

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## AGENDA ITEM REQUEST

for a Petition for Rulemaking

**AGENDA REQUESTED:** August 20, 2025

**DATE OF REQUEST:** August 1, 2025

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Candice Slater, Agenda Coordinator, (512) 239-6087

**CAPTION: Docket No. 2025-1017-RUL.** Consideration of a petition for rulemaking under Section 20.15 of 30 TAC Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality (commission) on July 3, 2025, by Kyle Kromer, Vice President of Tank Builders, Inc. The petitioner requests that the commission amend 30 TAC Section 290.43(c)(6) to clarify the requirement for water tanks to be tight against leakage. Specifically, to prohibit measurable or calculated leakage during hydrostatic testing for tanks. (Marlo Wanielista Berg, Ruth Takeda; Project No. 2025-029-PET-NR)

Cari-Michael La Caille

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**Director**



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**Division Deputy Director**

*Candice Slater*

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**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** August 1, 2025

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

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

**Subject:** Consideration of a Petition for Rulemaking

**Docket No.:** 2025-1017-PET

**Project No.:** 2025-029-PET-NR

**Who Submitted the Petition:**

On July 3, 2025, the Texas Commission on Environmental Quality (commission or TCEQ) received a petition from Kyle Kromer, Vice President of Tank Builders, Inc. (petitioner).

**What the Petitioner Requests:**

The petitioner requests that the commission amend 30 Texas Administrative Code (TAC) §290.43(c)(6) to clarify the requirement for water tanks to be tight against leakage. Specifically, to prohibit measurable or calculated leakage during hydrostatic testing for tanks.

**Recommended Action and Justification:**

The executive director recommends the commission deny the petition for rulemaking because the current TCEQ rule requirements are sufficient to ensure adequate protection of public health and safety. The petitioner's requested amendment would require some storage tanks to meet a more stringent requirement. The current commission rule requires tank designs to meet national consensus minimum design requirements, established by the American Water Works Association (AWWA), which are specific requirements for each type of tank design. The petitioner's amendment would result in imposing a more stringent requirement that is not supported by any national public health or safety organizations and is unlikely to result in increased public health protection.

30 TAC, Chapter 290, Subchapter D includes the minimum design, operation, and maintenance requirements for public water systems (PWS) that supply drinking water to the citizens of Texas. Subchapter D requires that a PWS must be designed and operated to meet AWWA Standards. This is a common practice among states with drinking water primacy, as demonstrated by the inclusion of a requirement for drinking water tanks to meet the minimum requirements found in applicable AWWA Standards in the publication commonly referred to as the "10 state standards" ([Recommended Standards for Water Works - 2022 edition](#), Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Engineering Managers ). The 10 state standards are minimum drinking water standards compiled and required by a group of 10 primacy agencies known as the

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Great Lakes-Upper Mississippi River Board – Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Ontario, Pennsylvania, and Wisconsin. Additionally, many other states use the 10 state standards as part of their design requirements for water works facilities.

30 TAC §290.43(c) requires all tanks to be designed, fabricated, erected, tested and disinfected in accordance with AWWA standards. This standard has been required in Texas drinking water rules since at least 1967 (*Rules and regulations covering preparation of plans & specifications for public waterworks projects*, adopted by Texas State Department of Health March 12, 1967, see rule D3.1, p. 22-23.<sup>1</sup>). AWWA standards are consensus documents containing minimum requirements which are accredited by the American National Standards Institute (ANSI). The first standard was published in 1908 and today there are 190 standards. Thousands of utilities in North America and other countries have adopted AWWA Standards as part of their processes and procedures ([AWWA Standards](#)). Texas and other states require PWSs to meet AWWA standards to ensure applicable requirements are the most protective of human health because AWWA standards are reviewed and updated regularly and reflect the state of the industry. Also, using national standards tailored for each tank type limits any bias toward any specific tank type. Amending the rule to require a stricter standard than what is specified in AWWA standards is unnecessary and is unlikely to result in increased public health protection.

Concrete and steel are both used to construct tanks, but have different physical properties, thus having different design requirements contained in separate AWWA standards. The petitioner's proposed amendment is based on AWWA Standard D110, Wire-and Strand-Wound, Circular Prestressed Concrete Water Tanks Section 5.12 Construction, Watertightness. In its statement of injury or inequity, the petitioner states the Standard AWWA D-110 allows prestressed concrete tanks to leak up to 0.05 of 1 percent of the tank capacity-up to 5,000 gallons per day for a 10-million-gallon tank, but the information provided is incomplete. AWWA D-110 Standard requires testing for watertightness after construction but before backfilling a concrete tank. The tank must be filled to the overflow level and all valves are closed. The tank is left filled for several days and the water level is monitored. To pass the test, the net liquid loss during a 24-hour period must be below 0.05% of the total tank volume. Leaking is not allowed during normal use, nor during the test, the standard specifically requires observation and does not allow flowing water or damp spots on the outside of the tank. To use the tank, the standard requires all leaks to be located and permanently sealed. The confusion may come from the standard referring to the net liquid loss as "leakage" in parentheses. The Standard uses a colloquialism to allow a shorter word than net liquid loss, then further requires the observation portion of the test where "leaks" such as flowing water are identified. Finally, the net liquid loss is allowed for concrete tanks because although concrete is impermeable, there are microscopic pores in the material that may absorb water until the cement is fully hardened. The standard does not allow water to leak out of

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<sup>1</sup> Rules and regulations covering preparation of plans & specifications for public waterworks projects, adopted by Texas State Department of Health March 12, 1967, see rule D3.1, p. 22-23;

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the tank. If the rule is amended as proposed, the rule would be based on a misinterpretation of the cited AWWA standard and would not result in increased public health protection.

The current rule requires PWS tanks to meet national minimum design standards based on the type of tank and requires the tanks to be thoroughly tight against leakage. The petition seeks to amend the rule to require some types of tanks to meet a more stringent tank testing requirement than is required by the current rule and national standards, without benefit to public water systems. The executive director recommends denying the petition because incorporating the requested change will not provide any appreciable increase in watertightness or protection of public health and safety.

**Applicable Law:**

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule;
- 30 TAC §20.15, which provides such procedures specific to the commission;
- Tex. Health and Safety Code, §341.031, which grants TCEQ the authority to adopt and enforce rules governing drinking water standards;
- Texas Water Code (TWC), §5.102, which establishes the commission's general authority to perform acts necessary to carry out its jurisdiction;
- TWC, §5.103, which sets forth TCEQ's general rulemaking authority; and
- TWC, §5.105, which allows TCEQ to establish and approve general policy by rule.

**Agency Contacts:**

Marlo Wanielista Berg, Engineer, Water Supply Division, (512) 239-6967

Ruth Takeda, Staff Attorney, Environmental Law Division, (512) 239-6635

Candice Slater, Agenda Coordinator, General Law Division, (512) 239-6087

**Attachment:**

Petition

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Patrick Lopez  
Jessie Powell  
Krista Kyle  
Office of General Counsel  
Marlo Wanielista Berg  
Candice Slater  
Office of Legal Services  
Ruth Takeda



Kyle Kromer  
Vice President  
Tank Builders, Inc.  
2101 Golden Heights Road  
Fort Worth, TX 76177

July 3, 2025

**Kelly Keel**  
Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

**Subject: Petition for Rulemaking — Require All Potable Water Storage Tanks to Be Leak-Free**

Dear Ms. Keel:

Pursuant to 30 TAC §20.15, Tank Builders, Inc., a Texas-based business entity, respectfully submits this petition requesting a revision to TCEQ rules to ensure that **all potable water storage tanks meet a zero-leakage requirement**, consistent with the language and intent of 30 TAC §290.43(c)(6).

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**1. Name and Address of Petitioner**

Tank Builders, Inc.  
2101 Golden Heights Road  
Fort Worth, TX 76177

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**2. Explanation of Proposed Rule**

We request clarification and reinforcement of the current rule to ensure that all potable water storage tanks, regardless of design or material, must meet a zero-leakage performance requirement. Specifically, this would eliminate allowances for leakage found in certain tank design standards, such as AWWA D-110.

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**3. Text of Proposed Rule**

*Proposed clarification to 30 TAC §290.43(c)(6):*

“Clearwells and potable water storage tanks shall be **constructed and tested to be thoroughly tight** against leakage, shall be located above the groundwater table, and shall have no walls in common with any other plant units containing water in the process of treatment. All associated appurtenances including valves, pipes, and fittings shall be tight against leakage.

**This requirement shall apply to all tank types and materials, including but not limited to concrete, steel, and composite construction, regardless of referenced design standard or manufacturer. Any tank specification or testing method that permits leakage shall not be accepted as compliant with this section. This includes, but is not limited to, any provision allowing measurable or calculated leakage during hydrostatic or performance testing.”**

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#### 4. Authority for the Rule

This petition is submitted pursuant to the **Texas Administrative Procedure Act (Texas Government Code §2001.021)** and **30 TAC §20.15**, which authorize any interested person to petition a state agency to adopt a rule. The Texas Commission on Environmental Quality has clear authority to adopt the proposed rule under the following statutes:

- **Texas Water Code §5.102** – Grants the Commission general jurisdiction over the state's water resources and authorizes it to perform acts necessary to carry out its powers and duties.
- **Texas Water Code §5.103** – Empowers the Commission to adopt rules necessary to carry out its responsibilities and ensure safe water systems.
- **Texas Water Code §5.105** – Allows the Commission to adopt reasonable rules for the performance of its duties under the law.
- **Texas Health and Safety Code §341.031** – Requires public drinking water to be safe and empowers the Commission to establish and enforce minimum standards for drinking water systems, including storage facilities.

These statutory provisions provide clear and sufficient authority for TCEQ to revise and enforce performance standards related to leakage in potable water storage tanks. The proposed rule falls squarely within the Commission's jurisdiction to protect public health, prevent water loss, and ensure consistent standards across all tank types and materials.

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#### 5. Statement of Injury or Inequity

Under AWWA D-110, prestressed concrete tanks may leak up to 0.05 of 1 percent of the tank capacity —up to 5,000 gallons per day for a 10-million-gallon tank. This allowance directly conflicts with 30 TAC §290.43(c)(6), which states that potable water tanks must be leak-free. Such leakage poses potential environmental concerns, undermines public confidence in water system integrity, and places unequal performance expectations on different tank types. Welded steel tanks must pass rigorous zero-leakage hydrostatic testing, while concrete tanks are often accepted despite known leakage rates that often exceed the allowable leakage rates.

This regulatory inconsistency creates both a public health vulnerability and a competitive disadvantage. We respectfully ask the Commission to initiate rulemaking to close this gap and ensure consistent enforcement of performance standards.

Sincerely,



**Kyle Kromer**  
Vice President  
Tank Builders, Inc.

# Texas Commission on Environmental Quality



## **DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED BY TANK BUILDERS INC.**

Docket No. 2025-1017-PET  
Rule Project No. 2025-029-PET-NR

On August 20, 2025, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by Tank Builders Inc. The petitioner filed the request on July 3, 2025 and requests that the commission amend 30 TAC § 290.43(c)(6) to clarify the requirement for water tanks to be tight against leakage. Specifically, to prohibit measurable or calculated leakage during hydrostatic testing for tanks.

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021, and Texas Water Code, § 5.102 and § 5.103 to deny the petition because the current TCEQ rule requirements are sufficient to ensure adequate protection of public health and safety. The petitioner's amendment would result in imposing a requirement that is not supported by any national public health or safety organizations.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Brooke T. Paup, Chairwoman

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Date Signed