

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 17, 2016

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

Ramiro Garcia, Jr., Deputy Director
Office of Compliance and Enforcement

Docket No.: 2016-0335-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 210, Use of Reclaimed Water
Chapter 285, On-Site Sewage Facilities
HB 1902: Graywater and Alternative Onsite Water Reuse
Rule Project Number: 2015-028-210-OW

Background and reason(s) for the rulemaking:

House Bill (HB or bill) 1902, 84th Texas Legislature (2015), amended Texas Health and Safety Code (THSC), Chapters 341 and 366 and Texas Water Code (TWC), Chapter 26 in relation to the use of graywater and alternative onsite water. The bill requires the Texas Commission on Environmental Quality (TCEQ, agency, or commission) to develop standards to allow the reuse of graywater for toilet and urinal flushing.

Additionally, the bill creates a new regulatory classification for "alternative onsite water" which the bill defines as "rainwater, air-conditioning condensate, foundation drain water, storm water, cooling tower blowdown, swimming pool backwash and drain water, reverse osmosis reject water, or any other source of water considered appropriate by the commission". The bill directs TCEQ to develop similar standards for the reuse of this new source of water similar to graywater.

The bill provides authority to TCEQ to adopt and implement rules for the inspection and annual testing of graywater and alternative onsite water systems.

The bill allows an adjustment in the drainfield size of an on-site sewage facility (OSSF) if used in conjunction with a graywater reuse system.

Lastly, the bill requires TCEQ to develop a regulatory guidance manual to explain the graywater and alternative onsite water regulations.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking amends 30 Texas Administrative Code Chapters 210 and 285.

The proposed rules:

- allow for a reduction in the OSSF drainfield size if the OSSF is used in conjunction with a reuse system;
- move all graywater reuse to Chapter 210 by repealing Section 285.81;

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- authorize the reuse of alternative onsite water;
- add toilet and urinal flushing as an authorized use of graywater and alternative onsite water;
- establish uses of and treatment standards for alternative onsite water similar to graywater;
- incorporate nationally recognized treatment levels for total suspended solids and *Escherichia coli* (*E. coli*) for graywater and alternative onsite water when used for toilet and urinal flushing; and
- revise bacteria limits from fecal coliform to *E. coli* throughout the rule.

The proposed rulemaking retains the existing prohibition on the commission requiring a permit for the residential use of less than 400 gallons of graywater, and adds the use of less than 400 gallons of alternative onsite water to the prohibition.

Because the TCEQ does not issue permits for graywater and alternative onsite water reuse systems, the proposed rules do not include an inspection or testing program for these systems.

A regulatory guidance manual to explain the graywater and alternative onsite water regulations will be developed after adoption of this rulemaking.

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

The proposed rules implement HB 1902.

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

None.

Statutory authority:

- 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 authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state;
- TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest;
- TWC, §26.0311, which establishes the commission's authority to adopt standards for the use and control of graywater;
- THSC, §341.039, which establishes the commission's authority to adopt standards for the use and reuse of graywater;

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- THSC, §366.011, which establishes the commission's authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and
- THSC, §366.012, which establishes the commission's authority to adopt rules concerning on-site sewage disposal systems.

Effect on the:

A) Regulated community:

The regulated community consists of homeowners, industrial and commercial facilities, and agricultural facilities that reuse graywater and alternative onsite water. The proposed rules allow the regulated community to reuse additional sources of water and provide additional options for management of graywater and alternative onsite water, including toilet and urinal flushing which is not currently authorized by rule. The proposed rulemaking establishes treatment standards for toilet and urinal flushing that are consistent with the National Science Foundation/American National Standards Institute (NSF/ANSI) Standard 350-2014. By proposing nationally recognized standards, members of the regulated community can use commercially available products that are NSF/ANSI 350 certified.

Additionally, members of the regulated community that dispose of wastewater by use of an OSSF will have the option of reducing the size of the OSSF drainfield when used in conjunction with a reuse system. The cost savings from the reduced drainfield may offset the costs of installing the reuse system.

B) Public:

As the Author's/Sponsor's Statement of Intent makes clear, the 84th Texas Legislature enacted HB 1902 with the aim of lessening Texas' demand for freshwater resources by encouraging and expanding the allowable uses of graywater and other recycled water as a part of the solution to Texas' water challenges.

The proposed rules implement HB 1902 and the bill's intent by expanding the sources of water that are authorized for reuse, expanding the authorized uses of graywater and alternative onsite water, and encouraging the beneficial reuse of graywater and alternative onsite water by allowing a reduction in the size of OSSF drainfields when used in conjunction with a reuse system.

C) Agency programs:

Outside of the rulemaking and regulatory guidance manual, no additional impacts are anticipated for agency programs as these rules are self-implementing. If the agency chooses to develop rules for the inspection and annual testing of graywater and alternative onsite water systems, a new program will need to be created.

Stakeholder meetings:

The executive director held a stakeholder meeting on August 26, 2015, which had approximately 53 attendees. Additionally, the executive director published a draft version of the rules from January 25 through February 29, 2016, for informal stakeholder review and comment. Comments were received from 13 individuals and entities. Although an

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official response to comments was not required, the proposed rules were revised in response to these informal comments.

Potential controversial concerns and legislative interest:

There was significant discussion at the stakeholder meeting related to the drainfield size adjustment. Some stakeholders supported a reduction in size as a financial incentive to install a graywater system while others recommended no decrease in size due to the increased wastewater strength that the OSSF would receive and treat.

There was also significant discussion on the definition of alternative onsite water, specifically "any other source of water considered appropriate by the commission." Stakeholders wanted to expand the definition to include domestic wastewater and carwash water.

The proposed rules allow for a reduction in the OSSF drainfield size but do not expand the definition of alternative onsite water to include domestic wastewater or carwash water. These sources of water are more appropriately regulated under a permit authorization rather than a permit by rule.

Will 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?

THSC, §341.039 directs the commission to adopt rules for the indoor and outdoor reuse of graywater and alternative onsite water. THSC, §366.012 directs the commission to adopt rules governing the installation of OSSFs. This rulemaking implements HB 1902 amendments to the statutes and any alternative course of action would not be in compliance with the statutes.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 6, 2016

Anticipated *Texas Register* publication date: July 22, 2016

Anticipated public hearing date (if any): August 16, 2016

Anticipated public comment period: July 22, - August 22, 2016

Anticipated adoption date: December 7, 2016

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Attachments:

HB 1902

Letter, State Representative Donna Howard

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