

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** April 22, 2016

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

From: John Racanelli, Deputy Director
Office of Administrative Services

Docket No.: 2015-0984-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
HB 1: Public Health Service Fee Increase
Project No. 2015-031-290-AD

Background and reason(s) for the rulemaking:

The Texas Commission on Environmental Quality (TCEQ) has seen the general revenue appropriated for water programs decline over the past few biennia, which has led to a greater dependence on fee revenue. The agency underwent a rule making in Fiscal Year (FY) 2009 and raised the Public Health Service (PHS), the Consolidated Water Quality (CWQ), and the Water Use Assessment fees. The increases resulted in approximately \$19 million in additional revenue for FY 2010. The agency has seen funding obligations of the water resource management account increase over the past few years from increases to appropriation, fringe, and the Statewide Cost Allocation Plan. These costs have been supported by adjustments to the CWQ fee parameters, but there is a limitation on how much the agency can increase this fee in the future.

The agency requested additional General Revenue appropriations for the water program, but did not receive the amount necessary to offset the program's costs. The legislature instructed the agency in House Bill 1, Article IX, Section 18.01., (84th Texas Legislature, 2015) of the General Appropriation Act to increase fee revenue to meet funding needs. This rule will provide the agency the ability to increase the PHS fee by \$17 million per year which will ensure adequate cash to support the agency's water program moving forward.

Scope of the rulemaking:

The adopted rule will replace the current fee rates for the PHS fee authorized under §290.51.

A.) Summary of what the rulemaking will do:

The current rate for Tier I (fewer than 25 connections) is \$100, Tier II (25-160 connections) is \$175, and Tier III (over 160 connections) is \$2.15 per connection. The new rates will be Tier I up to \$200, Tier II up to \$300, and Tier III up to \$4.00 per connection. The agency anticipates only increasing the Tier I and II rates by \$25 and the Tier III rate to \$2.45 in FY 2017 to meet the water program's costs.

The agency has been successful over the past few years with meeting the funding needs of various accounts using the "up to" language in fee rules. This provides the agency the

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ability to adjust fees based on necessary funding needs, and gradually increase PHS fees as the water funding needs increase. It is anticipated that this rule change will provide the agency adequate flexibility to address water funding needs for multiple years.

By providing the flexibility to increase the PHS fee, the agency can spread the increase to more regulated entities. Recently, any increase to the water resource management account had to be supported by the CWQ fee and their approximately 3,500 regulated entities. Using the PHS fee to supplement some of the costs will result in an additional 7,000 entities sharing the burden, and limits the potential fee burden of each.

The method of increasing fee revenue by rule is supported by the 84th Texas Legislature and House Bill 1, Article IX, Section 18.01., of the General Appropriation Act. The new section states the agency should increase fee rates by rule to support additional program needs. The PHS fee is specifically listed as a fee to be increased to meet water funding demands.

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 §5.012, 5.013, 5.103, 5.105, and 5.701

Texas Health and Safety Code, §341.0315 and §341.041

House Bill 1, Article IX, Section 18.01 (General Appropriations Act), 84th Texas Legislature (2015)

Effect on the:

A.) Regulated community:

Entities that provide drinking water services will see an increase in their annual PHS fee rate. The increase will depend on the size of the public water system. Tiers I and II will see an annual increase of \$25 in the first year, while Tier III will see an increase per connection. The amount of the increase will depend on the number of connections in that system, but the agency anticipates the rate for FY 2017 to increase by approximately \$0.30 per connection.

B.) Public:

There is potential that the increase in the PHS fee will be passed along to the individual customer. The anticipated cost to the individual customer in FY 2017 will be approximately \$0.30 per year, based on the water funding needs in FY 2017.

C.) Agency programs:

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The adopted rule will provide the agency the necessary flexibility to fund the various water programs for multiple years.

Stakeholder meetings:

There were no stakeholder meetings held related to this rulemaking; however, the agency published information about the rulemaking proposal on the external website and the *Texas Register* on December 4, 2015 (40 TexReg 8731) and included an insert in the Public Health Service Fee billing regarding the proposed rulemaking. The agency will update the external website with official FY 2017 rates upon adoption of the rule.

Public comment:

The commission held a public hearing on January 5, 2016. The comment period closed on January 11, 2016. The agency did not receive any comments at the public hearing.

The commission received written comments from: the Honorable State Representative Abel Herrero, the City of Austin, the City of Houston, the City of Fort Worth, the City of Plano, the Texas Municipal League, the Texas Rural Water Association, Martin Luther Lutheran Church, and one individual.

A late comment was received with similar concerns to other commenters.

Significant changes from proposal:

The commission received comments requesting that notice be provided to public water systems to allow budget planning for increases and the commission to justify the needed increases in future rules. In response to these comments, the commission added subsection (c) which requires the agency to provide notification through an appropriate notification process, such as, but not limited to, *Texas Register* publication.

Potential controversial concerns and legislative interest:

The agency requested additional general revenue to support the agency's water programs during the 84th Texas Legislative Session. The agency did not receive the necessary funding and was instructed to raise the fee rate by rule under House Bill 1, Article IX, Section 18.01., of the General Appropriation Act. The legislature provided TCEQ the authority to adjust fees to ensure the agency has adequate funding for our water programs.

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?

The agency requested additional general revenue to support the agency's water programs during the 84th Texas Legislative Session. The agency did not receive the necessary funding and was instructed to raise the fee rate by rule under House Bill 1, Article IX,

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Section 18.01. (General Appropriation Act). The legislature provided TCEQ the authority to adjust fees to ensure the agency has adequate funding for our water programs. If the agency does not adopt this rule package, the projected funding shortfall in the agency's water programs will continue to increase.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** December 4, 2015

Anticipated *Texas Register* adoption publication date: May 27, 2016

Anticipated effective date: June 2, 2016

Six-month *Texas Register* filing deadline: June 6, 2016

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Attachments

House Bill 1, Article IX, Section 18.01. (General Appropriations Act), 84th Texas Legislature (2015)

cc: Chief Clerk, 2 copies
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