

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** May 30, 2025

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

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

**Docket No.:** 2024-1676-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 353, Leaking Water Wells Grant Program  
Rule Project No. 2025-008-353-OW

### Background and reason(s) for the rulemaking:

House Bill (HB) 4256, 88th Texas Legislature, Regular Session, 2023 amended the Texas Water Code (TWC), Chapter 28, Subchapter E to require the Texas Commission on Environmental Quality (TCEQ or commission) to establish and administer a Leaking Water Wells Grant Program (LWWGP, or program). This rulemaking establishes the program and its associated requirements and criteria.

### Scope of the rulemaking:

#### A.) Summary of what the rulemaking will do:

This rulemaking creates new 30 Texas Administrative Code (TAC) Chapter 353 and establishes the LWWGP. The rule adoption implements requirements in HB 4256 (88R), including the establishment of criteria for prioritizing projects and criteria for ensuring that wells are permanently plugged.

As required by TWC, §28.106(c), the following criteria are provided in 30 TAC §353.7 for prioritizing projects: 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. Additionally, criteria are proposed in 30 TAC §353.8 for ensuring that a well has been permanently plugged. Plugging criteria were established in consultation with the Railroad Commission of Texas (RRC) as required by TWC, §28.107(b). The adopted rule requires that the grant recipient use RRC information, data, and regulations to plan, execute, and document the permanent plugging of an affected well.

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

TWC, §28.106(c) requires that TCEQ establish, by rule, criteria for prioritizing projects eligible to receive grant funding.

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

Separate from rule adoption, the LWWGP is developing grant documents. These documents will be finalized after the rule is effective and disbursement of funds is anticipated in Fiscal Year 2026.

### Statutory authority:

TWC, Chapter 28, Subchapter E, §§28.101 through 28.107.

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**Effect on the:**

**A.) Regulated community:**

Eligible Groundwater Conservation Districts (GCDs) may receive grant funding to offset the costs of plugging leaking water wells in their district. At this time the program is limited based on county population data to the following GCDs: Middle Pecos GCD (Pecos County), Crockett County GCD (Crockett County), and Gateway GCD (King, Motley, and Cottle Counties).

**B.) Public:**

Leaking water wells can contaminate groundwater and surface water. This program to plug leaking water wells would limit contamination that is already occurring and prevent additional contamination.

**C.) Agency programs:**

The LWWGP is a new program in the Water Availability Division, which is leading program development and implementation. The Office of Legal Services and the Financial Administration Division are supporting program development and program implementation.

**Stakeholder meetings:**

A public hearing was held on January 29, 2025.

On May 20, 2025, TCEQ staff held a workshop on the program. More information about the Workshop is provided in the public comment section, below.

**Public Involvement Plan**

Is a Public Involvement Plan Required? Yes

**Alternative Language Requirements**

Yes, Spanish

**Public comment:**

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

MPGCD requested that the rule include a definition for “leaking water well” and asked for a description of what constitutes an administrative expense. MPGCD also asked whether grant funds could be issued before beginning an eligible project, as opposed to being reimbursement only, and stated that they would like to develop a sequence of wells to be plugged in order to minimize future problems. No changes to the rule language were made in response to the comments.

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In response to the request for a definition of “leaking water well,” TCEQ noted that while the term was not specifically defined in the statute, it is effectively described by the eligibility criteria in statute and the rule, and a change is not needed.

Regarding the specific question on what constitutes an administrative expense, the response provides general guidance that activities performed prior to an application being filed under this program are not eligible.

For the request that grant funds be made available before work is done on the project as opposed to reimbursement only, TCEQ stated that payments would be made 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.

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 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).

**Significant changes from proposal:**

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

New Section 353.8(b)(3) will be 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: “Ensure any well plugged under this chapter is plugged in compliance with the standards and criteria in 16 TAC §3.14 and RRC guidance.”

**Potential controversial concerns and legislative interest:**

Senator Blanco is likely to have interest in program development and implementation. Representative Virdell is also likely to have interest in the program.

Section §353.3 of the adopted rule incorporates requirements from TWC, §28.102 and specifies that the LWWGP 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. The LWWGP will utilize data from the U.S. Census Bureau’s 2020 Census for determining county populations, as this is the most recent decennial Census at the time of the rule adoption. Based on an informal review of U.S. Census’ county populations in Texas, it appears there are three GCDs that have counties meeting the population criteria. The commission did not receive comments on the proposal from any counties or districts outside of Pecos County.

The Leaking Water Wells Fund is a separate fund within the state treasury outside of the general revenue fund and may only be used to implement the Program, including the costs of TCEQ program administration and operation. To date, \$10,000,000 has been deposited to the Leaking Water Wells Fund. None of these funds were appropriated by the 88th Texas Legislature for grant

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awards during the current biennium. The legislature authorized TCEQ to use \$200,000 in fiscal 2024 for the new program and to hire two new employees and \$408,156 in fiscal 2025 to begin work to implement the program. The general appropriations bill by the 89th Texas Legislature would include \$9,391,844 for the next biennium to be used for grant awards and program administration. Any grant awarded under the LWWGP will be subject to availability of funds.

**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?**

TWC, Chapter 28, Subchapter E requires TCEQ to establish and administer a Leaking Water Wells Grant Program and for the commission to establish, by rule, criteria for prioritizing projects eligible to receive a grant under the Program. If this rulemaking does not go forward, TCEQ will not be compliant with the statute. There are no alternatives to rulemaking.

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** January 3, 2025

**Anticipated *Texas Register* adoption publication date:** July 4, 2025

**Anticipated effective date:** July 10, 2025

**Six-month *Texas Register* filing deadline:** July 3, 2025

**Agency contacts:**

Cindy Hooper, Rule Project Manager, Water Availability Division, (512) 239-4271

Kayla Murray, Staff Attorney, Environmental Law Division, (512) 239-4731

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

**Attachments:**

**HB 4256**

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Patrick Lopez  
Jessie Powell  
Krista Kyle  
Office of General Counsel  
Cindy Hooper  
Kayla Murray  
Gwen Ricco