

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§288.1 - 288.5.

Sections 288.1 and 288.2 are adopted *with changes* to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5216). Sections 288.3 - 288.5 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2011, the 82nd Legislature passed Senate Bill (SB) 181, relating to the calculation and reporting of water usage by municipalities and water utilities for state water planning and other purposes. The 82nd Legislature also passed SB 660, related to the review and functions of the Texas Water Development Board (TWDB), including the functions of the board and related entities in connection with the reporting of municipal water use data.

SB 181 amended Texas Water Code (TWC), Chapter 16, related to provisions generally applicable to water development. SB 660 amended TWC, Chapter 16, and TWC, Chapter 11, related to water rights.

SB 181 added TWC, §16.403, and SB 660 amended TWC, §16.402 and added TWC, §16.403, to require that the TWDB and the TCEQ, in consultation with the Water

Conservation Advisory Council (WCAC), develop a uniform, consistent methodology and guidance for calculating and reporting water use and conservation. For a municipality or water utility, the bills require a method of calculating total water use, a method of calculating total water use in gallons per capita per day (GPCD), a method of classifying water users within sectors, a method of calculating water use in the non-population dependent sectors, and guidelines on the use of service populations. The methodology and guidance applies to all entities required to submit water conservation plans to the TWDB or the TCEQ. Additionally, the bills require that the TWDB, the TCEQ, and the WCAC develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

SB 181 added TWC, §16.404, and SB 660, §21, amended TWC, §16.402 and §11.1271, to require entities to report the most detailed level of water use possible, but specified that entities cannot be required to report at a higher level than their current billing systems allow. SB 181 specifies that the rules may require that new billing systems purchased be capable of reporting water use according to the prescribed methodology.

SB 660 amended TWC, §11.1271 and §16.402, to require the TCEQ, or the TCEQ and TWDB, to jointly adopt rules by January 1, 2013, requiring the methodology and guidance for calculating water use and conservation developed under TWC, §16.403, to be used in water conservation plans or reports.

This adopted rulemaking will implement the amendments made by SB 181 and §21 of SB 660.

Section by Section Discussion

The commission adopts the amendment to §288.1, Definitions, by adding definitions for commercial use, institutional use, residential use, residential GPCD, total use, total GPCD, and wholesale use, and to renumber the paragraphs to accommodate the addition of definitions. The adopted definitions for commercial use in §288.1(5), institutional use in §288.1(8), and wholesale use in §288.1(25) were derived from the identified definitions of these uses by the American Water Works Association. The adopted definitions for residential use in §288.1(16) and residential GPCD in §288.1(17) were derived from TWC, §16.403(b)(4), as added by SB 181, which requires a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in GPCD. In response to a comment, the commission modified the definition in §288.1(17) to clarify that the numerator in the calculation is residential gallons sold. The adopted definition for total use in §288.1(21) was derived from TWC, §16.403(b)(1), as added by SB 181, which requires a method of calculating total use by a municipality or water utility, including water billed and nonrevenue water used. The adopted definition for total GPCD in §288.1(22) was derived from TWC, §16.403(b)(2), as added by SB 181, which requires a method of calculating total water use by a municipality or water utility in GPCD.

The commission adopts the definitions for industrial use, irrigation use, and municipal use. The definition of industrial use in §288.1(7) was amended to remove commercial fish production (aquaculture) which was defined as an agricultural use by the 82nd Legislature in HB 2694, which amended TWC, §11.002(12)(G). The commission adopts the definition of irrigation use in §288.1(9) to change "through a municipal distribution system" to "from a public water supplier" to be consistent with the terminology used throughout the remainder of Chapter 288. The commission adopts the definition of municipal use in §288.1(12) to remove the various listed examples of municipal uses and instead list the sectors of water use required by SB 181 and SB 660, §21.

The commission deleted the definitions for municipal per capita water use in §288.1(10) and municipal use in GPCD in §288.1(12). These definitions are no longer needed because SB 181 and SB 660, §21 require municipal use to be reported in the adopted definitions for residential use in §288.1(16); residential GPCD in §288.1(17); total use in §288.1(21); and, total GPCD in §288.1(22). The commission renumbered the paragraphs to accommodate the deletion of the definitions.

The definitions that were added, amended, or deleted are necessary to implement SB 181 and SB 660, §21.

The commission adopts the amendment to §288.2, Water Conservation Plans for

Municipal Uses by Public Water Suppliers, to implement the requirements of SB 181 and SB 660, §21.

The commission adopts the amendment to §288.2(a)(1) by deleting the word "drinking" from "public drinking water suppliers" to ensure consistency of terms throughout Chapter 288.

The commission adopts the amendment to §288.2(a)(1)(A) by adding "in accordance with the Texas Water Use Methodology" to the requirements for utility profiles of water conservation plans. This uniform methodology, required by the bills, is currently being developed by the TWDB, TCEQ, and WCAC. This amendment also adds "(including total GPCD and residential GPCD)" with respect to the water use data provided in these utility profiles. SB 181 and SB 660, §21 require that municipalities or water utilities report GPCD values in both total GPCD and residential GPCD.

The commission adopts §288.2(a)(1)(B) to require the sector-based water use reporting as required by SB 181 and SB 660, §21. This new requirement also specifies that water suppliers do not need to purchase new software immediately, but will need to purchase the appropriate software when upgrading.

The commission deleted existing §288.2(a)(1)(B). The May 1, 2005 date was originally

added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003.

Because this deadline has passed, it is no longer needed in the current rule language.

The commission adopts the amendment to §288.2(a)(1)(C) to remove the date reference "beginning May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning. The commission specifies that the goals for municipal use be in total GPCD and residential GPCD. This change is adopted to ensure that the water use data in §288.2(a)(1)(A) and this subparagraph are consistent.

The commission adopts the amendment to §288.2(a)(1)(F) by removing the term "unaccounted-for uses of" and add "loss" to the word "water." The term "water loss" is the appropriate semantic for reporting.

The commission adopts the amendment to §288.2(a)(2)(A) by removing "in order to control unaccounted-for uses of water" because this is an inappropriate semantic for referring to water loss.

The commission deleted existing §288.2(a)(2)(B) which, previous to SB 181 and SB 660, was an additional content requirement for reporting by sectors and to re-letter the subparagraphs that follow. The sector-based reporting requirement was added in adopted §288.2(a)(1)(B).

The commission adopts the amendment to §288.2(c) to remove the date references "Beginning May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663 passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rule based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission deleted §288.3(a)(2) and renumbered the paragraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for industrial water users to submit water conservation goals for water conservation plans are now located in adopted §288.3(a)(2).

The commission adopts the amendment to renumbered §288.3(a)(2) to remove the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission adopts the amendment to §288.3(b) to remove the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663 passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rules based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language, as well as "after that date", are no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission deleted current §288.4(a)(1)(B) and re-lettered the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no

longer needed in the current rule language. The requirements for individual agricultural users to submit water conservation goals for water conservation plans are now located in re-lettered §288.4(a)(1)(B).

The commission adopts the amendment to re-lettered §288.4(a)(1)(B) to remove the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission deleted current §288.4(a)(2)(D) and re-lettered the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because these deadlines have passed, they are no longer needed in the current rule language. The requirements for individual irrigation users to submit water conservation goals for water conservation plans are now located in adopted §288.4(a)(2)(D).

The commission adopts the amendment to re-lettered §288.4(a)(2)(D) by removing the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because

these deadlines have passed, they are no longer needed in the current rule language.

The amendment does not alter the requirements for entities to submit revised water conservation plans for every five years to coincide with regional water planning.

The commission deleted current §288.4(a)(3)(B) and re-lettered the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for systems providing agricultural water to more than one user to submit water conservation goals for water conservation plans are now located in adopted §288.4(a)(3)(B).

The commission adopts the amendment to re-lettered §288.4(a)(3)(B) by removing the date reference "beginning, May 1, 2005." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission adopts the amendment to §288.4(c) by removing the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the

78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rule based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

The commission deleted current §288.5(1)(B) and re-lettered the subparagraphs that follow. The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. Because this deadline has passed, it is no longer needed in the current rule language. The requirements for wholesale water suppliers to submit water conservation goals for water conservation plans are now in adopted §288.5(1)(B).

The commission adopts the amendment to re-lettered §288.5(1)(B) by removing the date reference "beginning, May 1, 2005." This date was originally added to implement HB 2660 and HB 2663, as passed by the 78th Legislature in 2003. Because the deadline has passed it is no longer needed in the current rule language. This amendment does not alter the requirement for entities to submit revised water conservation plans every five years to coincide with regional water planning. The commission also removed the term "unaccounted for" and added "loss" to the word "water" because the term "water

loss" is the appropriate semantic for reporting.

The commission adopts the amendment to §288.5(3) to remove the date references "Beginning, May 1, 2005," "not later than May 1, 2009," and "after that date." The May 1, 2005 date was originally added to implement HB 2660 and HB 2663, passed by the 78th Legislature in 2003. The May 1, 2009 date was originally incorporated into the rules based on comments received during a 2004 agency rulemaking amending §§288.2 - 288.5. Because these deadlines have passed, this language as well as "after that date" are no longer needed in the current rule language. The adopted amendment does not alter the requirements for entities to submit revised water conservation plans every five years to coincide with regional water planning.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the

state or a sector of the state.

This adopted rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule amendments to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by SB 181 and SB 660, which require public water suppliers to utilize the uniform methodology and guidance for calculating water use and conservation developed under TWC, §16.403 to be used in the water conservation plans and reports that must be submitted to the TCEQ.

Further, the adopted rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the adopted amendments is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the adopted rulemaking does not meet the statutory definition of a "major

environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking does not meet the four applicability requirements, because the adopted amendments: 1) do not exceed a standard set by federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the rules; and 4) are not an adoption of a rule solely under the general powers of the commission as the rules are required by SB 181 and SB 660.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments regarding this section of the preamble.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission adopted this rulemaking for the specific purpose of implementing legislation enacted by the 82nd Legislature in 2011. The adopted rulemaking amends §§288.1 - 288.5. The commission's analysis revealed that amending these rule sections would achieve consistency with TWC, §§11.1271(f), 16.402, 16.403, and 16.404 as added or amended in 2011 by SB 181 and SB 660. The adopted rulemaking would create new definitions and amend or delete other definitions in §288.1. The adopted definitions define the different categories of water use that must be reported by public water suppliers in their water conservation plans; and are consistent with the terms used by the Legislature in SB 181 and SB 660. The adopted rulemaking would also require public water suppliers to utilize the uniform methodology and guidance for calculating water use and conservation developed under TWC, §16.403, to be used in the water conservation plans and reports that must be submitted to the TCEQ as required by the TWC.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and

reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by creating, amending, or deleting the definitions as adopted or requiring public water suppliers to utilize the uniform methodology and guidance in producing the water conservation plans, the commission has determined that promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the adopted rulemaking. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), Actions and Rules Subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory

Committee and determined that the adopted rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission did not receive any comment regarding this part of the preamble.

Public Comment

The commission held a public hearing on August 7, 2012, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. No one requested to speak at the public hearing. The commission received written comments from the City of Dallas, Dallas Water Utilities (Dallas Water Utilities), City of Fort Worth Water Department (City of Fort Worth), Tarrant Regional Water District (TRWD), Texas Water Foundation (TWF) and one individual.

Dallas Water Utilities, City of Fort Worth, TRWD and TWF suggested changes to the rule as noted in the Response to Comments section of this preamble. One commenter expressed concerns about city growth and water quality issues.

Response to Comments

General

One individual commented that the City of Cypress continues to grow in an unsustainable way and noted that the bacteria in the waterways are a side effect of unsustainable growth. The commenter also suggested that action needs to be taken to reduce runoff from the homes, parking lots, and streets in order to reduce the amount of polluted runoff into our waterways as well as suggesting several additional ways to reduce runoff. The commenter stated that retention ponds currently function only as flood basins and mosquito breeding grounds and suggested requiring neighborhoods to convert these areas to more natural environments. The commenter also suggested that permeable alternatives to concrete for pathways be encouraged and promoted. The commenter also expressed concern with surface water quality and suggested that watershed awareness is necessary.

The commission acknowledges these comments; however, notes that these comments fall outside of the scope of this rulemaking. This rulemaking is to implement SB 181 and SB 660 which require sector based water use reporting for entities that are required to submit water conservation plans to the TCEQ or the TWDB. No changes were made in response to these comments.

The City of Fort Worth commented that the "Texas Water Use Methodology" is still being developed but that the proposed rule includes this methodology as a required method of reporting. The City of Fort Worth asked when utilities will have an opportunity to comment on the water use methodology.

This rule includes this methodology as a required method of reporting to ensure a consistent methodology for calculating water use. SB 181 added TWC, §16.403(b), that requires the TWDB and the commission, in consultation with the WCAC, to develop a uniform consistent methodology and guidance for calculating water use and conservation to be used by a municipality or a water utility in developing water conservation plans and preparing reports required under the TWC.

The TWDB, the commission and the WCAC developed the guidance document which is scheduled to be completed and available to the public in early 2013. The WCAC accepted comments on this document through September 14, 2012. No change was made in response to this comment.

The City of Fort Worth asked how sector based water use would be reported.

The guidance and methodology being developed by the commission, the

TWDB, and the WCAC will describe how to report water use by sector. The commission and the TWDB are also in the process of revising the utility profile forms for use by entities that are developing or revising water conservation plans. No changes were made in response to this comment.

The City of Forth Worth stated that it does not have a classification for "institutional" and asked if they would be required to reclassify their accounts, citing concerns about the intensity of labor required to complete this task.

This rulemaking does not require a water system to classify its users as "institutional" or to use an accounting system capable of reporting the sector based water use described in this rulemaking; however, any new software purchases must be capable of reporting detailed water use as described in this rule. This includes the category "institutional." Until a water system purchases new accounting software, a water system may continue to use its existing software. No changes were made in response to this comment.

TRWD commented that the definition of "Nursery Grower" defines a grower as an individual person and suggested a change to this definition. TRWD also commented direct and indirect reuse are important and viable means of extending water supplies

and requested that definitions for direct reuse and indirect reuse be added to Chapter 288 as well as requesting a definition be added for the term "water loss." Additionally, TRWD stated that it does not have the authority to change its rates to seasonal or inclining block rates and recommended this be addressed in the rule or the guidance document. TRWD also commented that references to flat rates or decreasing block rates may not be necessary or appropriate. TRWD also suggested adding some other technologies used in scheduling and measuring the amount of water applied for individual irrigation users such as evapotranspiration/weather based irrigation controllers.

The commission acknowledges these comments; however, notes that these comments fall outside of the scope of this rulemaking. This rulemaking is to implement SB 181 and SB 660 which require sector based water use reporting for entities that are required to submit water conservation plans to the TCEQ or the TWDB. No changes were made in response to these comments.

§288.1, Definitions

Dallas Water Utilities suggested that the definition for "Best management practices" in §288.1(3) be amended to add the words "duplicated and" before the word "implemented."

The purpose of this rulemaking is to implement SB 181 and SB 660 which require sector based water use reporting for entities that are required to submit water conservation plans to the TCEQ or the TWDB. Changing the definition of "Best management practices" is outside of the scope of implementing these bills through this rulemaking. No changes were made in response to this comment.

TRWD commented that the definition of irrigation makes it appear that golf courses and parks are classified as pastureland and suggested a different definition for irrigation.

The commission does not agree that the definition of irrigation in adopted §288.1(9) classifies golf courses and parks as pastureland. In this definition, golf course and parks are included solely as examples of lands that are irrigated. No changes were made in response to this comment.

The City of Fort Worth commented that the calculation for "municipal per capita water use" and the definition for "municipal use in gallons per capita per day" are missing the words "divided by number of days in the year."

The definitions of "municipal per capita water use" and "municipal use in

gallons per capita per day" are being deleted from §288.1. These definitions are no longer needed because SB 181 and SB 660, §21, require municipal use to be reported in the adopted definitions for residential use in §288.1(16); residential GPCD in §288.1(17); total use in §288.1(21); and, total GPCD in §288.1(22). No changes were made in response to these comments.

TWF requested that the commission modify the definition of "residential GPCD" to clarify that the numerator in the calculation is residential gallons sold. TWF commented that the definition, as it is written now, implies that the numerator is total gallons sold.

The commission agrees with the comment and has modified the definition of "Residential gallons per capita per day" in §288.1(17) to read, as suggested by the commenter: "The total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year."

SUBCHAPTER A: WATER CONSERVATION PLANS

§§288.1 - 288.5

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the TWC; §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; §5.105, which establishes the commission's authority to set policy by rule; §11.1271, which requires the commission to adopt rules regarding the methodology and guidance for calculating water use and conservation developed under §16.403 to be used in the water conservation plans; §16.402, which requires the commission to adopt rules regarding the methodology and guidance for calculating water use and conservation developed under §16.403; and §16.404, which requires the commission to adopt rules and standards as necessary to implement TWC, Subchapter K.

The adopted rules implement TWC, §§11.1271, 16.402, 16.403, and 16.404.

§288.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural or Agriculture--Any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) Agricultural use--Any use or activity involving agriculture, including irrigation.

(3) Best management practices--Voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

(4) Conservation--Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(5) Commercial use--The use of water by a place of business, such as a hotel, restaurant, or office building. This does not include multi-family residences or agricultural, industrial, or institutional users.

(6) [(5)] Drought contingency plan--A strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).

(7) [(6)] Industrial use--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, [commercial fish production,] and the development of power by means other than hydroelectric, but does not include agricultural use.

(8) Institutional Use--The use of water by an establishment dedicated to public service, such as a school, university, church, hospital, nursing home, prison or government facility. All facilities dedicated to public service are considered institutional regardless of ownership.

(9) [(7)] Irrigation--The agricultural use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water from a public water supplier [through a municipal distribution system].

(10) [(8)] Irrigation water use efficiency--The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

(11) [(9)] Mining use--The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

[(10) Municipal per capita water use--The sum total of water diverted into a water supply system for residential, commercial, and public and institutional uses divided by actual population served.]

(12) [(11)] Municipal use--The use of potable water provided by a public water supplier [within or outside a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity] as well as the use of sewage effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses [certain purposes, including the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools,

the use of potable water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens].

[(12) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals.]

(13) Nursery grower--A person engaged in the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, who grows more than 50% of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, grow means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease, and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(14) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) Public water supplier--An individual or entity that supplies water to the public for human consumption.

(16) Residential use--The use of water that is billed to single and multi-family residences, which applies to indoor and outdoor uses.

(17) Residential gallons per capita per day--The total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year. ~~The calculation is made by dividing the number of gallons of water sold by the residential population served divided by the number of days in the year.~~

(18) [(16)] Regional water planning group--A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

(19) [(17)] Retail public water supplier--An individual or entity that for compensation supplies water to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants when that water is not resold to or used by others.

(20) [(18)] Reuse--The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(21) Total use--The volume of raw or potable water provided by a public water supplier to billed customer sectors or nonrevenue uses and the volume lost during conveyance, treatment, or transmission of that water.

(22) Total gallons per capita per day (GPCD)--The total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in this chapter shall be credited against total diversion volumes for the purposes of calculating GPCD for targets and goals.

(23) [(19)] Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

(24) [(20)] Wholesale public water supplier--An individual or entity that for compensation supplies water to another for resale to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants as an incident of that employee service or tenancy when that water is not resold to or used by others, or an individual or entity that conveys water to another individual or entity, but does not own the right to the water which is conveyed, whether or not for a delivery fee.

(25) Wholesale use--Water sold from one entity or public water supplier to other retail water purveyors for resale to individual customers.

§288.2. Water Conservation Plans for Municipal Uses by Public Water Suppliers.

(a) A water conservation plan for municipal water use by public water suppliers must provide information in response to the following. If the plan does not provide information for each requirement, the public water supplier shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. All water conservation plans for municipal uses by public [drinking] water suppliers must include the following elements:

(A) a utility profile in accordance with the Texas Water Use Methodology, including, but not limited to, information regarding population and customer data, water use data (including total gallons per capita per day (GPCD) and residential GPCD), water supply system data, and wastewater system data;

(B) a record management system which allows for the classification of water sales and uses into the most detailed level of water use data currently available to it, including, if possible, the sectors listed in clauses (i) - (vi) of this subparagraph.
Any new billing system purchased by a public water supplier must be capable of reporting detailed water use data as described in clauses (i) - (vi) of this subparagraph:

(i) residential;

(I) single family;

(II) multi-family;

(ii) commercial;

(iii) institutional;

(iv) industrial;

(v) agricultural; and,

(vi) wholesale.

[(B) until May 1, 2005, specification of conservation goals including, but not limited to, municipal per capita water use goals, the basis for the development of such goals, and a time frame for achieving the specified goals;]

(C) [beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in total GPCD and residential GPCD[, in gallons per capita per day]. The

goals established by a public water supplier under this subparagraph are not enforceable;

(D) metering device(s), within an accuracy of plus or minus 5.0% in order to measure and account for the amount of water diverted from the source of supply;

(E) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(F) measures to determine and control [unaccounted-for uses of] water loss (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections; abandoned services; etc.);

(G) a program of continuing public education and information regarding water conservation;

(H) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(I) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin in order to optimize available water supplies; and

(J) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the water supplier; and

(ii) a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(K) documentation of coordination with the regional water planning groups for the service area of the public water supplier in order to ensure consistency with the appropriate approved regional water plans.

(2) Additional content requirements. Water conservation plans for municipal uses by public drinking water suppliers serving a current population of 5,000 or more and/or a projected population of 5,000 or more within the next ten years subsequent to the effective date of the plan must include the following elements:

(A) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system [in order to control unaccounted-for uses of water];

[(B) a record management system to record water pumped, water deliveries, water sales, and water losses which allows for the desegregation of water sales and uses into the following user classes:]

[(i) residential;]

[(ii) commercial;]

[(iii) public and institutional; and]

[(iv) industrial;]

(B) [(C)] a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer

intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with the provisions of this chapter.

(3) Additional conservation strategies. Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements in paragraphs (1) and (2) of this subsection, if they are necessary to achieve the stated water conservation goals of the plan. The commission may require that any of the following strategies be implemented by the water supplier if the commission determines that the strategy is necessary to achieve the goals of the water conservation plan:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) adoption of ordinances, plumbing codes, and/or rules requiring water-conserving plumbing fixtures to be installed in new structures and existing structures undergoing substantial modification or addition;

(C) a program for the replacement or retrofit of water-conserving plumbing fixtures in existing structures;

(D) reuse and/or recycling of wastewater and/or graywater;

(E) a program for pressure control and/or reduction in the distribution system and/or for customer connections;

(F) a program and/or ordinance(s) for landscape water management;

(G) a method for monitoring the effectiveness and efficiency of the water conservation plan; and

(H) any other water conservation practice, method, or technique which the water supplier shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) A water conservation plan prepared in accordance with 31 TAC §363.15 (relating to Required Water Conservation Plan) of the Texas Water Development Board and substantially meeting the requirements of this section and other applicable

commission rules may be submitted to meet application requirements in accordance with a memorandum of understanding between the commission and the Texas Water Development Board.

(c) A [Beginning May 1, 2005, a] public water supplier for municipal use shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The public water supplier for municipal use shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.

§288.3. Water Conservation Plans for Industrial or Mining Use.

(a) A water conservation plan for industrial or mining uses of water must provide information in response to each of the following elements. If the plan does not provide information for each requirement, the industrial or mining water user shall include in the plan an explanation of why the requirement is not applicable.

(1) a description of the use of the water in the production process, including how the water is diverted and transported from the source(s) of supply, how the water is utilized in the production process, and the estimated quantity of water

consumed in the production process and therefore unavailable for reuse, discharge, or other means of disposal;

(2) [(2) until May 1, 2005, specification of conservation goals, the basis for the development of such goals, and a time frame for achieving the specified goals;]

(2) [(3) beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings and the basis for the development of such goals. The goals established by industrial or mining water users under this paragraph are not enforceable;

(3) [(4)] a description of the device(s) and/or method(s) within an accuracy of plus or minus 5.0% to be used in order to measure and account for the amount of water diverted from the source of supply;

(4) [(5)] leak-detection, repair, and accounting for water loss in the water distribution system;

(5) [(6)] application of state-of-the-art equipment and/or process modifications to improve water use efficiency; and

(6) [(7)] any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) An [Beginning May 1, 2005, an] industrial or mining water user shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The industrial or mining water user shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.

§288.4. Water Conservation Plans for Agricultural Use.

(a) A water conservation plan for agricultural use of water must provide information in response to the following subsections. If the plan does not provide information for each requirement, the agricultural water user must include in the plan an explanation of why the requirement is not applicable.

(1) For an individual agricultural user other than irrigation:

(A) a description of the use of the water in the production process, including how the water is diverted and transported from the source(s) of supply, how the water is utilized in the production process, and the estimated quantity of water consumed in the production process and therefore unavailable for reuse, discharge, or other means of disposal;

~~(B)~~ until May 1, 2005, specification of conservation goals, the basis for the development of such goals, and a time frame for achieving the specified goals;]

~~(B)~~ [(C) beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings and the basis for the development of such goals. The goals established by agricultural water users under this subparagraph are not enforceable;

~~(C)~~ [(D)] a description of the device(s) and/or method(s) within an accuracy of plus or minus 5.0% to be used in order to measure and account for the amount of water diverted from the source of supply;

~~(D)~~ [(E)] leak-detection, repair, and accounting for water loss in the water distribution system;

(E) [(F)] application of state-of-the-art equipment and/or process modifications to improve water use efficiency; and

(F) [(G)] any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(2) For an individual irrigation user:

(A) a description of the irrigation production process which shall include, but is not limited to, the type of crops and acreage of each crop to be irrigated, monthly irrigation diversions, any seasonal or annual crop rotation, and soil types of the land to be irrigated;

(B) a description of the irrigation method, or system, and equipment including pumps, flow rates, plans, and/or sketches of the system layout;

(C) a description of the device(s) and/or methods, within an accuracy of plus or minus 5.0%, to be used in order to measure and account for the amount of water diverted from the source of supply;

(D) until May 1, 2005, specification of conservation goals including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan;]

(D) [(E) beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan. The goals established by an individual irrigation water user under this subparagraph are not enforceable;

(E) [(F)] water-conserving irrigation equipment and application system or method including, but not limited to, surge irrigation, low pressure sprinkler, drip irrigation, and nonleaking pipe;

(F) [(G)] leak-detection, repair, and water-loss control;

(G) [(H)] scheduling the timing and/or measuring the amount of water applied (for example, soil moisture monitoring);

(H) [(I)] land improvements for retaining or reducing runoff, and increasing the infiltration of rain and irrigation water including, but not limited to, land leveling, furrow diking, terracing, and weed control;

(I) [(J)] tailwater recovery and reuse; and

(J) [(K)] any other water conservation practice, method, or technique which the user shows to be appropriate for preventing waste and achieving conservation.

(3) For a system providing agricultural water to more than one user:

(A) a system inventory for the supplier's:

(i) structural facilities including the supplier's water storage, conveyance, and delivery structures;

(ii) management practices, including the supplier's operating rules and regulations, water pricing policy, and a description of practices and/or devices used to account for water deliveries; and

(iii) a user profile including square miles of the service area, the number of customers taking delivery of water by the system, the types of crops, the types of irrigation systems, the types of drainage systems, and total acreage under irrigation, both historical and projected;

(B) until May 1, 2005, specification of water conservation goals, including maximum allowable losses for the storage and distribution system;]

(B) [(C) beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings including maximum allowable losses for the storage and distribution system. The goals established by a system providing agricultural water to more than one user under this subparagraph are not enforceable;

(C) [(D)] a description of the practice(s) and/or device(s) which will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) [(E)] a monitoring and record management program of water deliveries, sales, and losses;

(E) [(F)] a leak-detection, repair, and water loss control program;

(F) [(G)] a program to assist customers in the development of on-farm water conservation and pollution prevention plans and/or measures;

(G) [(H)] a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(H) [(I)] official adoption of the water conservation plan and goals, by ordinance, rule, resolution, or tariff, indicating that the plan reflects official policy of the supplier;

(I) [(J)] any other water conservation practice, method, or technique which the supplier shows to be appropriate for achieving conservation; and

(J) [(K)] documentation of coordination with the regional water planning groups, in order to ensure consistency with appropriate approved regional water plans.

(b) A water conservation plan prepared in accordance with the rules of the United States Department of Agriculture Natural Resource Conservation Service, the Texas State Soil and Water Conservation Board, or other federal or state agency and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements in accordance with a memorandum of understanding between the commission and that agency.

(c) An [Beginning May 1, 2005, an] agricultural water user shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. An agricultural water user shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.

§288.5. Water Conservation Plans for Wholesale Water Suppliers.

A water conservation plan for a wholesale water supplier must provide information in response to each of the following paragraphs. If the plan does not

provide information for each requirement, the wholesale water supplier shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. All water conservation plans for wholesale water suppliers must include the following elements:

(A) a description of the wholesaler's service area, including population and customer data, water use data, water supply system data, and wastewater data;

[(B) until May 1, 2005, specification of conservation goals including, where appropriate, target per capita water use goals for the wholesaler's service area, maximum acceptable unaccounted-for water, the basis for the development of these goals, and a time frame for achieving these goals;]

(B) [(C) beginning May 1, 2005,] specific, quantified five-year and ten-year targets for water savings including, where appropriate, target goals for municipal use in gallons per capita per day for the wholesaler's service area, maximum acceptable [unaccounted-for] water loss, and the basis for the development of these goals. The goals established by wholesale water suppliers under this subparagraph are not enforceable;

(C) [(D)] a description as to which practice(s) and/or device(s) will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) [(E)] a monitoring and record management program for determining water deliveries, sales, and losses;

(E) [(F)] a program of metering and leak detection and repair for the wholesaler's water storage, delivery, and distribution system;

(F) [(G)] a requirement in every water supply contract entered into or renewed after official adoption of the water conservation plan, and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements of this chapter. If the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(G) [(H)] a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin. The reservoir systems operations plans shall include optimization of water supplies as one of the significant goals of the plan;

(H) [(I)] a means for implementation and enforcement, which shall be evidenced by a copy of the ordinance, rule, resolution, or tariff, indicating official adoption of the water conservation plan by the water supplier; and a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(I) [(J)] documentation of coordination with the regional water planning groups for the service area of the wholesale water supplier in order to ensure consistency with the appropriate approved regional water plans.

(2) Additional conservation strategies. Any combination of the following strategies shall be selected by the water wholesaler, in addition to the minimum requirements of paragraph (1) of this section, if they are necessary in order to achieve the stated water conservation goals of the plan. The commission may require by commission order that any of the following strategies be implemented by the water supplier if the commission determines that the strategies are necessary in order for the conservation plan to be achieved:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) a program to assist agricultural customers in the development of conservation pollution prevention and abatement plans;

(C) a program for reuse and/or recycling of wastewater and/or graywater; and

(D) any other water conservation practice, method, or technique which the wholesaler shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(3) Review and update requirements. The [Beginning May 1, 2005, the] wholesale water supplier shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. A wholesale water supplier shall review and update the next revision of its water conservation plan [not later than May 1, 2009, and] every five years [after that date] to coincide with the regional water planning group.