

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 26, 2024

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

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

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

**Subject:** Commission Approval for Proposed Rulemaking  
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 (Program). This rulemaking establishes the Program and its associated requirements and criteria.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking would do:**

This rulemaking will create new 30 Texas Administrative Code (TAC) Chapter 353 and establish the Leaking Water Wells Grant Program. The proposed rules implement requirements in HB 4256 (88R) which includes 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 proposed 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 as required by TWC, §28.107(b) and propose that the grant recipient use Railroad Commission of Texas information, data, and regulations to plan, plug, and document that a well has been permanently plugged.

#### **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.

### **Additional staff recommendations that are not required by federal rule or state statute:**

After rule adoption, TCEQ will provide an opportunity for input on the terms and conditions of the grant, including a project prioritization plan.

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**Statutory authority:**

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

**Effect on the:**

**A.) Regulated community:**

Eligible groundwater conservation districts may receive grant funding to plug leaking water wells in their district. At this time the program is limited based on county population data.

**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 Program would be a new program in the Water Availability Division, which would lead rulemaking, program development, and program implementation. Office of Legal Services and the Financial Administration Division would need to support rulemaking, program development, and program implementation.

**Stakeholder meetings:**

No stakeholder meetings have been held or are planned. A public hearing will be held as part of the rulemaking process.

**Public Involvement Plan**

Is a Public Involvement Plan Required? Yes

**Alternative Language Requirements**

Yes, Spanish.

**Potential controversial concerns and legislative interest:**

Senator Blanco is likely to have interest in the rulemaking effort. The State House District 53 Representative is also likely to have interest in the rulemaking.

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 have been appropriated by the legislature for grant awards. Any grant awarded under this Program will be subject to availability of funds.

**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?**

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.

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

**Anticipated proposal date:** December 18, 2024

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

**Anticipated public hearing date:** January 29, 2025

**Anticipated public comment period:** January 3, 2025 to February 4, 2025

**Anticipated adoption date:** June 6, 2025

**Agency contacts:**

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**Attachments:**

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