

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: Dorca Zaragoza-Stone, Deputy Director
Office of Administrative Services

Docket No.: 2015-0984-RUL

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

Background and reason(s) for the rulemaking:

The proposed rulemaking would implement House Bill 1, Article IX, Section 18.01 (General Appropriations Act), 84th Texas Legislature (2015), Regular Session, which instructed the agency to raise fee rates by rule to ensure adequate revenue is available to support the agency water appropriation.

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 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 10. 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 programs costs. The legislature instructed the agency in the General Appropriation Act (HB 1 of 84th Texas Legislature) to increase fee revenue to meet funding needs. This rule will provide the agency the ability to increase the PHS fee by a maximum of \$17 million per year which will ensure adequate cash to support the agency's water program moving forward.

Scope of the rulemaking:

The rule making will replace the current fee rates for the PHS fee authorized under 30 TAC §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.

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The agency anticipates only increasing the Tier I and II rates by \$25 and the Tier III rate to \$2.45 in FY 17 to meet the water program's costs. The agency will adjust the rates on an annual basis to fulfill the water programs funding needs.

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 ability to adjust fees based on necessary funding needs and gradually increases PHS fees as the water funding needs increase. This rule change is anticipated to provide the agency with adequate flexibility to address water funding needs for the next 10 years.

By providing the flexibility to increase the PHS fee, the agency can allocate the increase across more regulated entities. Recently, any increase to the water resource management account had to be supported by the CWQ fee and the approximately 3,500 regulated entities subject to that fee. Using the PHS fee to supplement some of those 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 Legislature and HB 1, Article IX, Section 18.01 (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 Health and Safety Code, §341.041, Fees

General Appropriation Act for the 2016-2017 Biennium (HB 1, Article IX, Section 18.01)

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 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 for Tier III will depend on the number of connections in that system, but the agency anticipates the rate for FY 17 to increase by approximately \$0.30 per connection.

B.) Public:

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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 17 will be approximately \$0.30 per year, based on the water funding needs in FY 17.

C.) Agency programs:

The rule will provide the agency the necessary flexibility to fund the various water programs for the next 10 years.

Stakeholder meetings:

There were no stakeholder meetings held related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin. Additionally, the agency will publish information about the rule on the external website and will include an insert in the Public Health Service Fee billing.

Potential controversial concerns and legislative interest:

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

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?

The agency requested additional general revenue to support the agency's water programs during the 84th Legislative Session. The agency did not receive the necessary funding and was instructed to raise the fee rate by rule under HB 1, Article IX, Section 18.01 (General Appropriation Act). The legislature provided us 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 agency will eventually run out of water revenue necessary to support water programs cost and will have to discontinue certain water activities.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 18, 2015

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

Anticipated public hearing date (if any): January 5, 2016

Anticipated public comment period: December 4, 2015 - January 11, 2016

Anticipated adoption date: May 11, 2016

Agency contacts:

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Attachments:

HB 1, Article IX, Section 18.01

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