

The Texas Commission on Environmental Quality (TCEQ, or commission) adopts new 30 Texas Administrative Code (TAC) §§353.1-353.8.

New Sections 353.2, 353.5 and 353.8(b)(3) are adopted *with changes* to the proposed text and, therefore, will be republished. New Sections 353.1, 353.3, 353.4, 353.6, and 353.7 are adopted without changes to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 4256, 88th Texas Legislature, Regular Session, 2023, amended the Texas Water Code (TWC), Chapter 28, Subchapter E to require TCEQ to establish and administer a Leaking Water Wells Grant Program (LWWGP). This rulemaking adoption establishes the LWWGP and its associated requirements and criteria by creating new 30 TAC Chapter 353. The adopted rules implement requirements in HB 4256 (88R) by establishing criteria for prioritizing projects and establishing criteria for ensuring that wells are permanently plugged.

TWC, §28.106(c) requires that TCEQ establish, by rule, criteria for prioritizing projects eligible to receive grant funding. The criteria adopted include well characteristics, including completion and wellbore conditions; well location relative to sensitive areas; environmental considerations; wellsite safety and access considerations; economic considerations; and other priorities determined by the commission.

TWC, §28.107(b) requires TCEQ to establish criteria for ensuring a well is permanently plugged. The adopted rule requires that the grant recipient use Railroad Commission of Texas (RRC) information, data, and regulations to plan, plug, and document that a well has been permanently plugged.

The Leaking Water Wells Fund (LWWF) created by HB 4256 is a separate fund within the state treasury outside of the general revenue fund and may only be used to implement the LWWGP, including the costs of TCEQ program administration and operation. The fund can be financed by various sources, including money appropriated, credited, or transferred by the legislature, gifts or grants contributed to the fund, and interest earned from deposits and investments of the fund. To date, \$10,000,000 has been deposited to the LWWF. None of these funds were appropriated by the 88th Texas Legislature for grant awards during the current biennium.

During the comment period, the commission received comments from several individuals and from Middle Pecos Groundwater Conservation District (MPGCD), which is a district that meets the eligibility requirements to apply for LWWGP funding. The individuals and MPGCD expressed support for the rule. MPGCD requested the rule include a definition for “leaking water well,” asked for a description of an administrative expense, and asked whether the commission could award grant funds to a district for an eligible project before the project begins, rather than providing reimbursement only.

In response, the commission notes that while the term “leaking water well” was not specifically defined in the statute, it is effectively described by the eligibility criteria and a change is not needed to the adopted rule. In addition, grant documents will clarify how the LWWGP will determine administrative costs and how it will award grant funds. The commission did not change the rule language for these comments but provided general guidelines that expenses incurred before an application is submitted would not be reimbursable.

The commission noted that grant documents are being developed separately from the rule adoption. Recognizing that many of the questions asked during the rulemaking will be

addressed by the grant documents as opposed to the rule itself, a LWWGP Workshop was held on May 20, 2025. All Groundwater Conservation Districts (GCDs) in Texas were invited to attend this workshop. At the workshop, the TCEQ presented information about the program and provided an opportunity for GCDs to ask questions and provide feedback. The workshop addressed eligibility, prioritization criteria, eligible and non-eligible expenses, and disbursement of funds (including reimbursement, advance of funds, and working capital advance).

Section by Section Discussion

§353.1 Purpose

TWC, Chapter 28, Subchapter E, charges the commission to establish a grant program to offset the cost of plugging leaking water wells for eligible districts for eligible projects. The commission adopts new 30 TAC §353.1 to describe the purpose of the rules and specify that these grants will be administered by the commission staff in accordance with the most recent Uniform Grant and Contract Management Act (Texas Government Code, Chapter 783) and any specific requirements of the applicable State General Appropriations Act.

§353.2 Definitions

The commission adopts new 30 TAC §353.2 to include definitions for “District,” “Leaking Water Wells Fund,” and “Leaking Water Wells Grant Program.” TWC §28.101 defines these three terms as “District,” “Fund” and “Program.” The variation in the terms defined and slight variations in the language defining these three terms is for clarity. For the purposes of this chapter, “District” means a GCD or authority established under Section 52, Article III, or Section 59, Article XVI of the Texas Constitution and endowed with the power to regulate the spacing and production of water wells. The “Leaking Water Wells Fund” and “Leaking Water Wells Grant

Program," respectively, refer to the fund created, and the program established under TWC, §§28.103 and 28.104.

The commission's rulemaking adoption defines "approved well plugger" by referencing RRC rules, 16 TAC §3.14. The definition establishes that the term "approved well plugger" in the statute is equivalent to the RRC's term "approved cementer."

Minor changes to the definitions were made to conform to the style of definitions in other TCEQ rules. Specifically, the definition for "approved well plugger" removes the word "is" as the first word of the definition; and the definitions for "district," "leaking water wells fund," and "leaking water wells program" removes the word "means" as the first word of the definition.

§353.3 Grant Eligibility

The commission adopts new 30 TAC §353.3 which incorporates requirements from TWC, §28.102 and specifies that this chapter only applies to GCDs within counties that have a population of 16,000 or less and that are adjacent to at least seven counties with populations less than 15,000.

To determine grant eligibility, the commission will utilize county population data from the most recent decennial Census conducted by the U.S. Census Bureau.

§353.4 Application for Grant

The commission adopts new 30 TAC §353.4 to incorporate requirements from TWC, §28.105(b), which specifies that districts seeking grants for eligible projects under the LWWGP must apply using a specific form provided by the commission and include the information requested on

that form by the commission.

§353.5 Restriction on Use of the Grant

The commission adopts new 30 TAC §353.5 to identify restrictions on the use of the grant funds. In accordance with TWC, §28.107, the rulemaking adoption specifies that districts may only use the funds for the cost of the project, excluding administrative expenses. The grant documents will specify what constitutes an administrative expense.

Per TWC, §28.106(b)(1-2), the rulemaking adoption will require that a district select a contractor from a list of RRC approved well pluggers after a bid process, and that the district may select a contractor based on whose bid the district determines provides the best value.

Lastly, per TWC, §28.107(c), unspent grant money must be returned to the commission to be re-allocated to the fund.

In order to ensure the rule language follows the statute, new §353.5(d) is adopted with changes to the proposed text to remove the last sentence: “TCEQ may choose to credit the funding to other projects under the grant.”

§353.6 Project Eligibility

The commission adopts new 30 TAC §353.6 to identify projects eligible for the grant funds, consistent with TWC, §28.106. A District must demonstrate that the project includes a leaking water well, and then must demonstrate either: that the leaking water well is located within 2,000 feet of a drinking water well, a water well for livestock or irrigation, or a sensitive wildlife area; or that the leaking water well has seasonal or annual flow to the surface, or a hydrological

connection to surface water, including a waterway, intermittent stream, or springs system. In addition, a District must demonstrate either: that the leaking water well is known by a District to have a deficiency in the plug, casing, completion interval, or general integrity; or that the leaking water well's completion interval is sufficiently proximate to other known intervals or pressurized zones with high concentrations of salinity, chlorides, sulfides, or other hazardous or toxic components.

A District must obtain any necessary property access from the surface owner where the leaking water well is located.

§353.7 Prioritization Criteria

The commission adopts new 30 TAC §353.7 to provide the criteria that will be used to prioritize projects, consistent with TWC, §28.106(c). In addition to the requirements adopted in the "Project Eligibility" section, the commission adopts additional criteria for the purpose of prioritizing projects. These criteria include the following: well characteristics, such as completion information and wellbore conditions; well location relative to sensitive areas; environmental considerations; wellsite safety and access considerations; economic considerations, and other priorities determined by the commission. The grant documents will include detail on prioritization criteria.

§353.8 Plugging Criteria

The commission adopts new 30 TAC §353.8 which directs a district to utilize appropriate information, data, and regulations available from the RRC and to adhere to certain RRC rules as applicable to ensure wells are properly and permanently plugged. Per TWC, §28.106(b)(1), the contract to permanently plug a leaking water well must be awarded to a contractor selected

from a list of RRC-approved well pluggers. The approved well plugger must ensure that the wells are plugged in compliance with the standards and criteria in applicable RRC rules for plugging wells under RRC jurisdiction (16 TAC §3.14). The adopted rule does not require the district or their contractor to directly coordinate with RRC. The district must ensure a leaking water well is permanently plugged. The grant will set forth the criteria for ensuring that a well is permanently plugged, and the documentation that will be required.

Section 353.8(b)(3) is adopted with changes to the proposed text to more clearly describe how an approved well plugger will need to comply with RRC rules and standards related to plugging a leaking water well.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “Major environmental rule” as defined in the Texas Administrative Procedure Act. A “Major environmental rule” is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking adoption does not meet the statutory definition of a “Major environmental rule” because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking adoption is to implement legislative changes enacted by HB 4256, which establishes and funds a grant

program to plug leaking water wells in certain Texas counties.

In addition, the rulemaking does not meet the statutory definition of a “Major environmental rule” because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy.

Furthermore, the rulemaking adoption is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing grant programs for plugging leaking water wells. Second, the rulemaking adoption does not exceed an express requirement of state law. Third, the rulemaking adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking adoption is not an adoption of a rule solely under the general powers of the commission as the adopted rules are required by HB 4256.

The commission invited public comment regarding the draft regulatory impact analysis determination. During the public comment period, no comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an assessment of whether the rulemaking adoption constitutes a taking under Texas Government Code, Chapter 2007.

The specific intent of the rulemaking adoption is to implement legislative changes enacted by HB 4256, which establishes and funds a grant program to plug leaking water wells in certain Texas counties. The rulemaking adoption will substantially advance this purpose by incorporating the new statutory requirements.

Promulgation and enforcement of this rulemaking adoption will be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The rulemaking adoption will primarily affect districts planning to utilize the grant program to plug leaking water wells; this will not be an effect on real property. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program.

The commission invited public comments regarding the consistency with the coastal management program (CMP) during the public comment period. No comments were received on the Consistency with the CMP.

Public Comment

The commission held a public hearing on January 29, 2025, and the comment period closed on February 4, 2025. The commission received comments from MPGCD, who supported the rulemaking and recommended changes to the rule language; and from six individuals who supported the rulemaking.

Response to Comments

Comment 1:

MPGCD and six individuals expressed their support for the rulemaking.

Response 1:

The commission acknowledges these comments.

Comment 2: Two individuals stated that the LWWGP needs to plug the leaking wells to protect water supply and water systems for humans, food, and livestock; three individuals stated that more money would be needed to plug all of the wells; and four individuals commented that the rules need to be adopted quickly in order to plug the wells as soon as practicable.

Response 2:

The commission acknowledges these comments.

Comment 3:

MPGCD requested that the commission clarify the prioritization criteria described in §353.7—
Prioritization Criteria.

Response 3:

30 TAC 353.7 of the adopted rule provides the criteria that will be used for project prioritization. On May 20, 2025, TCEQ hosted a LWWGP workshop. The workshop provided additional detail regarding the potential metrics associated with the prioritization criteria in 30 TAC 353.7. The final metrics will be included in the grant documents. No changes were made in response to this comment.

Comment 4:

MPGCD recommended that the rule include a definition of “leaking water well” to ensure that wells originally drilled for oil and gas purposes are eligible for the LWWGP if water is present in the wellbore or at the well head, such that one can reasonably conclude that water is leaking from or into the wellbore. The commentor stated that adding this definition would ensure that wells colloquially known as “P-13” wells or wells for which no known records are available—but which meet the definition—are eligible for LWWGP grant funding. MPGCD requested the commission add the following definition as a new §353.2(3):

“(3) Leaking water well—means a well leaking water, or a mix of water and other substances such as oil, gas, or minerals and/or substances, either at the surface or subsurface portions of the wellbore, irrespective of the purpose for which the well was originally drilled.”

Response 4:

The commission notes that the statute does not provide a definition for leaking water well; however, the eligibility criteria in §28.106(a) of the statute effectively define the wells that can receive the funding. These eligibility criteria are included in 30 TAC §353.6, “Project Eligibility.” Establishing a definition could create a conflict between the definition and the

eligibility criteria. This could result in projects that meet the eligibility criteria being disqualified because of the definition. As written, wells originally drilled for oil and gas will be eligible if they meet the criteria in the rule. No changes were made in response to this comment.

Comment 5:

MPGCD requested the rule include clarification on what qualifies as an administrative expense. MPGCD commented that they expect to have expenses related to identification of projects, site evaluation and preparation, downhole investigation to determine project eligibility and plugging cost estimates, preliminary engineering, hydrogeological assessments, and other related expenses. MPGCD requested the commission add the following language to the end of paragraph §353.5(a):

“Administrative costs include costs associated with preparing a grant application, but specifically do not include those costs associated with preliminary fieldwork required to develop overall project cost estimates. All costs associated with necessary preliminary fieldwork, which are first approved by the Commission, shall be recoverable costs under the Program.”

Response 5:

The commission acknowledges the benefit of addressing what may be considered an administrative expense and notes that Texas Comptroller of Public Accounts offers general guidance on reimbursable and non-reimbursable costs under the Texas Grant Management Standards.

A recipient of a grant provided under the LWWGP may use the grant only to pay the cost of

a project for which the grant is awarded. The grant documents, which the executive director is developing separately from the rule adoption, will contain specific information about both reimbursable and non-reimbursable expenses, including administrative costs. On May 20, 2025, TCEQ hosted a LWWGP workshop. The workshop provided additional detail regarding eligible and non-eligible expenses. No changes were made in response to this comment.

Comment 6:

MPGCD requested clarification as to whether grant funds can be issued prior to the commencement of an eligible project or if they are issued for reimbursement only. MPGCD states that they support a grant distribution process that does not burden the district with incurring considerable costs related to eligible projects for a prolonged period.

Response 6:

The LWWGP will award grants and distribute funds based on the Texas Grant Management Standards. The state’s standard distribution method for grants is reimbursement of money actually spent on allowable expenses. An advance of funds may also be available at a grantee’s request where the LWWGP determines the advance is necessary for the purposes of the grant. On May 20, 2025, TCEQ hosted a LWWGP workshop. The workshop provided additional detail regarding disbursement of funds, including the information needed for the grantee to demonstrate the need for advance of funds. No changes were made in response to this comment.

Comment 7:

MPGCD commented that they would like to develop a sequence or well plugging plan to ensure

that when a well is plugged, it does not create additional problems, such as blow out wells or sinkholes.

Response 7:

The commission acknowledges this comment. During the application process, it would be acceptable for an eligible GCD in its application to request grant funds to plug a sequence of wells based on studies conducted by the eligible GCD or their consultants. The prioritization criteria as included in §353.7(f) of the adopted rule includes “other priorities determined by the commission.” Considering a proposed well sequence is in line with the adopted rules’ prioritization criteria, although the study itself would not be reimbursable under the grant fund. No changes were made in response to this comment.

CHAPTER 353: LEAKING WATER WELLS GRANT PROGRAM

RULE §§353.1 – 353.8:

Statutory Authority

These new rules are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §28.106 establishes the commission's authority to make rules for establishing criteria for prioritizing projects eligible to receive a grant under the Leaking Water Wells Program set out in this chapter; and TWC, §28.030 requires the commission to adopt rules reasonably required for the performance of the powers, duties, and functions of the commission under this chapter. Lastly, TWC, §5.124 establishes the executive director's authority to award grants for any purpose regarding resource conservation or environmental protection in accordance with this section, with the consent of the commission, and it establishes the commission's authority to adopt rules for establishing procedures for awarding a grant, for making any determination related to awarding a grant, and for making grant payments.

The rulemaking adoption implements the language set forth in House Bill 4256 88th Texas Legislature, Regular Session, 2023.

§353.1. Purpose.

This chapter sets forth the requirements for administration of the Leaking Water Wells Grant Program (Program), established by Texas Water Code, Chapter 28, Subchapter E. Under the Program, the commission will provide grants to offset the cost of plugging leaking water

wells to eligible groundwater conservation districts for eligible projects. Any grant issued under this Program is subject to the availability of funds and the requirements in 30 Texas Administrative Code Chapter 14 and any guidance issued under the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783, as it may be from time to time revised.

§353.2 Definitions.

When used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(a) Approved well plugger – ~~is~~ a Railroad Commission of Texas approved cementer as defined in 16 TAC §3.14

(b) District – ~~means~~ a groundwater conservation district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, which has the authority to regulate the spacing of water wells, the production of water wells, or both.

(c) Leaking Water Wells Fund (Fund) – ~~means~~ the leaking water wells fund created under TWC, §28.103 that provides funds to certain Districts to plug leaking water wells.

(d) Leaking Water Wells Grant Program (Program) – ~~means~~ the Texas Commission on Environmental Quality (commission or TCEO) program established under TWC, §28.104 that provides funds to certain Districts to plug leaking water wells.

§353.3. Grant Eligibility.

A District in a county that has a population of 16,000 or less and is adjacent to at least seven counties with populations of less than 15,000 is eligible to apply for and receive a grant under the Program.

§353.4. Application for Grant.

A District seeking a grant under the Program must submit an application on a form provided by the commission and the application must contain the information required by the commission.

§353.5. Restriction on Use of the Grant.

(a) A District receiving a grant provided under the Program may use the grant only to pay the cost of eligible projects. A District may not use the grant to pay administrative costs associated with a project.

(b) When contracting or subcontracting for work on a project for which a grant is provided under the Program, a District shall engage in a bid process to select and hire a contractor or subcontractor.

(c) A contract for work on a project for which a grant is provided under the Program:

(1) must be awarded to a contractor or subcontractor selected from a list of approved well pluggers maintained by the Railroad Commission of Texas; and

(2) may be awarded to the contractor or subcontractor whose bid or proposal provides the best value for a District, as determined by the District based on the selection criteria published by the District in the bid solicitation documents.

(d) The amount of a grant provided under the Program that is not spent for the completion of a project must be returned to the commission for deposit to the credit of the Fund. TCEQ may choose to credit the funding to other projects under the grant.

§353.6. Project Eligibility.

(a) For a project to be eligible for a grant, a District must demonstrate that the project includes a leaking water well:

(1) that:

(A) is located within 2,000 feet of a drinking water well, a water well for livestock or irrigation, or a sensitive wildlife area; or

(B) has seasonal or annual flow to the surface, or a hydrological connection to surface water, including a waterway, intermittent stream, or springs system; and

(2) of which:

(A) the plug, casing, completion interval, or general integrity is known by a District to be deficient; or

(B) the completion interval is sufficiently proximate to other known intervals or pressurized zones with high concentrations of salinity, chlorides, sulfides, or other hazardous or toxic components.

(b) A District shall obtain written approval from a surface property owner for access to the property where the leaking water well is located.

§353.7 Prioritization Criteria.

In addition to the eligibility criteria at §353.6, the executive director may establish additional criteria for purposes of prioritizing projects for selection. The following criteria will be used for the prioritization of projects:

(a) Well characteristics, including completion information and wellbore conditions;

(b) Well location relative to sensitive areas;

(c) Environmental considerations;

(d) Wellsite safety and access considerations;

(e) Economic considerations; and

(f) Other priorities determined by the commission.

§353.8. Plugging Criteria.

(a) A District must utilize available Railroad Commission of Texas (RRC) information, data, and regulations to plan, plug, and document that a well has been permanently plugged.

(b) A District must:

(1) Ensure that the leaking water well is permanently plugged. The criteria for ensuring that a well is permanently plugged will be set forth in the grant terms and conditions.

(2) Award the plugging contract to an RRC approved plugger, and

(3) Ensure any well plugged under this chapter is plugged in compliance with that the approved well plugger adheres to the standards and criteria applicable RRC rules in 16 TAC §3.14 and RRC guidance.