



AGENDA MEMORANDUM

One Reading Action Item for the City Council Meeting of November 15, 2016

DATE: November 4, 2016

TO: Margie C. Rose, City Manager

Thru: Mark Van Vleck, Assistant City Manager of Public Works and Utilities

FROM: Dan Grimsbo, Interim Director of Water Utilities
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<p>Opposing proposed Texas Commission on Environmental Quality (TCEQ) rule amendments that give TCEQ broader discretion to order boil water notices</p>

CAPTION:

Resolution authorizing submission of comments in proposed rulemaking at Texas Commission on Environmental Quality ("TCEQ") regarding revised total coliform rule plus, TCEQ Rule Project No. 2015-035-290-OW, to oppose proposed rules that allow discretionary issuance of boil water notices and request clarification and modification with regard to other proposed amendments.

PURPOSE:

To oppose proposed TCEQ rules that allow discretionary issuance of boil water notices and request clarification with regard to other proposed amendments before the comment submission period ends on November 22, 2016.

BACKGROUND AND FINDINGS:

TCEQ has issued proposed rules to amend Title 30 Texas Administrative Code Chapter 290 Public Water Systems, Subchapter D: Rules and Regulations for Public Water Systems and Subchapter F: Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems.

As stated on the TCEQ notice of proposed rulemaking: "This rulemaking proposes to amend existing state rules in 30 Texas Administrative Code Chapter 290 for consistency with the Revised Total Coliform Rule, align current state rules with federal regulations and to clarify and streamline additional existing state rules".

Of primary concern with the proposed rules are the multiple proposed rule amendments to Section 290.46(q) giving discretionary authority to the Executive Director of TCEQ to require the public water system to issue Boil Water Notices (BWNs). BWNs should only be issued when scientific

data indicates contamination is a threat to public health and not used as an administrative punishment for other circumstances such as untimely submittal of required reports. In addition, several terms in the proposed rules require further clarification to provide predictability in the TCEQ rules and regulations.

There must be predictability in the TCEQ rules and regulations to allow public water systems to respond promptly which will ensure consumer confidence and ensure protection of public health and welfare.

Listed below is a summary of the proposed amendments of concern:

- Amendments to Section 290.46(q) provide for discretionary issuance of boil water notices.
- The terms “special precautions” and “protective measures” to be implemented by a public water system are not clearly defined in proposed amendment to Section 290.46(q)(5).
- Amendments to Section 290.46(q)(5) (A) (i) allow discretionary authority for the Executive Director to issue boil water notices for administrative non-compliance.
- Amendments to Section 290.46(q)(5)(A)(iii) may result in issuance of boil water notice based on a single failure to maintain disinfectant residuals.
- Amendments to Section 290.46(q)(5)(B) mandate that a public water system implement special precautions, protective measures, or issue boil water notices to customers “within 24 hours or within time period specified by the executive director”.
- The word “may” should be changed to “shall” in amendment to 290.46(q)(6) so that it would read as follows: “The executive director ~~may~~ shall provide written notification to the public water system once the public water system has provided required [boil water notice] compliance documentation to the executive director.”
- Clarification is needed to proposed amendments to Section 290.46(q)(6)(E) regarding water samples for microbiological analysis to clarify whether this requirement is only for boil water notice orders associated with microbial and disinfectant level related events and to clarify sample location determination.
- The term “Certificate of Delivery” as used in proposed amendment to Section 290.46(q)(1) should be clarified to allow email notification within 24 hours and documents with certificate of delivery to be provided within 3 business day.
- Modifications to amendments to 290.106(e), 290.107(e), 290.108(e) , and 290.115 (e) are needed to provide that the public water system should not be penalized for failure to timely provide the sampling reports when delay is caused by events outside control of the public water system.

The attached Resolution and attached Exhibit A address the proposed amendments of concern.

ALTERNATIVES:

The City Council may decide to modify the comments or may decide not to submit comments in this rulemaking.

OTHER CONSIDERATIONS:

The TCEQ Executive Summary identifies anticipated adoption date of March 8, 2017.

In 2016 TCEQ approved a significant increase in the per connection fee for large water systems, which will cost the City an additional \$229,418.50 annually. The City currently pays in aggregate in excess of \$40 million per year to TCEQ for all relevant fees. The proposed rules may result in additional expenses to the City.

CONFORMITY TO CITY POLICY:

This item conforms to City policy.

EMERGENCY / NON-EMERGENCY:

n/a

DEPARTMENTAL CLEARANCES:

Water Utilities Department

FINANCIAL IMPACT:

☐ Operating ☐ Revenue ☐ Capital x Not applicable

Fiscal Year: 2016-2017	Current Year	Future Years	TOTALS
Line Item Budget			
Encumbered / Expended Amount			
This item			
BALANCE			

Fund(s):

Comments:

n/a

RECOMMENDATION:

Staff recommends approval of the resolution as presented.

LIST OF SUPPORTING DOCUMENTS:

Resolution with Exhibit A
TCEQ Proposed Amendments to 30 Texas Administrative Code 290.46(q)