

Mary Alice Boehm-McKaughan

Please see Texas Rural Water Association's comments on TCEQ's 88th Legislative Session Drinking Water Implementation Rule - RPN 2024-015-290-OW in the enclosed attachment. Thank you.



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September 17, 2024

Ms. Gwen Rico
Office of Legal Services
MC 205
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Via Electronic Submission

**Re: Texas Rural Water Association Comments on TCEQ Rule
Project No. 2024-015-290-OW**

Dear Ms. Ricco:

The Texas Rural Water Association (TRWA) thanks the Texas Commission on Environmental Quality (TCEQ) for the opportunity to comment on TCEQ's proposed amendments to 30 Texas Administrative Code (TAC) Sections 290.38, 290.45 and 290.46 (Rule Package).

1. Introduction.

Texas Rural Water Association is a non-profit educational and trade association that represents the full spectrum of the rural water community. Our over 900 utility members provide water and wastewater services to communities across Texas. TRWA supports its members with on-site technical assistance, operator certification training, leadership training, annual conferences, legal services, advocacy before the legislature and regulatory agencies, apprenticeship and student scholarship programs, a trade magazine, and emergency assistance. TRWA is a member of the National Rural Water Association and part of a nationwide network of State Rural Water Associations that includes all 50 states.

2. TRWA Rule Comments.

TRWA appreciates being a partner in this process. TRWA provided rule comments prior to these draft rules being promulgated. To comply with a statute or a rule, a water system must first be able to understand what it requires. The language of both SB 594, referred to herein as the Recreational

Vehicle (“RV”) statute, and HB 3810, referred to as the Immediate Notification statute, has caused some confusion amongst water systems. The proposed rules interpreting these statutes also contain some ambiguities such as:

For the RV Statute:

1. What is the definition of “cabin” and does it include tiny homes?
2. What is the Definition of a Recreational Vehicle (“RV”) and a RV Park?

For the Immediate Notification Statute:

1. What does the statute mean by a “do-not-use” advisory?
2. What is a “do-not-consume” advisory? Is it the same as is mentioned in TCEQ Guidance?
3. What does the proposed rule mean by a “protective measure”?
4. Why does the proposed rule use the term “special precaution” used when 290.47(e) only refers to a boil water notice? Are they synonymous?

3. Proposed Changes to the TCEQ RV Rule.

SB 594 amended the Texas Health and Safety Code by adding section 341.0315(C-1) (1) which required the TCEQ to enact rules that, “must: (1) establish that eight recreational vehicle or cabin sites at a recreational vehicle park, whether occupied or not, are equivalent to one residential metered connection.”¹ Cabin is not defined in the Water Code, Health and Safety Code or the TCEQ Rules. TRWA received many calls from rural water utility members regarding what a “cabin” is and whether the term “cabin” includes tiny homes. To dispel the confusion, TRWA proposes the definition of cabin set forth below in 5. A.

The changes made by SB 594 to the Texas Health and Safety Code (adding Section 341.0315(C-1)) and the Texas Water Code (adding Section 13.152) should seamlessly work together to establish connection equivalence rules for RV parks, standardize how these connections are counted for capacity purposes, and ensure fair billing practices. It would be helpful if the rules promulgated by the TCEQ and the PUC interpreting the new laws were consistent with one another and had the same definitions for RVs and RV Parks.

Unlike the proposed PUC rules, the TCEQ rules contain no definition of a recreational vehicle (“RV”) or a recreational vehicle park (“RV Park”). TRWA encourages the TCEQ to include the same definitions for RVs and RV Parks in their proposed rules to make the applicability of SB 594 consistent across the two agencies. The proposed definitions of these terms are set forth below in 5.A. and are the same definitions used by SB 594 and proposed PUC rule 16 TAC Section 24.50.

¹ SB 594 Enrolled, 88th Texas Legislature.

4. Proposed Changes to the TCEQ Proposed Immediate Notification Rule.

HB 3810 enacted Texas Health and Safety Code section 341.033(i)(6) to require a nonindustrial public water supply system to provide immediate notification of, “an unplanned condition that has caused a public water supply outage or the public water supply system to issue a do-not-use advisory, do-not-consume advisory, or boil water notice.”² However, the TCEQ proposed rule would require immediate notification of an “unplanned condition that has caused the system to issue a special precaution under Section 290.47(e) of this title or issue a special precaution, protective measure or boil water notice under Section 290.46(q) of this section.” This seems much broader than what is required by the new statute. To address this issue, the TRWA recommends that the TCEQ limit the rule to the express intent of HB 3810 by using the terms “do-not-consume advisory” and “do-not-use advisory” and by providing definitions for the terms since neither of them are defined in rule or statute. The TRWA recommends definitions based upon the TCEQ guidance as set forth below in 5.B.

TRWA also finds confusing the reference to 30 TAC Section 290.47(e) in relation to a “special precaution.” The schematic at 30 TAC Section 290.47(e) seems to only address boil water notices. Special precautions and protective measures seem to be best addressed by 30 TAC Section 290.46(q).

5. TRWA’s Proposed Rule Changes.

TRWA proposes the following changes in red to ensure that water systems have sufficient clarity to comply with the proposed rules.

A. Proposed Changes to RV Rule: 30 TAC §290.45

(j) Alternative recreational vehicle park connection equivalency. If the actual water usage of a recreational vehicle park that is a retail customer of a public water system is less than 90 percent of the average daily demand of 45.0 gallons per day per recreational vehicle site, the public water system may use an alternative recreational vehicle park connection equivalency calculated using Figure 30 TAC §290.45(j). The alternative recreational vehicle park connection equivalency will be reviewed during on-site compliance inspections.

(1) To determine the alternative recreational vehicle park connection equivalency, the public water system must calculate the recreational vehicle park’s actual average daily demand.

² HB 3810, Enrolled, 88th Texas Legislature.

- (A) For the purposes of this paragraph, the actual average daily demand is determined based upon at least 12 consecutive months of meter readings for the recreational vehicle park, divided by the total number of days in those months. The actual average daily demand is then divided by the number of recreational vehicle sites and cabin sites within the recreational vehicle park, whether occupied or not.
- (B) For the purposes of this paragraph the term “cabin” means a single structure where sleeping accommodations are furnished to the transient, traveling, or vacationing public, including tiny homes.
- (C) For the purposes of this paragraph the term "Recreational vehicle park" means a commercial property that is primarily designed and used for recreational vehicle transient guest use; and for which fees for site service connections for recreational vehicles are paid daily, weekly, or monthly.
- (D) For the purposes of this paragraph the term "recreational vehicle" includes a "house trailer" as that term is defined by Section 501.002, Transportation Code; and a "towable recreational vehicle" as that term is defined by Section 541.201, Transportation Code.

B. Proposed Changes to the Immediate Notification Rule: 30 TAC §290.46 (w)

All systems shall maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

- (1) an unusual or unexplained unauthorized entry at property of the public water system;
- (2) an act of terrorism against the public water system;
- (3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;
- (4) a theft of property that supports the key activities of the public water system;~~or~~
- (5) a natural disaster, accident, or act that results in damage to the public water system;~~;~~
or
- (6) a nonindustrial water system that experiences an unplanned condition that causes a public water supply outage or that has caused the water system to issue a special precaution or protective measure such as a do-not -use advisory, do-not-consume advisory under §290.47(e) of this title or issue a special precaution, protective measure, or boil water notice under §290.46(q) of this section.

- (A) For the purposes of this paragraph, a nonindustrial water system is defined as a public water system which does not exclusively serve industrial connections.
- (B) For the purposes of this paragraph unplanned condition is defined as any condition where advance notice to water system customers has not been performed.
- (C) For the purposes of this paragraph a “Do-Not-Consume Advisory” is defined as a special precaution required by 290.46(q) of this section when the drinking water distributed by the water system contains a chemical contaminant that makes it unsafe to drink but will not cause adverse health effects if the drinking water is inhaled or touches the skin.
- (D) For the purposes of this paragraph a “Do-Not-Use Advisory” is defined as a special precaution required by 290.46(q) of this section when the drinking water distributed by the water system contains an unknown contaminant and treatment of the drinking water is not possible, or the contaminant poses a health risk through inhalation of water vapor or through skin contact with the water or water vapor; the notice will specify how the water should, or should not, be used.

TRWA appreciates the opportunity to comment on these rules.

Respectfully submitted 9/17/2024:

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