

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 12, 2024

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

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

Docket No.: 2024-0550-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 290, Public Drinking Water
Chapter 291, Utility Regulations
88th Legislative Session Drinking Water Implementation Rule
Rule Project No. 2024-015-290-OW

Background and reason(s) for the rulemaking:

During the 88th Texas Legislature (2023), House Bill (HB) 1500, authored by Justin Holland, HB 3810, authored by Brooks Langraf, HB 4559, authored by Drew Darby, and Senate Bill (SB) 594, authored by Judith Zaffirini passed and require amendments to 30 Texas Administrative Code (TAC) Chapter 290 and 30 TAC Chapter 291.

This rulemaking would implement Texas Water Code (TWC), §13.4132 as enacted in HB 1500, which established a duration of 360 days for an emergency order appointing a temporary manager for a utility that has ceased operation or been referred for appointment of a receiver. HB 1500 is legislation associated to the Sunset review of the Public Utility Commission.

This rulemaking would implement Texas Health and Safety Code (THSC), §341.033 as enacted in HB 3810, which requires a nonindustrial public water system to notify the Texas Commission on Environmental Quality (TCEQ) of an unplanned condition that causes a system outage, the issuance of a boil water notice, or other types of drinking water advisories.

This rulemaking would implement TWC, §13.1395(a)(1) as enacted in HB 4559, which amended the definition of “affected utility” by changing the county population relating to the requirements for an affected utility to submit an Emergency Preparedness Plan to TCEQ.

Finally, this rulemaking would implement THSC, §341.0315 (based on language in TWC, §13.087) enacted in SB 594, which requires TCEQ to establish by rule both a connection equivalency value and an alternative recreational vehicle park connection equivalency value used to determine the connection count for recreational vehicle parks that are retail customers of public water systems.

A.) Summary of what the rulemaking would do:

This rulemaking proposes to amend 30 TAC §291.143 by changing the term of the temporary manager from 180 days to a term of no more than 360 days, based on the 360-day duration of the emergency order appointing a temporary manager. The proposed rule also includes the basis for renewing the emergency order under TWC, §13.4132.

This rulemaking proposes to amend 30 TAC §290.46(w) and §290.46(w)(6) to implement THSC, §341.033 by adding requirements of notification by a nonindustrial public water system of an

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unplanned condition that causes a system outage or a boil water notice issuance or other types of drinking water advisories. The proposed language in (w)(6) includes an internal definition of “nonindustrial water system” and “unplanned condition.”

This rulemaking proposes to amend 30 TAC §290.38(3)(B)(ii) and 30 TAC §291.161(1)(B)(ii) to implement TWC, §13.1395(a)(1) by revising the definition of “affected utility” with the updated population of 800,000, which replaces 550,000. The revised definition determines which affected utilities are required to submit an Emergency Preparedness Plan to TCEQ.

This rulemaking proposes to amend 30 TAC §290.38(18) and proposes new §290.45(j) to implement THSC, §341.0315. The rulemaking updates the definition of a connection for recreational vehicle parks that are retail customers of public water systems. In addition, the proposed language establishes both a recreational vehicle connection equivalency value and an alternative to the equivalency value.

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

This rulemaking proposes to amend 30 TAC Chapter 290, specifically §§290.38, 290.45, and 290.46, as well as 30 TAC Chapter 291, specifically §291.143 and §291.161, based on state statutes TWC, §13.4132, THSC, §341.033, TWC, §13.1395, and THSC, §341.0315. No federal regulations apply.

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

There are no additional staff recommendations.

Statutory authority:

THSC, §341.031 and §341.0315 and TWC, §§5.013, 5.102, 5.105. The proposed rulemaking implements legislation referenced herein: TWC, §13.4132(b-1) [HB 1500]; THSC, §341.033(i) and (i-1) [HB 3810]; TWC, §13.1395(a)(1) [HB4559]; and THSC, §341.0315(c) and (c-1) [SB 594].

Effect on the:

A.) Regulated community:

- **SB 594:** The rulemaking will update the connection count requirements for recreational vehicle parks that are retail customers of public water systems. The public water system will utilize a connection equivalency value or alternate recreational vehicle connection equivalency to determine the connection count for each recreational vehicle park that is a retail customer of the public water system.
- **HB 4559:** Based on the new population governing applicability, affected utilities within a county with a population of 800,000 adjacent to a county with a population of 3.3 million or more are required to have an Emergency Preparedness Plan in accordance with TWC, §13.1395. The rulemaking effectively maintains the applicability of TWC, §13.1394 and §13.1395 as set forth in originating legislation while accounting for population growth in the most recent census.

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- **HB 1500:** The rulemaking will extend the timeframe for the appointment of a temporary manager from 180 days to 360 days and allows for renewals for a receiver to be appointed or a sale, transfer merger to be finalized.
- **HB 3810:** The rulemaking will require nonindustrial public water systems to notify TCEQ immediately when a condition has caused an outage or issuance of a boil water notice, do-not-use advisory, or do-not-consume advisory.

B.) Public:

- **SB 594:** None. The rulemaking will update the connection count requirements for recreational vehicle parks that are retail customers of public water systems. There are no anticipated effects to the public.
- **HB 4559:** None. The rulemaking effectively maintains the applicability of TWC, §13.1394 and §13.1395 as set forth in originating legislation while accounting for population growth in the most recent census.
- **HB 1500:** This rulemaking will provide continuity of operations for customers of a public water system with an appointed temporary manager until a receiver can be appointed, or a sale, transfer, merger, consolidation, or acquisition process is complete.
- **HB 3810:** This rulemaking could assist emergency resources to be allocated to the public impacted by an outage or advisory more readily.

C.) Agency programs:

- **SB 594:** TCEQ's Office of Compliance and Enforcement will continue to review and document connection counts and capacity requirements for public water systems. These reviews will determine public water system compliance based on the recreational vehicle park equivalency values and alternative equivalencies values.
- **HB 4559:** There are no changes to the TCEQ Emergency Preparedness Plan program from this rulemaking. The rulemaking effectively maintains the applicability of TWC, §13.1394 and §13.1395 as set forth in originating legislation while accounting for population growth in the most recent census.
- **HB 1500:** This rulemaking allows additional time for TCEQ to recommend a receiver or for the Public Utility Commission of Texas to complete a sale, transfer, merger, consolidation, or acquisition. TCEQ may experience reduced resource demands related to the administration of temporary manager renewals.
- **HB 3810:** The rulemaking will result in approximately 2,500 additional notifications to be tracked by TCEQ annually, as well as associated follow-up, enforcement activities, and coordination with the Texas Division of Emergency Management.

Stakeholder meetings:

As directed during the May 19, 2023, Senate Water, Agriculture and Rural Affairs committee hearing on HB 3810, staff worked with stakeholders at TCEQ's Drinking Water Advisory Workgroup meetings to discuss notification procedures.

Public Involvement Plan

No.

Alternative Language Requirements

Yes.

Potential controversial concerns and legislative interest:

The regulated community expressed concerns about HB 3810 rule changes in the July and October 2023 Drinking Water Advisory Work Group meetings, particularly the ambiguity of situations which require notification.

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Would 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?

The proposed rule changes would make agency rules consistent with state statute. There are no alternatives to this rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 31, 2024

Anticipated *Texas Register* publication date: August 16, 2024

Anticipated public hearing date: September 12, 2024

Anticipated public comment period: August 16, 2024 - September 17, 2024

Anticipated adoption date: December 18, 2024

Agency contacts:

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Attachments:

HB 1500, HB 3810, HB 4559, SB 594

cc: Chief Clerk, 2 copies
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