chapter 217 to address existing facilities, it has been unclear under what regulations those permitted existing facilities should operate and the basis for applying those regulations.

Because many of the rule requirements and even the former name of Chapter 317 state "Design Criteria," there has also been uncertainty regarding whether or not a facility must also be constructed or installed, maintained, and operated in compliance with the rule requirements.

### **Scope of the rulemaking:**

It has never been the commission's intent that any facility be subject to no regulation. Accordingly, the Executive Director (ED) initiated this rulemaking to "re-adopt" Chapter 317 as the most expeditious means to address this uncertainty, and amend the applicability section to clarify which facilities are subject to Chapter 317, and to clarify the commission's initial and ongoing position that facilities must be installed, operated, and maintained in accordance with the approved specifications, plans, and design criteria of Chapter 317.

The adopted rulemaking will clarify the commission's requirements, thereby simplifying the regulated community's efforts to comply, while maintaining the commission's duty to protect human health and the environment.

### **A.) Summary of what the rulemaking will do:**

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Adopted new Chapter 317 would address regulatory uncertainty caused by the 2008 repealing of Chapter 317 and clarify the ongoing intent that those facilities originally governed by Chapter 317 continuously comply with the Chapter 317 standards during installation/construction, operation and maintenance.

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

None.

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

None.

**Statutory authority:**

Texas Water Code (TWC), §5.013, General Jurisdiction of Commission; TWC, §5.103, Rules; TWC, §5.105, General Policy; TWC, §5.120, Conservation and Quality of Environment; TWC, §26.027, Commission May Issue Permits; TWC, §26.034, Approval of Disposal System Plans; and TWC, §26.121, Unauthorized Discharges Prohibited.

**Effect on the:**

**A.) Regulated community:**

The adopted rules clarify regulatory uncertainty as to applicable requirements but do not introduce a new regulatory burden. There is no fiscal impact to the regulated community.

**B.) Public:**

The public will benefit from improved compliance. There is no fiscal impact to the public.

**C.) Agency programs:**

Agency permitting and enforcement programs will benefit from improved compliance. There is no fiscal impact to agency programs.

**Stakeholder meetings:**

There were no stakeholder meetings held for this rulemaking.

**Public comment:**

A public hearing was held on June 23, 2015, which coincided with the public hearing for Chapter 217 rulemaking project (Rule Project No. 2012-040-217-OW); there were no attendees from the public on this rulemaking project. Two comments were received on the rule package, relating to enforcement guidance.

**Significant changes from proposal:**

No changes were made to the proposed rules.

**Potential controversial concerns and legislative interest:**

There are no controversial issues or legislative interest.

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

No current policies are affected and no new policies are required.

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

If the rulemaking does not go forward, the regulatory uncertainty and confusion regarding agency intent will remain, with that uncertainty and confusion eventually addressed by the court system.

**Key points in the adopted 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 29, 2015

**Agency contacts:**

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**Attachments**

None.

cc: Chief Clerk, 2 copies  
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