

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 216

AGENDA REQUESTED: January 10, 2024

DATE OF REQUEST: December 20, 2023

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

CAPTION: Docket No. 2023-0075-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 216, Water Quality Performance Standards for Urban Development. 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 July 28, 2023, issue of the *Texas Register* (48 TexReg 4135). (Jill Csekitz, Aubrey Pawelka) (Non-Rule Project No. 2023-083-216-OW)

Cari-Michel La Caille

Director

Kelly Mills

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: December 20, 2023

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

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

Docket No.: 2023-0075-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 216, Water Quality Performance Standards for Urban Development
Rules Review of 30 TAC Chapter 216
Non-Rule Project No. 2023-083-216-OW

What the adopted action would do:

This action will approve the rules review of Chapter 216, 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 216 and determined that the reasons for adopting these rules continue to exist. Chapter 216 provides specific procedures and measures to implement Texas Water Code, §26.177. The rules and statute address the TCEQ's authority to require a city with a population of 10,000 or more and water pollution that is attributable to non-permitted sources to develop a water pollution control and abatement program. Non-permitted sources of water pollution are those not authorized by a valid permit, general permit, or rule pursuant to Texas Water Code, Chapter 26, the federal Clean Water Act, or other applicable state or federal law. Because Texas Water Code, §26.177 is still effective, Chapter 216 is still needed.

Rules found to be obsolete:

None.

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Public comment:

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

Affected agency program(s):

The program area(s) responsible for implementing these rules is the Water Quality Planning Division.

Agency contacts:

Jill Csekitz, Project Manager, Water Quality Planning Division, (512) 239-3136
Aubrey Pawelka, Staff Attorney, Environmental Law Division, (512) 239-0622
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

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 112, Control of Air Pollution from Sulfur Compounds.

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 112 continue to exist.

Comments regarding suggested changes to the rules in Chapter 112 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 the commission; however, the comments must be resubmitted during the open comment period for that future rulemaking.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 112. 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 2023-082-112-AI. Comments must be received by August 28, 2023. For further information, please contact Jamie Zech, Air Quality Division, at (512) 239-3935.

TRD-202302588

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 19, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 216, Water Quality Performance Standards for Urban Development.

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 216 continue to exist.

Comments regarding suggested changes to the rules in Chapter 216 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 the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 216. 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 2023-083-216-OW. Comments must be received by August 28, 2023. For further information, please contact Jill Csekitz, Water Quality Planning Division, at (512) 239-3136.

TRD-202302589

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 19, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 293, Water Districts.

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 293 continue to exist.

Comments regarding suggested changes to the rules in Chapter 293 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 the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 293. 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,

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 216, Water Quality Performance Standards for Urban Development, as required by Texas Government Code, §2001.039. Texas Government Code, §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 July 28, 2023, issue of the *Texas Register* (48 TexReg 4135).

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 216 are required because Chapter 216 provides specific procedures and measures to implement Texas Water Code, §26.177. The rules and statute address the TCEQ's authority to require a city with a population of 10,000 or more and water pollution that is attributable to non-permitted sources to develop a water pollution control and abatement program. Non-permitted sources of water pollution are those not authorized by a valid permit, general permit, or rule pursuant to Texas Water Code, Chapter 26, the federal Clean Water Act, or other applicable state or federal law. Because Texas Water Code, §26.177 is still effective, Chapter 216 is still needed.

Public Comment

The public comment period closed on August 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 216 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

Texas Commission on Environmental Quality



ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2023-0075-MIS
Non-Rule Project No. 2023-083-216-OW

On January 10, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 TAC Chapter 216, Water Quality Performance Standards for Urban Development 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 July 28, 2023, issue of the *Texas Register* (48 TexReg 4135).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 216 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