

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 86

AGENDA REQUESTED: June 12, 2024

DATE OF REQUEST: May 24, 2024

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2022-1691-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 86, Special Provisions for Contested Case Hearings. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The proposal was published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6921). (Harrison Malley) (Non-Rule Project No. 2023-021-086-LS)

Erin E. Chancellor

Director

Charmaine Backens

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 24, 2024

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Erin E. Chancellor, Director
Office of Legal Services

Docket No.: 2022-1691-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 86, Special Provisions for Contested Case Hearings
Rules Review of 30 Texas Administrative Code (TAC) Chapter 86
Non-Rule Project No. 2023-021-086-LS

What the adopted action would do:

This action will approve the rules review of Chapter 86 and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality (TCEQ), after opportunity for public review and comment, that the initial reasons for adopting the rules of this chapter continue to exist.

Applicable law:

The review of the rules is authorized under the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §§9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for re adoption each of their rules every four years.

Reason rules are needed:

Chapter 86, Subchapter A indicates that the chapter supplements 30 TAC Chapter 80 (Contested Case Hearings) by providing specific procedures for particular types of hearings. In the event of conflicting provisions, Chapter 86 prevails over Chapter 80.

Chapter 86, Subchapter B provides procedures for the water rights adjudications that were conducted by TCEQ and predecessor agencies under Texas Water Code (TWC), Chapter 11 starting in 1977. Although TCEQ has completed all adjudications for the state, there are still some pending claims in court.

Chapter 86, Subchapter D provides procedures for petitions by affected persons to TCEQ claiming that a city's rulings, orders, or other acts relating to water pollution control and abatement outside the corporate limits of such city and adopted under TWC, §26.177, or any statutory authorization, are invalid, arbitrary, unreasonable, inefficient, or ineffective in the city's attempt to control water quality. This action is specifically allowed under TWC, §26.177(d). Because TWC, §26.177(d) still exists, Chapter 86, Subchapter D is still needed.

Rules found to be obsolete:

None.

Commissioners

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May 24, 2024

Re: Docket No. 2022-1691-MIS

Public comment:

A public hearing was not offered for this review. The comment period for the rules review closed on December 28, 2023. No comments were received.

Affected agency program(s):

The program areas responsible for implementing these rules are the Water Availability Division and the Water Quality Planning Division.

Agency contacts:

Harrison Cole Malley, Project Manager/Staff Attorney, Environmental Law Division, (512) 239-1439

Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division, (512) 239-2678

Attachments:

Texas Register publication of Proposed Rule Review Notice

cc: Chief Clerk
Executive Director's Office
Jim Rizk
Krista Kyle
Jessie Powell
Office of General Counsel
Harrison Malley
Gwen Ricco

Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-059-005-AD. Comments must be received by January 3, 2024. For further information, please contact Susan Palachek, External Relations Division, at (512) 239-3106.

TRD-202304272

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 15, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 86, Special Provisions for Contested Case Hearings.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 86 continue to exist.

Comments regarding suggested changes to the rules in Chapter 86 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 86. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-021-086-LS. Comments must be received by January 3, 2024. For further information, please contact Harrison Malley, Environmental Law Division, at (512) 239-1439.

TRD-202304273

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 15, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 217, Design Criteria for Domestic Wastewater Systems.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 217 continue to exist.

Comments regarding suggested changes to the rules in Chapter 217 may be submitted but will not be considered for rule amendments as

part of this review. Any such comments will be considered in a future rulemaking action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 217. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-013-217-OW. Comments must be received by January 3, 2024. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202304274

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 15, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 222, Subsurface Area Drip Dispersal Systems.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 222 continue to exist.

Comments regarding suggested changes to the rules in Chapter 222 may be submitted but will not be considered for rule amendments as part of this review. Any such comments will be considered in a future rulemaking action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 222. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-042-222-OW. Comments must be received by January 3, 2024. For further information, please contact Shannon Gibson, Program Project Manager, Water Quality Division, at (512) 239-4284.

TRD-202304275

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 15, 2023



Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (commission) has completed its review of Texas Administrative Code, Title 13, Part 1,

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 86, Special Provisions for Contested Case Hearings, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6921).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 86 are required because Chapter 86, Subchapter A indicates that the chapter supplements 30 TAC Chapter 80 (Contested Case Hearings) by providing specific procedures for particular types of hearings. In the event of conflicting provisions, Chapter 86 prevails over Chapter 80.

Chapter 86, Subchapter B provides procedures for the water rights adjudications that were conducted by TCEQ and predecessor agencies under Texas Water Code (TWC), Chapter 11 starting in 1977. Although TCEQ has completed all adjudications for the state, there are still some pending claims in court.

Chapter 86, Subchapter D provides procedures for petitions by affected persons to TCEQ claiming that a city's rulings, orders, or other acts relating to water pollution

control and abatement outside the corporate limits of such city and adopted under TWC, §26.177, or any statutory authorization, are invalid, arbitrary, unreasonable, inefficient, or ineffective in the city’s attempt to control water quality. This action is specifically allowed under TWC, §26.177(d). Because TWC, §26.177(d) still exists, Chapter 86, Subchapter D is still needed.

Public Comment

The public comment period closed on December 28, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 86 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

Texas Commission on Environmental Quality



ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2022-1691-MIS
Non-Rule Project No. 2023-021-086-LS

On June 12, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 86, Special Provisions for Contested Case Hearings, in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for re-adoption each of its rules every four years. The proposed Notice of Intention to Review was published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6921).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 86 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IF ANY PORTION OF THIS ORDER is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed