

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** March 28, 2008
Thru: LaDonna Castañuela, Chief Clerk
Glenn Shankle, Executive Director
From: Dan Eden, Deputy Director
Office of Permitting, Remediation and Registration
Docket No.: 2007-0997-RUL
Subject: Commission Approval for Proposed Rulemaking
Chapter 290, Public Drinking Water
SB 3, HB 4, HB 1391: Standards for Harvested Rainwater and Public Safety Standards.
Rule Project No. 2007-046-290-PR

Reasons for the rule package:

In 2007, the 80th Legislature passed House Bill (HB) 4, HB 1391, and Senate Bill (SB) 3. This legislation amended Texas Health and Safety Code (THSC), §341.042 and added §341.0357. This proposed rulemaking will implement §11 of HB 4, HB 1391, and §2.28 of SB 3 by amending Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems.

- **Under what authority are we proposing these changes?**
These amendments are proposed 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, §5.105, which establishes the commission's authority to set policy by rule; THSC §341.0315, which requires the commission to ensure that public drinking water supply systems supply safe drinking water, §341.042, which requires the commission to enforce the requirements contained therein, and §341.0357 (relating to public safety standards), which requires the commission to enforce the requirements contained therein.
- **Is this rulemaking required by federal rule or state statute? Which ones?**
The proposed rulemaking is required to implement changes made to THSC, §341.042 and §341.0357.
- **Are there any legal deadlines by which these rules must be proposed, adopted, or effective?**
No.
- **What issue(s) or problem(s) are we trying to solve?**
This rulemaking will implement THSC, §341.042 as amended by HB 4, §11 and SB 3, §2.28 and will implement THSC, §341.0357, Public Safety Standards as added by HB 1391. In response to the amended THSC, §341.042, the rulemaking will also clarify current rule requirements related to the domestic use of rainwater harvesting systems.
- **Why is it important that we do this rule package?**
To implement THSC, §341.042 as amended by HB 4, §11 and SB 3, §2.28 and to implement THSC, §341.0357, Public Safety Standards, as added by HB 1391.
- **Other important background or historical information.**
HB 4 was authored by Representative Robert Puente and sponsored by Senator Kip Averitt.

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HB 1391 was authored by Representative Sylvester Turner and sponsored by Senator John Whitmire.

SB 3 was authored by Senator Kip Averitt and sponsored by Representative Robert Puente.

Scope of the rulemaking:

This rulemaking proposes to implement legislation from the 80th Legislative Session, 2007, by amending various sections of Chapter 290 to incorporate changes required by HB 4, §11 and SB 3, §2.28 regarding structures having rainwater harvesting systems for indoor use that are connected to a public water system; and HB 1391, related to public safety standards for water pressure for service to fire hydrants in residential areas in a municipality with a population of at least one million. The commission is proposing a minimum standard to meet the new public safety requirements from HB 1391. The local standard must meet or exceed this standard.

• **Changes required by federal rule:**

None.

• **Changes required by state statute:**

The Legislature amended the THSC during the 80th Legislative Session, 2007. This rulemaking proposes to incorporate the changes to the THSC by amending various sections of Chapter 290. The statutory provisions proposed to be incorporated into Chapter 290 include:

- THSC, §341.042, Standards for Harvested Rainwater, as amended by HB 4, §11 and SB 3, §2.28 which requires standards for rainwater harvesting systems; and
- THSC, §341.0357, Public Safety Standards, as added by HB 1391 which requires standards for sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in a municipality with a population of at least one million. To implement this change the commission is proposing a minimum standard applicable to "public utilities" as defined by TWC, §13.002, in residential areas inside the corporate limits of the municipality. The standard is designed to meet the new public safety requirements from HB 1391. The commissioner's proposed rules do not require a municipality to require that public utilities have fire hydrants in residential areas; however, it would require public utilities that do have fire hydrants to maintain sufficient water pressure adequate to protect public safety. The commission would require impacted municipalities to adopt standards within one year of the date the rule first applies to the municipality. The public utility must comply with the municipality's established standards within one year of the date the standards first apply. If the municipality fails to adopt standards, then the public utility must comply with the commission's standards within two years of this rulemaking's effective date or within one year of the date the standards first applies, whichever occurs later.

• **Staff recommendations that are not expressly required by federal rule or state statute:**

None.

Impact on the regulated community:

• **Who will be affected?**

HB 4, §11 and SB 3, §2.28 will affect public water supply systems that have connections to rainwater harvesting systems used for indoor purposes and the owners of structures connected to

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public water supply systems that have rainwater harvesting systems that are used for indoor purposes.

HB 1391 will affect regulatory authorities with authority over residential areas in municipalities with a population of 1,000,000 or more and will affect public utilities operating in those areas.

- **Does it create a group of affected persons who were not affected previously? How?**

No.

- **Will there be a fiscal impact? If so, estimate.**

Staff estimates that there are eight micro-businesses that serve as public utilities in the City of Houston. The fiscal impact on these eight micro-businesses will depend on what each investor owned utility is required to do to comply with the proposed minimum standard for fire hydrants in the residential areas they serve. The minimum standard requires a flow of 250 gpm, with a residential pressure of 20 psi, for two hours. The amount of water line that may need to be upgraded and the capacity of a storage tank needed to comply with the standard are expected to vary depending on the circumstances of each public utility. Costs are estimated to be \$18.20 per linear foot of six-inch water line and \$1.50 per 1,000 gallons for a storage tank. There could also be engineering costs and financing costs associated with this type of project. If a public utility has to upgrade one mile of line (5,280 feet) and add a 50,000-gallon storage tank, total costs, excluding engineering and financing costs, could be as much as \$171,000. These costs could be higher if the City of Houston adopts a standard that exceeds the standard found in the proposed rules.

Impact on the public:

- **Who will be affected?**

HB 4, §11 and SB 3, §2.28 will affect persons owning rainwater harvesting systems used for indoor purposes that are connected to a public water supply system.

HB 1391 will affect those persons living within a city with a population of at least 1,000,000. THSC, §341.0357(b), as amended by HB 1391, states that the regulatory authority for a *public utility* shall by rule or ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in a municipality with a population of 1,000,000 or more. (Italics added.) THSC, §341.057(1) and (2), state that "public utility" and "regulatory authority" have the meanings assigned by TWC, §13.002.

According to the U.S. Census Bureau, County and City Data Book: 2000, on pages 659 and 660, the cities in Texas with a population of at least 1,000,000 are Dallas, Houston, and San Antonio. Public utility means any person, corporation, cooperative corporation, or any combination of these, other than a water supply or sewer service corporation, or a political subdivision of the state, owning or operating for compensation, equipment or facilities for the provision of potable water to the public as described in TWC, §13.002(23). There are currently no public utilities within the corporate limits of the City of Dallas. Staff has only found one public utility in San Antonio (Sheridan Water System); however, the City of San Antonio is in the process of merging this public utility into the city's public water system. Therefore, staff anticipates that only those persons residing in and receiving services from public utilities within the city limits of Houston will be affected under HB 1391.

- **Does it create a group of affected persons who were not affected previously? How?**

No.

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- **Will there be a fiscal impact? If so, estimate.**

There may be fiscal implications for public utilities that cannot already comply with at least the proposed minimum public safety standard regarding the provision of sufficient water pressure for service to fire hydrants. These utilities are investor owned, and staff is aware that there may be as many as eight micro-businesses that may be affected by the proposed rules. The fiscal implications for these micro-businesses are more fully discussed in the IMPACT ON THE REGULATED COMMUNITY section above. A large business that cannot meet at least the proposed minimum standard would experience the same fiscal impacts as a small business or micro-business.

Impact on agency programs:

Enforcement Division and Field Operations Division: Public water system inspectors will have to determine compliance during inspections.

Stakeholder meetings:

- **Have any stakeholder meetings been held?**

Yes, on July 10, 2007, August 28, 2007, and October 9, 2007 in Austin.

- **With whom?**

The Drinking Water Advisory Work Group (DWAAG), a group of participants that meet on a quarterly basis to discuss issues related to drinking water with an emphasis on compliance with state and federal regulations and improving customer service to the public. The DWAAG currently has representation from the American Water Works Association, Texas Rural Water Association, Texas Water Utilities Association, Independent Water & Sewer Companies of Texas, Texas Municipal League, Clean Water Action, Consumers Union, League of Women Voters, Sierra Club, Texas Water Conservation Association, Association of Water Board Directors, Community Resource Group, Dow Chemical, attorneys, engineers, and individual citizens.

- **What were the general sentiments?**

HB 4, §11 and SB 3, §2.28: An individual asked if a physical separation would be acceptable and if systems can require a backflow prevention device.

HB 1391: An individual representing the City of Houston asked whether it was the TCEQ's intent to make cities responsible for testing fire hydrants. He stated that the City of Houston currently requires commercial properties to be tested and that a fire department permit is required with the results of an annual test of the entire fire flow system. An individual representing the San Antonio Water System stated that testing is an ongoing process for them and that property owners will ask the City of San Antonio if something changes or if there is a problem.

- **Were any changes made in response to stakeholder concerns?**

No.

Policy issues:

- **What policy issues are affected?**

Rainwater

Agency rules currently allow consumers to use water collected from rainwater harvesting systems for potable indoor purposes if they have a backflow prevention assembly or an air gap. HB 4, §11 and

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SB 3, §2.28, now provides that rainwater harvesting systems for indoor use connected to a public water system can only be used for nonpotable indoor purposes.

- **Are any policies that are not currently based on rule being made into a rule?**
No.
- **What are the consequences if this rulemaking is not approved to go forward?**
Without approval, Chapter 290 will be inconsistent with the state statutes.
- **Are there alternatives?**
No.

Potentially controversial matters:

Rainwater

HB 4, §11 and SB 3, §2.28 restrict the use of rainwater harvesting systems for indoor use to nonpotable indoor purposes when the system is part of a structure that is connected to a public water supply system. The Public Drinking Water Section was required by HB 2430, 79th Regular Legislative Session, 2005, to establish recommended standards for the domestic use of harvested rainwater. The regulatory guidance published for public water systems (RG-345) and the informational guidance published for the non-regulated community (GI-366) do not prohibit the use of water collected from rainwater harvesting systems for potable indoor purposes that are connected to a public water supply system. These guidance documents will need to be revised and there may be some confusion within the regulated community and among the public until the new educational materials are available.

The Texas Manual on Rainwater Harvesting, published by the Texas Water Development Board (Board) in 2005, encourages the use of rainwater harvesting as a supplemental water source to customers already connected to a public water system. Staff will coordinate with the Board to request revisions to the Board's existing public information on the indoor potable use of harvested rainwater to be consistent with the provisions of HB 4, §11 and SB 3, §2.28, and the TCEQ's proposed rules.

Fire Flow

Many public water systems do not currently provide fire flow. These public water systems may object to the need to upgrade their facilities. Customers receiving water utility service from public utilities within the City of Houston may have improved service however their rates may be impacted if the public utilities have to make significant improvements to their public water systems to meet the city's standards.

Key points in proposed rulemaking schedule:

- **Anticipated proposal date:** April 16, 2008
- **Anticipated *Texas Register* publication date:** May 2, 2008
- **Public hearing date:** May 29, 2008
- **Public comment period:** May 2, 2008 through June 2, 2008
- **Anticipated adoption date:** September 17, 2008

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Agency contacts:

Cindy Haynie, Rule Project Manager, 239-3465, Water Supply Division

Stefanie Skogen, Staff Attorney, 239-0575

Kristin Smith, Texas Register Coordinator, 239-0177

Attachments

cc: Chief Clerk, 5 copies
Executive Director's Office
David C. Schanbacher, P.E.
Ashley K. Wadick
Daniel Womack
Zak Covar
Office of General Counsel
Cindy Haynie
Kristin Smith