

Draft Regulatory Guidance

Purchase of Facilities

1. Applicable statutes or rules

30 TAC §293.69 Purchase of Facilities

2. Background

Under 30 Texas Administrative Code (TAC) §293.69, the executive director must provide written approval to finalize a purchase of facilities from or a reimbursement of funds to a developer, investor owned utility or water supply corporation. This approval is subject to an inspection of and a report of the condition of the facilities from the district's engineer, and the Texas Commission on Environmental Quality (TCEQ) may also inspect the facilities. The purpose of this document is to clarify when a TCEQ inspection will be required and the type of documentation that must be obtained by the district from the TCEQ prior to purchasing a facility or reimbursing a developer, investor owned utility or water supply corporation.

3. Draft Regulatory Guidance

Subject to the exception set forth below, a pre-purchase inspection by the field office is required prior to the purchase of water, wastewater and/or drainage facilities from or a reimbursement of funds advanced to finance construction of such facilities by a developer, investor owned utility or water supply corporation. The pre-purchase inspection shall confirm that the facilities are in good working order and that there are no major deficiencies, normal wear and tear excepted. A pre-purchase inspection by the TCEQ is not required for road facilities.

If the facilities to be purchased or for which reimbursement will be made are located within the corporate limits of and transferred from the district to the municipality immediately upon completion, then a TCEQ inspection will not be required for water, wastewater and/or drainage facilities if (i) the municipality has indicated in writing to the district that it waives any requirement for an inspection as specified in 30 TAC §293.69, and (ii) a copy of the utility agreement between the district and the municipality are provided to the TCEQ in the bond application in which such facilities are proposed for approval by the TCEQ.

Documentation Evidencing Approval or Disapproval of Facilities

If the bond order or surplus funds approval authorizes purchase of facilities contingent on the TCEQ field office inspection and report with no significant deficiencies noted, the district's board of directors may purchase the facilities with no additional approvals. This approval is valid for 120 days from 1) the date of the order approving the bonds, or, 2) the letter approving the surplus funds request. If substantial deficiencies are noted at the time of inspection, a copy of the inspection report must be submitted to the executive director along with a request for the authorization to purchase. If an inspection of facilities is performed in connection with a purchase or reimbursement to be made in whole or in part with proceeds from a bond anticipation note, then another inspection is not required to obtain approval of the purchase with or reimbursement from the bond proceeds provided that the facilities for which the bond anticipation note was issued are the same facilities for which the bonds will be issued.