

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 30, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2015-0829-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
HB 1146: Volunteer Operators for Public Water Systems
Rule Project No. 2015-020-290-OW

Background and reason(s) for the rulemaking:

House Bill (HB) 1146, passed by the 84th Texas Legislature, 2015, authored by Representative Kyle Kacal, amends Texas Health and Safety Code (THSC), §341.033 and §341.034, to allow public water systems to use volunteer licensed operators. HB 1146 requires the Texas Commission on Environmental Quality to adopt rules necessary to implement THSC, §341.033(a-1) and §341.034(a) no later than December 1, 2015. This rulemaking adopts amendments to 30 TAC §290.46 and §290.47.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking:

- clarifies existing rules allowing public water systems to use volunteer licensed operators;
- requires a volunteer to be licensed by the executive director; and
- requires an owner or manager of a water system that is operated by a volunteer to maintain a record of each volunteer; contact information for the volunteer; and the time period for which the volunteer is responsible for operating the water system.

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

The revisions to THSC, §341.033(a-1) and §341.034(a) requires rulemaking to revise §290.46 and §209.47 to implement the statutory requirement. There are no changes to federal regulations adopted.

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

There are no additional staff recommendations not required by federal rule or state statute.

Statutory authority:

Texas Water Code (TWC), §§5.102, 5.103, and 5.105; and THSC, §341.033 and §341.034.

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Effect on the:

A.) Regulated community:

The adopted rulemaking is applicable to community and non-transient non-community public water systems which account for approximately 5,533 water systems statewide. Owners of public water systems may realize cost savings by opting to use a volunteer operator instead of paying for operator services. The adopted rulemaking does not create a group of affected persons who were not affected previously. Currently, Chapter 290 requires public water systems to provide licensed operators for the maintenance and operation of their systems and to maintain records of work performed by licensed operators.

B.) Public:

The public will benefit by allowing public water systems more flexibility in obtaining licensed operators.

C.) Agency programs:

None; this is clarification of existing rules.

Stakeholder meetings:

There were no stakeholder meetings for this rulemaking; interested stakeholders were updated through the Drinking Water Advisory Working Group.

Public comment:

The public comment period began on August 21, 2015, and closed on September 21, 2015. A public hearing was held on September 14, 2015, in Austin, Texas, and no oral testimony occurred. No comments were received regarding this rulemaking.

Significant changes from proposal:

There are no changes from proposal to adoption.

Potential controversial concerns and legislative interest:

None, the 84th Texas Legislature unanimously supported passage of HB 1146.

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

No.

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

Without approval, Chapter 290 will be inconsistent with state statutes. If not adopted in this rulemaking, these rule changes could be included in the next Chapter 290 rulemaking.

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Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** August 21, 2015

Anticipated *Texas Register* adoption publication date: December 4, 2015

Anticipated effective date: December 10, 2015

Six-month *Texas Register* filing deadline: February 22, 2016

Agency contacts:

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Attachments

HB 1146

cc: Chief Clerk, 2 copies
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