

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 10, 2023

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

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

Docket No.: 2023-0255-RUL

Subject: Commission Approval for Adopted Rulemaking
Chapter 290, Public Drinking Water
Chapter 291, Utility Regulations
SB 3 and Staff-Initiated Revisions and Efficiencies Rule
Project No. 2023-125-290-OW

Background and reason(s) for the rulemaking:

In 2021, the 87th Texas Legislature passed Senate Bill (SB) 3, which relates to preparing for, preventing, and responding to weather emergencies and power outages. SB 3 requires that certain water service providers ensure continuity of operations during an extended power outage. The passage of SB 3 amended Texas Water Code (TWC), Chapter 13, by adding §13.1394, Standards of Emergency Operations, and amending §13.1395, Standards of Emergency Operations in Certain Counties.

Also in 2021, and in response to the widespread power and equipment failures during Winter Storm Uri that resulted in drinking water outages and shortages, the commission organized an after-action review to evaluate the factors that impacted public water systems across the state. This review resulted in findings and recommendations to enhance and integrate additional public water system critical infrastructure resiliency measures.

A.) Summary of what the rulemaking will do:

This adopted rulemaking package will amend 30 Texas Administrative Code (TAC), Chapter 290, Subchapter D, and Chapter 291, Subchapter L, for consistency with the TWC, §§13.1394 and 13.1395; to add weather resiliency and generator maintenance requirements consistent with the Winter Storm Uri after-action review findings; and to clarify and streamline existing state rules.

B.) Scope required by federal regulations or state statutes:

This adopted rulemaking package will amend 30 TAC Chapter 290, §§290.38, 290.39, 290.41, 290.42, 290.43, 290.44, 290.45, 290.46, and 290.47, as well as 30 TAC Chapter 291, §§291.160, 291.161, and 291.162, and to add 30 TAC §291.163 to implement new TWC, §13.1394 and the amendment of TWC §13.1395 by SB 3. No federal regulations apply.

C.) Additional staff recommendations that are not required by federal rule or state statute:

This rulemaking package includes staff recommendations based on findings from the after-action review and to clarify and streamline existing state rules.

1. *Weatherization of Public Water System Critical Infrastructure*

The executive director's (ED) staff requests adoption to amend 30 TAC §§290.38, 290.41, 290.42, 290.43, 290.44, 290.46, and 290.47 to require additional public water system

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components and plant equipment be protected from adverse weather conditions. A definition for “adverse weather conditions” was added to delineate a variety of weather conditions for a holistic approach to weatherization of a public water system’s critical infrastructure.

2. *Plant Operations Manual Criteria*

The existing rule requires a public water system’s plant operations manual to include, in sufficient detail, the protocols to be utilized in the event of a natural or man-made catastrophe. The ED’s staff requests adoption to amend 30 TAC §290.42(l) to further clarify “sufficient detail” by requiring certain elements be included in the plant operations manual for site-specific emergency protocols, instructions, and troubleshooting measures for continuity of operations during emergency situations.

3. *Emergency Preparedness Plan (EPP) Efficiencies*

The ED’s staff requests adoption to amend 30 TAC §290.45(a) to add requirements for an affected utility to submit a revised EPP if the affected utility makes any significant changes to the system that affect emergency operations, alters implementation methods that are not reflected in the approved EPP, or fails to provide a minimum of 20 psi or a pressure approved by the ED, as required by TWC §13.1394, throughout the distribution system during emergency operations. To adhere to statute, an EPP template for all affected utilities defined under TWC §13.1394 has been added to 30 TAC §290.47 Appendix G to assist affected utilities with the creation of an EPP. Additionally, the ED’s staff requests adoption to incorporate language in 30 TAC §290.45 to add clarity to EPP applicability between a wholesale and purchase customer.

4. *Minimum Standards Generator Maintenance*

The ED’s staff requests adoption to amend 30 TAC §§290.45, 290.46(f), 290.46(m), and 291.162 to consolidate all existing generator maintenance procedures and record retention requirements for public water systems serving 1,000 connections or more; and add generator maintenance procedures and record retention requirements for public water systems with less than 1,000 connections. Currently, affected utilities who choose a generator(s) as an alternative power option in their EPP are required to inspect, operate, and maintain it in accordance with manufacturers specifications, and public water systems with 1,000 connections or more are required to service and maintain emergency generators in accordance with Level 2 maintenance requirements in the National Fire Protection Association (NFPA 110 Standard).

5. *Fuel Storage Requirement for Generators*

The ED’s staff requests adoption to amend 30 TAC §290.45(g) and §290.45(h) to increase the minimum standard requirement of eight hours of on-site fuel-storage capacity to 48 hours for systems relying upon on-site generators or any other emergency power equipment necessary to sustain emergency operations during power outages.

6. *Boil Water Notice Issuance and Rescission Efficiencies*

The ED’s staff requests adoption to amend 30 TAC §290.46(q) and §290.47(c) to clarify when written notification from the ED is required prior to issuing a boil water notice, requiring special precautions and protective measures; when a public water system must submit compliance documentation to the ED prior to rescinding a boil water notice; and to remove the boil water notice templates in 30 TAC §290.47, Appendix C to allow ED’s staff to make modifications to the templates, if warranted. The adopted changes will streamline

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processes and reduce confusion when public water systems must issue and rescind a boil water notice, special precaution, or protective measure.

7. *Laboratory Accreditation Definition*

The ED's staff requests adoption to amend 30 TAC §§290.38, 290.44(i), and 290.46(g) to revise the definition of and references to "certified laboratory or approved laboratory" to "accredited laboratory" which is the term used by the agency's Laboratory Accreditation Program and the Environmental Protection Agency.

8. *Streamline the Exception Process for Setback Distances and Pressure Gauge Requirements*

The ED's staff requests adoption to amend 30 TAC §290.43(b)(1) to require the setback distance between an elevated or ground storage tank and on-site sewage sprayfield to be consistent with the setback distance requirement of a public water supply well and an on-site sewage sprayfield. The existing rule requires that a potable water storage tank be at a greater distance from an on-site sewage sprayfield than a public water supply well and requires a public water system to request an exception if the public water system cannot meet the distance requirement. By making the setback distance requirements equivalent, public water systems will no longer need to request an exception to the rule. In addition, the ED's staff requests adoption to amend 30 TAC §290.43(d)(2) to clarify when more than one pressure tank is connected via manifold, only one gauge will be required. The existing rule requires that each pressure tank have a pressure gauge; however, when pressure tanks are manifolded together, one gauge will provide the pressure reading across all the connected pressure tanks. Public water systems will no longer be required to submit an exception request to use one gauge.

Statutory authority:

TWC §13.1394 and §13.1395

Effect on the:

A.) Regulated community:

State Statutes

SB 3 required affected utilities to submit and implement an EPP. While there are options available in the statute that were implemented at little to no cost to the affected utility, there were instances where an affected utility was required to purchase a generator or incur costs for other system improvements required to provide water service during an extended power outage. The adopted amendments and additions included in this rule package will make 30 TAC Chapters 290 and 291 consistent with TWC §13.1394 and §13.1395.

Staff Recommendations

Weatherization of Critical Infrastructure

Increased costs may be incurred to protect critical system components and plant equipment from adverse weather conditions beyond the weatherization methods that are already being used by the public water system.

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Plant Operations Manual

The costs associated with updating a plant operations manual to include protocols that ensure continuity of operations during emergency conditions will be minimal. Costs could be incurred if the public water system outsources this task.

Generator Maintenance

The type of maintenance that a public water system or affected utility with a generator currently performs will determine if additional maintenance is required. Costs could be incurred if the entity outsources this task.

Generator Fuel Storage

Cost associated with the requirement to maintain enough fuel onsite to sustain 48 hours of emergency operations will be determined by the type and number of generators that a system needs to operate under emergency conditions. This provision may impose additional requirements on larger water systems, including registration for above ground fuel storage tanks needed to meet additional fuel storage capacity. Contaminated or expended fuel may need to be disposed of in a particular way to comply with hazardous waste regulations and some regulated entities may be required to have a Spill Prevention, Control, and Countermeasure Plan if the amount of fuel stored meets certain volume thresholds.

Boil Water Notices

The adopted revisions will benefit public water systems that are required to issue a boil water notice by providing clarity and streamlining the procedures for issuing and rescinding boil water notices.

Laboratory Accreditation

The adopted revisions will acknowledge current vernacular providing clarity in determining rule applicability and the appropriate type of laboratories used for regulatory sample analysis.

Setback Distance Requirements and Pressure Gauge Requirements

The adopted revisions for changes to the setback distance and pressure gauge requirements will benefit public water systems by eliminating costs and the time associated with requesting an exception to agency rules.

B.) Public:

The adopted revisions will benefit the public by increasing resiliency measures to mitigate water service disruptions during severe weather events, power outages and other emergency conditions; however, customers may experience increased costs for water service depending on costs incurred by affected utilities to implement these proposed revisions.

C.) Agency programs:

SB 3 established a new program, which required additional agency staff and resources to implement. The staff-initiated rule efficiencies will save staff resources by removing, clarifying, or streamlining agency processes. Implementing the after-action review recommendations will impact multiple agency programs but can be accomplished using existing resources.

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Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held during the comment period in Austin, TX.

Public comment:

The commission offered a public hearing on August 11, 2023. The comment period closed at 11:59 p.m. on August 13, 2023. Comments were received from Dallas Water Utilities and Texas Rural Water Association. Two changes were made in response to these comments. These changes include language in rule regarding the resubmission of emergency preparedness plan pages containing utility emergency contact information and changing the term “spare parts” to “operational maintenance items” as they relate to generator maintenance. These changes were made to provide clarity to the rules.

Significant changes from proposal:

No significant changes, however, alterations to phrasing in rule were made in response to comments to clarify §§290.45(a)(8)(D) and 290.46(m)(8)(A)-(B).

Public Involvement Plan

No.

Alternative Language Requirements

No.

Potential controversial concerns and legislative interest:

None.

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?

These adopted rule changes will make agency rules consistent with state statute. There are no alternatives to implementing the statutory changes made by Senate Bill 3. However, adopted rule changes related to implementing the after-action review recommendations and the staff-initiated rule efficiencies could be removed from the rulemaking.

Key points in the rulemaking adoption schedule:

Texas Register proposal date: July 14, 2023

Anticipated *Texas Register* adoption publication date: December 15, 2023

Anticipated effective date: December 21, 2023

Six-month *Texas Register* filing date: January 14, 2024

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Attachments:

Senate Bill 3

cc: Chief Clerk, 2 copies
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