

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Adoption of Rules Review & Readoption of Chapter 279

**AGENDA REQUESTED:** August 28, 2024

**DATE OF REQUEST:** August 9, 2024

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

**CAPTION: Docket No. 2022-1742-MIS.** Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 279, Water Quality Certification. 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 May 31, 2024, issue of the *Texas Register* (Vol. 49 TexReg page 3939). (Shannon Gibson, Bradford Eckhart) (Non-Rule Project No. 2023-056-279-OW)

Cari-Michel La Caille  
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**Director**

Robert Sadlier  
\_\_\_\_\_  
**Division Deputy Director**

Gwen Ricco  
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**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** August 9, 2024

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

**From:** Cari-Michel La Caille, Director  
Office of Water

**Docket No.:** 2022-1742-MIS

**Subject:** Commission Approval for Adoption of Rules Review and Readoption of Rules  
Chapter 279, Water Quality Certification  
Rules Review of 30 TAC Chapter 279  
Non-Rule Project No. 2023-056-279-OW

**What the adopted action would do:**

This action will approve the rules review of Chapter 279, 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 readoption each of their rules every four years.

**Reason rules are needed:**

Executive director's staff conducted a review of the rules in Chapter 279 and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 279 govern the issuance of state water quality certifications under the federal Clean Water Act (the Act), §401, codified at 33 United States Code, §1341. The Act, §401(a)(1), requires all applicants for a federal license or permit to conduct any activity that may result in a discharge into navigable waters, including the construction or operation of facilities, to request a certification from the state that the discharge will comply with state water quality standards. The rules establish procedures for public notice and the review of applications for water quality certification. These rules are needed for implementation by the commission of the certification and notice provisions of the Act, §401.

**Rules found to be obsolete:**

None.

**Public comment:**

A public hearing was not offered for this review. The comment period for the rules review closed on July 1, 2024. No comments were received.

**Affected agency program(s):**

The program area(s) responsible for implementing these rules are organized under the Water Quality Division.

Commissioners

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August 9, 2024

Re: Docket No. 2022-1742-MIS

**Agency contacts:**

Shannon Gibson, Project Manager, Water Quality Division, (512) 239-4284

Bradford Eckhart, Staff Attorney, Environmental Law Division, (512) 239-1283

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

**Attachments:**

*Texas Register* publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

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 40 continue to exist.

Comments regarding suggested changes to the rules in Chapter 40 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 TCEQ.

#### Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 40. 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 2023-049-040-AD. Comments must be received by July 1, 2024. For further information, please contact Kyle Lucas, Office of General Counsel, at (512) 239-0687.

TRD-202402273

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 21, 2024



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code (TAC) Chapter 279, Water Quality Certification.

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 279 continue to exist.

Comments regarding suggested changes to the rules in Chapter 279 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 rulemaking action by TCEQ.

#### Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 279. 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 2023-056-279-OW. Comments must be received by July 1, 2024. For further information, please contact Shannon Gibson, Project Manager, Office of Water, at (512) 239-4284.

TRD-202402274

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 21, 2024



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 311, Watershed Protection Rules

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 311 continue to exist.

Comments regarding suggested changes to the rules in Chapter 311 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 rulemaking action by TCEQ.

#### Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 311. 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 2023-053-311-OW. Comments must be received by July 1, 2024. For further information, please contact Shannon Gibson, Project Manager, Office of Water, at (512) 239-4284.

TRD-202402278

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 21, 2024



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 312, Sludge Use, Disposal, and Transportation.

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 321 continue to exist.

Comments regarding suggested changes to the rules in Chapter 312 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 312. 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 2023-090-312-OW. Comments must be received by July 1, 2024. For further information, please contact Shannon Gibson, Program Project Manager, Office of Water, at (512) 239-4284.

TRD-202402275

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 279, Water Quality Certification, 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 May 31, 2024, issue of the *Texas Register* (49 TexReg 3939).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules under Chapter 279 are required because the rules govern the issuance of state water quality certifications under the federal Clean Water Act (the Act), §401, codified at 33 United States Code, §1341. The Act, §401(a)(1), requires all applicants for a federal license or permit to conduct any activity that may result in a discharge into navigable waters, including the construction or operation of facilities, to request a certification from the state that the discharge will comply with state water quality standards. The rules establish procedures for public notice and the review of applications for water quality certification. These rules are needed for implementation by TCEQ of the certification and notice provisions of the Act, §401.

### Public Comment

The public comment period closed on July 1, 2024. 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 279 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. 2022-1742-MIS  
Non-Rule Project No. 2023-056-279-OW

On August 28, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 279, Water Quality Certification, in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for readoption each of its rules every four years. The proposed Notice of Intention to Review was published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3939).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 279 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

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Jon Niermann, Chairman

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Date Signed