

The Texas Commission on Environmental Quality (commission) adopts the repeal of §§210.51 - 210.55. The commission also adopts new §§210.51 - 210.60. Sections 210.51 - 210.57 and 210.59 are adopted *with changes* to the proposed text as published in the July 12, 2002 issue of the *Texas Register* (27 TexReg 6218). Sections 210.58 and 210.60 and the repeals are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The new sections in Subchapter E, Special Requirements for Use of Industrial Reclaimed Water, will clarify the existing application requirements; clarify the existing criteria regarding authorization denial situations; modify the existing recordkeeping requirements; and add the existing fee into the rule language. Currently, the fee language is included on the authorization form, but not in the rules.

The commission is adopting the repeal of §§210.51 - 210.55 in Subchapter E due to an increase in questions the agency has been receiving regarding eligibility under this subchapter. Specifically, the agency has seen an increase in applications for wastes that should be authorized by an individual permit rather than under this subchapter. Currently, a person may request coverage under this subchapter even though the wastewater proposed for reuse is a waste that this subchapter is not intended to authorize, such as process wastewater from a chemical manufacturing facility. Generally, the agency receives requests for authorizations under this subchapter because this subchapter offers significant time and cost savings over an individual permit. However, the agency also receives many inquiries about coverage under this subchapter when coverage is not necessary. These types of questions have included a person whose facility has non-contact cooling water and is requesting to reuse this water as makeup water for

the facility's boiler. This type of reuse does not require an authorization under this subchapter because the end use is not a land application activity. Since the rules are not clear about who should request coverage, who should not request coverage, and which activities do not require coverage, the executive director's staff has had to answer these questions on a case-by-case basis. By rewriting and reorganizing the existing sections and adding new sections, the executive director will clarify the intent and scope of this subchapter, including the existing: application requirements; criteria regarding the denial of authorizations; recordkeeping requirements; and fee language.

More specifically, the adopted changes to this subchapter will clarify and establish the following requirements for industrial reclaimed water: general requirements applicable to producers, providers, and users; requirements and specifications for transfer, storage, irrigation, and other end uses; requirements and specifications necessary to minimize the impact of discharge of waste into or adjacent to water in the state; specific uses of industrial reclaimed water; standards for the quality of industrial reclaimed water; standards for monitoring and recordkeeping; and criteria for denying or suspending an authorization.

These sections will not establish new or different requirements for the holders of water rights allowing the use of state water. These adopted new sections do not affect any current requirements necessitating the need for a commission permit for a water right or amendment, if applicable to a particular industrial reclaimed water use or activity.

SECTION BY SECTION DISCUSSION

Adopted new §210.51, Applicability, Purpose, and Scope, expands and clarifies the applicability, purpose, and scope information in the existing §210.51, When Authorization Is Required and How To Obtain It; Effect on Permitted Discharges. The adopted new section outlines the intent of the subchapter and indicates the types of requirements producers, users, and providers must meet. These requirements are intended to allow the safe use of reclaimed water for conservation of surface water and groundwater, to ensure the protection of public health, to protect surface and groundwater from contamination, and to help ensure an adequate supply of water resources for present and future needs. If a person currently has a wastewater discharge permit and the person obtains coverage for use of its industrial reclaimed water under this subchapter, an amendment to the permit is not required to recognize the activity. However, the person must comply with the applicable requirements and limitations of the wastewater discharge permit and the Chapter 210, Subchapter E authorization.

The commission modified language in §210.51(a) and (c) - (e) for enhanced readability and clarity. In §210.51(b)(3), the commission changed the word “waters” to “water,” because of the language in Texas Water Code (TWC), §26.001 and added “payment of fees” and made corresponding grammatical changes to clarify that this subchapter establishes the requirement for the payment of a \$100 fee for a Level II authorization. Additionally, in response to a comment the commission added language to §210.51(c) to clarify that land application of industrial reclaimed water that is authorized in a Texas Pollutant Discharge Elimination System (TPDES) permit or in a Texas Land Application permit does not require additional authorization under Subchapter E. The commission also clarified §210.51(c) by replacing the word “use” with the words “end use” and adding, “The end uses of industrial wastewater

that are subject to the requirements of this subchapter include landscape irrigation, dust suppression, soil compaction, impoundment maintenance or industrial wastewater that is otherwise land applied for a beneficial purpose.” Additionally, the commission added a new §210.51(d) into the rule in response to a comment and to clarify that this subchapter does not apply to recycled industrial wastewater. The commission added, “Internal recycling systems, closed loop systems, and systems that use industrial wastewater as makeup water within a facility process are not subject to the requirements of this subchapter” to new §210.51(d). These changes clarify that the end use, which in this subchapter only includes land application, is the determining factor for applicability under this subchapter. If land application for industrial wastewater is authorized by a permit, then an authorization under this subchapter is not required. If the land application activity, however, is not authorized by a permit or by commission rules other than those in this subchapter, then authorization is required. The end use may be eligible for authorization under this subchapter or may require authorization under a commission-issued permit. The rule language in proposed §210.51(d) - (f) has been relettered to §210.51(e) - (g). Nothing in this adopted subchapter will alter any existing requirements to obtain a water right authorization.

Adopted new §210.52, Definitions, defines terms used in the subchapter. The majority of the terms in this section are in the existing section, but several terms were added based on the new rule language. The additional definitions include acronyms for the Code of Federal Regulations (CFR) and standard units (su). Definitions for “Containing,” “Dioxins and furans,” “End use,” “Land application,” “On-site,” “Playa lake,” “Process wastewater,” and “Tail water” were added to the definition section to clarify the meaning of the terms as used in this subchapter. “End use” and “Land application” were

added based on comments received by the commission requesting additional clarity on the applicability of the rule. These added definitions will better define what activities should obtain authorization under this rule. Additionally, the commission changed the word “waters” to the word “water” in §210.52(5) because of the language in TWC, §26.001. Finally, the commission renumbered the definitions in this section to accommodate the added terms.

“Containing” is defined as when the pollutant(s) of concern are measured at levels which exceed the minimum analytical level (MAL). This definition is included to improve readability of the rules. This term explains standard practice used by wastewater permitting staff to determine what is considered a measurable amount of a particular pollutant in a waste stream. If the level of a pollutant in a waste stream is measured above the MAL, then the effluent is considered by staff to contain that pollutant.

The term “Dioxins and furans” is defined as tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans. This definition is from 30 TAC §335.1(35), Definitions.

The term “End use” is defined as landscape irrigation, soil compaction, dust suppression, impoundment maintenance, or industrial wastewater that is otherwise land applied in accordance with all applicable regulations. The commission added this definition to clarify the activities that the rule is intended to authorize. This definition of this term is inferred throughout the rule, but is now included here for clarification. The commission modified the definition by adding language to clarify that industrial wastewater that is land applied must be applied in accordance with all applicable regulations.

The commission changed the definition of “Industrial reclaimed water” in §210.52(7) from “Any industrial wastewater which has been treated, if necessary, to a quality suitable for beneficial use” to “Any industrial wastewater which has been treated, if necessary, to a quality suitable for land application for beneficial use.” The commission made this change to further clarify that this subchapter is intended to regulate industrial wastewater used for land application.

The term “Land application” is defined as the discharge of waste adjacent to water in the state. This term was added based on comments received by the commission requesting additional clarification on the applicability of the rule. This definition was taken from the *Instructions for Completing The Industrial Wastewater Permit Application*.

“On-site” is defined as the use of industrial reclaimed water within the boundaries of the producer’s facility or within the boundaries of the property that is contiguous to the producer’s facility and owned or operated by the producer. This definition is in the existing Subchapter E, but is not included in the definition section. It has been added to the definition section for clarity. The commission has modified this definition by adding the words “or operated” to clarify that a facility operated by the producer is covered by this definition.

“Playa lake” is defined as a shallow (generally less than one meter deep), isolated, naturally ephemeral approximately circular lake located in an enclosed basin in the High Plains and West Central Plains areas of the state. This definition is taken from the “*Glossary of Geology, 2nd Ed, Robert L. Bates & Julia A. Jackson, 1980*,” and has been modified to fit this subchapter.

“Process wastewater” is defined as any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. This definition is taken from 40 CFR Part 122.2, Definitions.

“Tail water” is defined as the runoff of irrigation water from the lower end of an irrigated field. This definition is taken from the United States Environmental Protection Agency’s (EPA) “*Terms of Environment*” webpage at www.epa.gov/OCEPAterms.

Adopted new §210.53, Wastes Eligible for Coverage, expands and clarifies the existing language in §210.54, Authorization of Industrial Reclaimed Water Use. The existing requirements in §210.53 have been moved to adopted new §210.56. Adopted new §210.53 clarifies that there are two tiers of authorization labeled as “Level I” and “Level II.” In the existing Subchapter E, the eligibility requirements for Level I are in §210.54(b) and for Level II in §210.54(c). Eligibility for Level I authorization in the adoption is the same as the existing subchapter, but more specific requirements regarding disposal methods as an alternative to reuse and end uses for industrial reclaimed water are established. Wastes eligible under Level I authorization are the same as in the existing rule; however, a limit is set for total dissolved solids (TDS) for cooling tower blowdown. Cooling tower blowdown can have high concentrations of TDS (greater than 2,000 milligrams per liter (mg/l)) which can negatively affect plant uptake of water. Water treatment filter backwash, external building washwater, and pavement wash water are included under Level I authorizations because of minimal water quality concerns. A person who is eligible to obtain a Level I authorization would not be required to submit an

authorization that is consistent with the existing rule. The majority of the eligibility requirements for Level II authorizations are continued from the existing rule. Under the adopted rule, a producer is now required to submit the application to request authorization. The existing rule requires the user to submit the application; however, the application required the producer to provide a majority of the information. Additionally, the eligibility requirements have been clarified. In §210.53(a)(9), the commission corrected the name of §210.54 from Waste Not Eligible for Coverage to Wastes Not Eligible for Coverage.

The commission modified language in §210.53(a)(1), (7), and (9) and subsection (b), (b)(1), and (b)(5) to make grammatical changes and for enhanced readability and clarity. Additionally, the commission added the word “primary” to §210.53(a) to clarify that a producer is eligible for a Level 1 authorization that has a primary disposal method as an alternative for reuse and complies with the other requirements in this subsection. In §210.53(a)(9), the commission moved the note from the table into the rule language to make clear that for all other priority pollutants list in 40 CFR Part 122 Appendix D, Table II and III, the threshold level is set at the minimum analytical level.

Adopted new §210.54, Wastes Not Eligible for Coverage, replaces the existing §210.54, Authorization of Industrial Reclaimed Water Use. The existing requirements in §210.54 have been moved to adopted new §210.53. The adopted §210.54 is a new section not found in the existing Subchapter E. This adopted section delineates the types of wastes that the executive director will not consider for authorization. The intent of the rule is to consider water reuse for wastes with little or no water quality concerns. The wastes listed in this section are wastes that have high pollutant potential or otherwise

require more oversight or other authorization than the rule provides. These wastes include wastewater that may contain radioactive material regulated under Texas Health and Safety Code, Chapter 401, pesticides, dioxin and furans, wastes that are characteristically hazardous or classified as hazardous, process wastewater from facilities regulated under 40 CFR Parts 400 - 471 with a few exceptions, septic tank waste, chemical toilet waste, grit trap waste, grease trap waste, barge cleaning washwater, and air scrubber washwater. Additionally, where process wastewater is prohibited for use from facilities regulated under 40 CFR Parts 400-471, the use of remediated/contaminated groundwater from these facilities is also prohibited. The producer may not obtain coverage under this subchapter for any wastewater that is regulated under 30 TAC Chapter 321, Control of Certain Activities by Rule, or where an issued general permit for land application is available. The waste is more properly handled under that authorization, because the waste will be evaluated more thoroughly and limitations specific to that waste will be developed. Furthermore, the adopted section clarifies that, if a facility is eligible for coverage under this subchapter but does not implement all the required conditions, the facility will be required to obtain proper permit coverage. The adopted section will also prohibit irrigation or storage within the boundaries of a playa lake. The executive director has determined that playa lakes can directly recharge groundwater; therefore, a discharge permit is required for that activity. In §210.54(c), the commission corrected the name of 30 TAC Chapter 213 from Edward's Aquifer to Edwards Aquifer.

In §210.54(a)(5), the commission added the word "Part" in front of each CFR part number; in §210.54(b) deleted a comma; and in §210.54(d) deleted an extraneous word. The commission made all these changes for clarity and enhanced readability.

Adopted new §210.55, Application Requirements for Authorization, replaces the existing §210.55, Record Keeping and Reporting. The recordkeeping and reporting requirements in existing §210.55 have been moved to adopted new §210.57, Sampling and Record Keeping Requirements. Adopted §210.55 is a new section that clarifies the information required for application submittal. Level I authorizations do not require an application to be submitted. For Level II authorizations, the adopted section outlines the minimum information required for the application. The information required is the same information as in the existing application with the exception of two items: liner certification and the location of the facility in relation to the Edwards Aquifer. This information is necessary to ensure the producer complies with §210.23, Storage Requirements for Reclaimed Water, and Chapter 213, Edwards Aquifer.

Further, this section revises the effluent testing requirements in the application based on the type of wastewater adopted for use as industrial reclaimed water. In the existing rules, the applicant must provide effluent results for all priority pollutants. This extensive amount of testing is no longer necessary since facilities with effluent that, for example, may contain pesticides may not obtain authorization. Testing requirements for higher strength wastes will, however, continue to be more extensive than lower strength wastes. For example, process wastewater will require more testing than reverse osmosis reject water. Threshold levels would be increased by a factor of three for antimony, arsenic, barium, beryllium, cadmium, copper, lead, manganese, nickel, selenium, silver, thallium, and zinc as indicated in the figure contained in §210.53(a)(9). The original cutoff levels were at the MAL and often many of these metals are detected even though they are not a concern when detected at the MAL. By increasing the threshold level by a factor of three, more facilities will be able to obtain Level

I authorization and still not present any water quality concerns at and below the threshold level. The remaining pollutants were left at the original threshold level or MAL because of water quality concerns at the detection level. This section also clarifies that if the end use is not on-site, the producer is subject to additional requirements in §210.4. In §210.55(b)(1), (6), and (7), the commission reworded the paragraphs for clarity and enhanced readability.

Adopted new §210.56, Authorization Requirements, includes and expands the information in existing §210.53, Requirements in Other Subchapters. Adopted new §210.56 outlines the requirements for Level I and Level II authorizations. This section includes requirements from other subchapters, general requirements, irrigation requirements, storage requirements, liner requirements, and requirements for off-site use. These requirements are in the existing subchapter, but are unclear because of general references and location of the requirements within the subchapter. Subsection (a) incorporates §210.53 in its entirety. Previously, §210.53 was located before the eligibility requirements section which made it unclear how to apply the section. A reference to the requirements of §210.22(a) and (e) has been added in §210.56(a)(6). Section 210.22(a) prohibits the reuse of untreated wastewater. Since industrial wastewater does not necessarily require treatment, this requirement would inadvertently prohibit reuse where treatment is not necessary, such as cooling tower blowdown and vegetable wash water.

Subsection (e) states that ponds used for storage may discharge into water in the state as a result of a storm event or in accordance with a permit. Since Subchapter E does not require the producer to hold a permit to be eligible for a Subchapter E authorization, this subsection does not apply. A discharge from a facility that does not have an appropriate permit violates TWC, §26.121. The commission deleted the “relating to” reference in §210.56(a)(3) - (6), because the section titles had previously been defined in

§210.56(a)(1). The commission reworded language in subsections (a)(1) and (6), (b)(4) and (b)(5), and (d)(2) for clarity and enhanced readability. Additionally, the commission deleted commas in subsection (i)(2). The commission made these changes for clarity and enhanced readability.

Adopted new subsection (b) outlines the minimum requirements for Level I authorizations. These requirements are continued from the existing subchapter with one change. Subsection (b) contains a list of authorized means of disposal as an alternative to reuse that are appropriate under this subchapter. This provides guidance for the acceptable types of disposal methods. The commission deleted (b)(1)(C) from the proposed rule because this disposal method is not regulated by the state or a municipality in a manner that would ensure proper treatment and disposal of the waste. A person, however, may still use this option, but must submit a Level II application for authorization. Additionally, the commission changed the word “waters” to the word “water” in the relettered §210.51(b)(1)(C), because of the language in TWC, §26.001. Subsection (b)(3) clarifies that, if the producer’s facility is within the service area of a publicly-owned treatment works (POTW), the producer must provide notice to the POTW of the producer’s intent to use industrial wastewater under this subchapter. Subsection (b)(4) clarifies that the storage, use, or distribution of industrial reclaimed water may not cause nuisance conditions to arise and will help ensure the facility operates in a manner to discourage odor and insect problems. Subsection (b)(5) clarifies that the producer, provider, and user must comply with all applicable rules under Chapter 335.

Adopted new subsection (c) requires that if the producer is eligible for Level I authorization, but does not implement all of the requirements for a Level I authorization, the producer must apply for Level II authorization.

Adopted new subsection (d) clarifies what limitations the producer will be required to follow. All holders of Level II authorizations will be required to meet a total organic carbon limit of 55 mg/l and a pH between 6.0 to 9.0 su. These limitations were identified in the existing subchapter, but will now be required for every authorization. These two parameters are indicator parameters used to identify the general quality of the water and are continued from the existing rule. This requirement is in existing §210.51, but will be added to the recordkeeping requirements in adopted new §210.57 to clarify what the authorization requires. The executive director continues to have authorization to establish additional limitations and/or monitoring requirements as the executive director deems appropriate.

Adopted new subsection (e) clarifies that Level II authorizations do not change any general or individual permit limits or requirements for an industrial wastewater discharge activity.

Adopted new subsection (f) ensures that irrigation water is used properly. The commission deleted §210.56(f)(1) because after re-evaluating the proposed maximum hydraulic application rate the commission determined an application rate was not appropriate for this subchapter. Since industrial reclaimed water is used as needed by the facility, restricting the hydraulic application rate may preclude water reuse during extreme drought situations. Moreover, the management practices in this subchapter ensure industrial reclaimed water is managed in such a way as to prevent runoff, nuisance conditions,

and percolation to groundwater. Because the commission deleted §210.56(f)(1), the commission renumbered §210.56(f)(2) - (6) to §210.56(f)(1) - (5). The existing subsection in §210.53 requires that the facility comply with the applicable parts of Chapter 210, Subchapters A - D. This information, however, was not provided in a location where the user could easily locate and understand the requirements. The last four requirements of the subsection are best management practices and buffer zone requirements for facilities that irrigate using industrial reclaimed water. These requirements are standard for irrigation permits. In renumbered §210.51(f)(2), the commission changed the word “waters” to the word “water” because of language in TWC, §26.001.

Adopted new subsection (g) establishes requirements for storage of industrial reclaimed water. The two-foot freeboard requirement is a standard requirement for industrial impoundments to ensure the pond does not overflow. This subsection establishes a new requirement prohibiting the use of ponds for disposal. Discharges to water in the state are not authorized under this subchapter.

Adopted new subsection (h) was included by reference in the existing rule under §210.53; however, the location of this reference made the requirement unclear and difficult to understand. All Level I and Level II authorizations will continue to be considered Type I effluent where contact between the effluent and humans is likely.

Adopted new subsection (i) includes the requirement from existing §210.53(c) and (e). This requirement was unclear because neither the application nor existing §210.53(c) and (e) clearly indicated that additional information is required for off-site use.

Adopted new subsection (j) clarifies that an authorization to use industrial reclaimed water is separate from the general and individual permit requirements for wastewater discharges under 30 TAC Chapter 205, General Permits for Waste Discharges, and 30 TAC Chapter 305, Consolidated Permits.

Adopted new §210.57, Sampling and Record Keeping Requirements, is a new section that expands the rule language in existing §210.55 and clarifies the monitoring, sampling, and recordkeeping requirements for the producer and user for each level of authorization. The section also clarifies that Level I authorizations do not have any sampling or recordkeeping requirements. Level II authorizations have an expanded list of requirements from the existing subchapter. Clarifications were made regarding how, what, when, and where sampling shall be conducted. The section further explains the responsibilities of the producer when the industrial water does not meet the limitations in the authorization. The existing rule did not address this situation. The adopted new section requires that if the limitations are not met, the producer must use the primary means of disposal listed in the reuse application instead of reuse. However, if the producer can treat the water to meet the limitations, the water may be used as industrial reclaimed water. Under new §210.57(b)(2)(C), the user will be required to maintain records regarding application rates if the user will be irrigating with industrial reclaimed water. This information was not required in the existing subchapter, but to assist in site evaluation, it is important to have performance records on-site. In subsection (b)(1)(B) and (2)(A), the commission reworded the text for clarity and enhanced readability.

Adopted new §210.58, Existing Authorizations, is a new section that clarifies how the adopted rule affects existing authorizations. Any producer holding a Level II authorization under the existing rule

(the authorization that required application submittal) is exempt from reapplying under the adopted rules. Since these applications were reviewed by staff and existing and adopted authorization requirements are similar, these applications do not require additional review. For existing authorizations where an application was not required for agency approval, the producers must reevaluate its processes against the adopted rules and determine the appropriate level of coverage. If a producer is no longer authorized under a Level I authorization, the producer will need to obtain authorization for the use of industrial wastewater within 180 days of the effective date of this subchapter.

Adopted new §210.59, Executive Director Denial or Suspension Authorization, is a new section that clarifies the criteria the executive director may use in denying or suspending an authorization. The existing rule does not provide clear guidance under what circumstances an authorization may be denied or suspended. Compliance history will now be reviewed as part of Level II authorization requests as required by 30 TAC Chapter 60, Compliance History.

In §210.59(a), the commission added the word “aquifer” to clarify that the executive director may deny or suspend an authorization request to use industrial reclaimed water under this subchapter based on close proximity to an aquifer. The addition of this water source creates a more comprehensive list of water sources that may be impacted by water reuse activities. In subsection §210.59(b), the commission changed the word “authorization” to the word “suspension” to clarify that a suspension issued under this subchapter will include the items listed in this subsection. In (b)(1)(C), (3)(C), and (C)(v), the commission reworded the text for clarity and enhanced readability. In §210.59(c), the

commission added the words "or denied" to clarify that an authorization can be denied based on the evaluation of compliance history as outlined in 30 TAC Chapter 60.

Adopted new §210.60, Fees, is a new section that clarifies that all Level II authorization requests are subject to a \$100 application fee. The fee is continued from the existing application, but it was not addressed in the existing rule. Persons obtaining Level I authorizations are not subject to the \$100 application fee because an application is not required.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. Major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This adoption does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this adoption is to clarify existing regulations in order to make them easier to follow.

In addition, the adopted rules do not meet the criteria for a major environmental rule as set out in the Texas Government Code, because §2001.0225 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. First, there are no federal law standards relating to or applicable to the reuse of industrial wastewater effluent. Therefore, there are no applicable standards set by federal law that could be exceeded by these rules. Second, the requirements of these adopted rules seek to carry out the commission's statutory authority to protect the quality of water in the state in accordance with TWC, §26.011. Therefore, the rulemaking does not exceed an express requirement of state law. Third, the commission is not a party to a delegation agreement with the federal government concerning a state and federal program that would be applicable to requirements set forth in these rules. Therefore, there are no delegation agreement requirements that could be exceeded by these rules. Fourth, the commission adopts these rules to protect the quality of water in the state in accordance with and in furtherance of its authority under state law in TWC, §26.011 and §26.121. Therefore, the commission does not adopt these rules solely under the commission's general powers. The commission concludes that a regulatory analysis is not required in this instance because the adopted rules do not trigger the definition of major environmental rule in Texas Government Code, §2001.0225.

In general, this rulemaking will repeal the existing Chapter 210, Subchapter E, which sets out the requirements that authorize a person to reuse industrial wastewater as industrial reclaimed water and replace it with a new Subchapter E which will clarify the requirements. Specifically, the adopted rules

include: 1) the general requirements applicable to producers, providers, and users of industrial reclaimed water; 2) the requirements and specifications for the transfer, storage, and irrigation of industrial reclaimed water; 3) the requirements and specifications necessary to minimize the discharge of waste into or adjacent to water in the state; 4) the specific manner in which industrial reclaimed water may be used; 5) the standards for the quality of industrial reclaimed water; and 6) the standards for monitoring and recordkeeping. Most importantly, this rulemaking will continue the two-tiered authorization process for the reuse of industrial wastewater - Level I and Level II authorizations.

A significant change in the adopted rules is the list of specific waste sources that are not eligible for coverage under this subchapter regardless of effluent quality or proposed end use because these types of high-strength wastes are more appropriately regulated under an individual wastewater discharge permit. Furthermore, the adoption outlines the executive director's criteria to suspend or deny an authorization. Finally, the rulemaking adds the existing fee into the rule language.

TAKINGS IMPACT ASSESSMENT

The commission performed a takings impact assessment of these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to continue to encourage and facilitate the reuse of treated industrial wastewater effluent for beneficial purposes, assist in the conservation of surface and groundwater, ensure the protection of public health, protect the quality of surface and groundwater, and help ensure an adequate supply of water for present and future needs. In addition, the adoption provides that certain waste sources must be authorized by an individual permit. The rulemaking also clarifies that the executive director may suspend or deny a request for

authorization if the authorization request poses a potential adverse impact. Thus, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because the promulgation and enforcement of these rules will not create a burden on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the adopted rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

Therefore, the adopted rules are not subject to the CMP.

PUBLIC COMMENT

The comment period closed at 5:00 p.m. on August 12, 2002. The commission did not hold a public hearing regarding these rules. The commission received written comments from the Texas Chemical Council (TCC) and Texas Instruments (TI).

No commenter generally opposed the proposal. TCC and TI suggested modifications to the proposed rules to clarify their applicability as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

TCC commented that the proposed rule language was not clear that the rules were intended to limit application of industrial reclaimed water to reclaimed water that is not currently listed in a TPDES permit. TCC suggested that the commission clarify the applicability of the proposed rule language, which is to address wastewater streams that are not currently covered by a permit. TI commented that the proposed rule language in §§210.51 - 210.55 appears to impact their ability to reuse water within their facilities and requested that the commission clarify the rules' applicability.

The commission responds that Subchapter E applies to the use of industrial reclaimed water for various land application methods, such as landscape irrigation or dust suppression. This subchapter is not intended to regulate industrial wastewater recycled to various processes within a facility. Section 210.51(c) provides that, “The requirements of this subchapter to obtain an authorization do *not* apply to the end use of industrial reclaimed water when the end use is authorized by permit...” (Emphasis added). The commission clarified §210.51(c) by replacing the word “use” with the words “end use” and adding, “The end uses of industrial wastewater that are subject to the requirements of this subchapter include landscape irrigation, dust suppression, soil compaction, impoundment maintenance, or industrial wastewater that is otherwise land applied.” These changes clarify that the end use, which in this subchapter only includes land application, is the determining factor for applicability under this subchapter. If land application for industrial wastewater is authorized by a permit, then an authorization under this subchapter is not required. If the land application activity, however, is not authorized by a permit or by commission rules other than those in this subchapter, then authorization is required.

The end use may be eligible for authorization under this subchapter or may require authorization under a commission-issued permit. Further, the commission revised §210.51(c) to provide clarification that land application of industrial reclaimed water that is authorized in a permit, including a TPDES permit or a Texas Land Application permit, does not require additional authorization under Subchapter E.

Additionally, the commission modified the definition of “Industrial reclaimed water” in §210.52(8) to include “land application for beneficial use.” The commission also added definitions for “Land application” and “End use.” The commission defined “Land application” as “an activity where industrial wastewater is disposed adjacent to water in the state,” and “end use” as “landscape irrigation, soil compaction, dust suppression, impoundment maintenance, or industrial wastewater that is otherwise land applied.” The commission made these changes to further clarify that this subchapter is intended to regulate industrial wastewater used for land application.

Finally, the commission added a new §210.51(d) which states, “internal recycling systems, closed loop systems, and systems that use industrial wastewater as makeup water within a facility process are not subject to the requirements of this subchapter.” The commission added this subsection to clarify that this subchapter is not applicable to industrial wastewater that is recycled to a process within a facility or used as makeup water for an industrial process since this activity is not a land application activity.

TCC suggested that the commission establish exemptions in this proposed rule for “reuse that does not discharge into or adjacent to waters of the State, or has the potential for human contact.”

The commission agrees in part with TCC’s suggestion to state in the rules that certain activities are not covered by Subchapter E, including industrial recycled wastewater that does not discharge into or adjacent to water in the state. The commission added §210.51(d) to clarify that internal recycling systems, closed loop systems, and systems that use industrial wastewater as makeup water within a facility process are not subject to the requirements of this subchapter. The commission did not include the language the commenter suggested. The proposed language could be interpreted that wastewater that does discharge to water in the state (i.e., directly to surface water) may need an authorization under this subchapter and was not included in the rule.

TI requested clarification about whether internal recycling water, including: 1) collected rinse water, which if discharged would be subject to 40 CFR Part 469; 2) brine water from reverse osmosis plants; and 3) pH-neutralized water, is covered under the proposed rule. TI further commented that none of these waters are used for irrigation.

The commission responds that Subchapter E applies to various land application methods, such as landscape irrigation or dust suppression. This subchapter is not intended to regulate industrial wastewater recycled to various processes within a facility. The commission added §210.51(d) to clarify that internal recycling systems, closed loop systems, and systems that use industrial wastewater as makeup water within a facility process are not subject to the requirements of this

subchapter. Thus, since collected rinse water, brine water from reverse osmosis, and pH-neutralized water are not use for irrigation or otherwise land applied, these waters are not subject to the requirements of this rule.

TI commented that it did not understand why the commission requires notice about internal recycling systems to local POTW since this is not regulated by POTWs and requested that the proposed rule be modified to clarify its applicability.

The commission responds that §210.56(b)(3) requires a producer's facility within the service area of a POTW to provide notice to the POTW of the producer's intent to use industrial reclaimed water under this subchapter. Since §210.51(d) states that internal recycling systems are not subject to Subchapter E, there is no notice requirement for internally recycled industrial wastewater. No change has been made to the rules in response to this comment.

**SUBCHAPTER E: SPECIAL REQUIREMENTS FOR USE OF
INDUSTRIAL RECLAIMED WATER**

§§210.51 - 210.55

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, which provides the commission the general powers to carry out duties under TWC and §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. In addition, TWC, §26.011 states that the commission shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in the state. Finally, TWC, §26.121, provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state or commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state.

§210.51. When Authorization Is Required and How To Obtain It; Effect on Permitted Discharges.

§210.52. Definitions.

§210.53. Requirements in Other Subchapters.

§210.54. Authorization of Industrial Reclaimed Water Use.

§210.55. Record Keeping and Reporting.

**SUBCHAPTER E: SPECIAL REQUIREMENTS FOR USE
OF INDUSTRIAL RECLAIMED WATER**

§§210.51 - 210.60

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.102, which provides the commission the general powers to carry out duties under TWC and §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 TWC and other laws of this state. In addition, TWC, §26.011 states that the commission shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in the state. Finally, TWC, §26.121, provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state or commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state.

§210.51. Applicability, Purpose, and Scope.

(a) A person proposing to use industrial wastewater as industrial reclaimed water may obtain authorization under this subchapter if all of the requirements of the subchapter are met. The purpose of this subchapter is to establish the applicable requirements for industrial reclaimed water use which may be used instead of potable water or raw water. As defined and specified in this subchapter, the requirements must be met by the producers, providers, and users of industrial reclaimed water. These

requirements are intended to allow the safe utilization of reclaimed water for conservation of surface water and groundwater, to ensure the protection of public health, to protect surface water and groundwater from contamination, and to help ensure an adequate supply of water resources for present and future needs.

(b) This subchapter establishes the following requirements for producers, providers, and users of industrial reclaimed water:

- (1) general requirements applicable to producers, providers, and users;
- (2) requirements and specifications for transfer, storage, irrigation, and other end uses;
- (3) requirements and specifications necessary to minimize the impact of discharge of waste into or adjacent to water in the state;
- (4) specific uses of industrial reclaimed water;
- (5) standards for the quality of industrial reclaimed water;
- (6) standards for monitoring and recordkeeping; and
- (7) payment of fees.

(c) The requirements of this subchapter to obtain an authorization do not apply to the end use of industrial reclaimed water when the end use is authorized by permit, including, but not limited to, a Texas Pollutant Discharge Elimination System permit or a Texas Land Application permit, or by commission rules other than those in this subchapter. The end uses of industrial wastewater that are subject to the requirements of this subchapter include landscape irrigation, dust suppression, soil compaction, impoundment maintenance, or industrial wastewater that is otherwise land applied for a beneficial purpose. When a use of industrial reclaimed water is regulated under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), that use shall comply with the requirements of Chapter 335 of this title in addition to the requirements of this subchapter.

(d) Internal recycling systems, closed loop systems, and systems that use industrial wastewater as makeup water within a facility are not subject to the requirements of this subchapter.

(e) The use of industrial wastewater as industrial reclaimed water as authorized by this subchapter does not require an amendment of any issued industrial wastewater discharge permit to recognize the activity authorized under this subchapter. Effluent limitations in the industrial wastewater discharge permit remain in effect for and during industrial reclaimed water use activities.

(f) Industrial reclaimed water projects approved under this subchapter do not require a new or amended permit from the commission except as provided by §210.5 of this title (relating to Authorization for the Use of Reclaimed Water). To develop projects not specifically authorized by this

subchapter, a person may seek authorization for a new or amended waste discharge permit under Chapter 305 of this title (relating to Consolidated Permits).

(g) Nothing in this subchapter shall alter any requirement to obtain a water right authorization.

§210.52. Definitions.

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

(1) **Blowdown** - The discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts that could damage or impair machinery, equipment, or systems.

(2) **CFR** - Code of Federal Regulations.

(3) **Commingled wastewater** - Industrial wastewater that contains any amount of domestic wastewater.

(4) **Containing** - When the pollutant(s) of concern are measured at levels that exceed the minimum analytical level.

(5) **Discharge** - The release or disposal of waste into or adjacent to any water in the state that in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state.

(6) **Dioxins and furans** - Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(7) **End use** - Landscape irrigation, soil compaction, dust suppression, impoundment maintenance, or industrial wastewater that is otherwise land applied in accordance with all applicable regulations.

(8) **Industrial reclaimed water** - Any industrial wastewater which has been treated, if necessary, to a quality suitable for land application for beneficial use.

(9) **Industrial wastewater** - A non-domestic or non-municipal wastewater.

(10) **Land application** - The discharge of waste adjacent to water in the state.

(11) **MGD** - Million gallons per day.

(12) **Minimum analytical level (MAL)** - The lowest concentration at which a particular substance can be quantitatively measured in the matrix of concern (i.e., wastewater) with a defined precision level, using approved analytical methods.

(13) **Non-contact cooling water** - Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, by-product, or finished product.

(14) **On-site** - The use of industrial reclaimed water within the boundaries of the industrial facility or within the boundaries of property that is contiguous to the facility and owned or operated by the producer.

(15) **Once-through cooling water** - Water passed through main cooling condensers in one or two passes for the purpose of removing waste heat.

(16) **Playa lake** - A shallow (generally less than one meter deep), isolated, naturally ephemeral approximately circular lake located in an enclosed basin in the High Plains and West Central Plains areas of the state.

(17) **POTW** - Publicly-owned treatment works.

(18) **Priority pollutants** - The pollutants as listed in 40 CFR Part 122, Appendix D, Tables 2 and 3, plus 2,3,7,8-Tetrachlorodibenzo-p-dioxin and asbestos.

(19) **Process wastewater** - Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(20) **Producer** - A person who produces industrial reclaimed water as identified in this subchapter.

(21) **SU** - Standard units.

(22) **Tail water** - The runoff of irrigation water from the lower end of an irrigated field.

§210.53. Wastes Eligible for Coverage.

(a) Level I eligibility. A producer is eligible for Level I authorization if the producer uses any of the following wastes on-site and has a primary disposal method as an alternative to reuse and an end use listed in §210.56(b) of this title (relating to Authorization Requirements):

- (1) air conditioner condensate; compressor condensate; steam condensate; or condensate that forms externally on steam lines and is not process wastewater;
- (2) washwater from washing whole fruits and vegetables;
- (3) non-contact cooling water;
- (4) once through cooling water;
- (5) water treatment filter backwash;
- (6) water from routine external washing of buildings, conducted without the use of detergents or other chemicals;
- (7) water from routine washing of pavement conducted without the use of detergents or other chemicals and where spills or leaks of toxic or hazardous waste have not occurred (unless spilled material has been removed);
- (8) cooling tower blowdown with a total dissolved solids concentration less than 2,000 milligrams per liter; or

(9) wastewater with measured effluent concentrations at or below threshold levels listed in the figure contained in this paragraph that is not a waste source listed in §210.54(a) of this title (relating to Wastes Not Eligible for Coverage). For all other priority pollutants in 40 CFR Part 122 Appendix D, Tables II and III, the threshold level is set at the minimum analytical level.

Figure: 30 TAC §210.53(a)(9)

Threshold Levels for Industrial Reclaimed Water					
Table 1					
Parameter	Threshold (mg/l)	MAL (mg/l)	Parameter	Threshold (mg/l)	MAL (mg/l)
Conventionals & Nonconventionals			Metals		
Total Organic Carbon	55	-	Copper, total	0.030	0.010
Oil and Grease	10	-	Lead, total	0.015	0.005
Total Dissolved Solids	2000	-	Manganese	0.05	--
Nitrate Nitrogen	10	-	Mercury, total	0.0002	0.0002
Metals			Nickel, total	0.030	0.010
Antimony, total	0.09	0.03	Selenium, total	0.030	0.010
Arsenic, total	0.030	0.010	Silver, total	0.006	0.002
Barium, total	0.030	0.010	Thallium, total	0.030	0.010
Beryllium, total	0.015	0.005	Zinc, total	0.015	0.005
Cadmium, total	0.003	0.001	Cyanide, free	0.200	---

(b) Level II eligibility. A producer is eligible to apply for Level II authorization for any of the following:

(1) industrial reclaimed water containing pollutant concentration levels which exceed threshold levels listed in the figure contained in subsection (a)(9) of this section, but which is not a listed waste in §210.54(a) of this title;

(2) industrial reclaimed water that contains any amount of domestic wastewater;

(3) the proposed end use of industrial reclaimed water is not on-site;

(4) the proposed end use is not listed in §210.56(b)(2) of this title; or

(5) the disposal method proposed as an alternative to reuse is not listed in §210.56(b)(1) of this title.

§210.54. Wastes Not Eligible for Coverage.

(a) The following wastes are not eligible for authorization under this subchapter regardless of effluent quality or end use:

(1) wastewater containing radioactive material regulated under Texas Health and Safety Code, Chapter 401;

(2) wastewater containing dioxin and furans;

(3) wastewater containing pesticides;

(4) wastewater classified as or which is characteristically hazardous as defined by 40 Code of Federal Regulations (CFR) Part 261;

(5) process wastewater regulated under 40 CFR Parts 400 - 471 with the following exceptions:

(A) Part 405 - dairy products processing;

(B) Part 406 - grain mills;

(C) Part 407 - canned and preserved fruits and vegetables;

(D) Part 408 - canned and preserved seafood processing;

(E) Part 409 - sugar processing;

(F) Part 411 - cement manufacturing;

(G) Part 417 - soap and detergent manufacturing;

(H) Part 423 - steam electric power generating;

(I) Part 434 - coal mining;

(J) Part 436 - mineral mining and processing;

(K) Part 454 - gum and wood chemicals manufacturing; and

(L) Part 460 - hospital;

(6) septic tank waste, chemical toilet waste, grit trap waste, or grease trap waste;

(7) barge cleaning washwater;

(8) air scrubber wastewater;

(9) any wastewater where a permit by rule authorized under Chapter 321 of this title (relating to Control of Certain Activities by Rule) or commission-issued general permit for land application is available; or

(10) remediated/contaminated groundwater generated from facilities where process wastewater is prohibited for use as listed in paragraph (5) of this subsection.

(b) Producers who could otherwise be eligible to obtain authorization under this chapter, but who do not implement all required applicable conditions of this authorization must apply for and obtain permit coverage.

(c) Discharges into or adjacent to water in the state shall not be authorized under this chapter where prohibited by applicable rules including, but not limited to, Chapter 213 of this title (relating to Edwards Aquifer); Chapter 311 of this title (relating to Watershed Protection); and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(d) Any user proposing to irrigate or store wastewater within the boundaries of a playa lake may not obtain authorization under this subchapter and must obtain a Texas Pollutant Discharge Elimination System discharge permit for authorization to discharge into a playa lake.

§210.55. Application Requirements for Authorization.

(a) Level I authorization. Producers eligible for Level I authorization under this subchapter are authorized to use industrial reclaimed water without any notification or approval by the executive director. Effluent sampling is not required for wastes listed in §210.53(a)(1) - (8) of this title (relating to Wastes Eligible for Coverage) with the exception of cooling tower blowdown which must meet the 2,000 milligrams per liter threshold level for total dissolved solids.

(b) Level II authorization. Producers requesting Level II authorization for industrial reclaimed water activities under this subchapter must submit a complete application to the executive director on a form approved by the executive director to request authorization. The use of industrial reclaimed water shall not begin until written authorization is received from the executive director. The application shall include, at a minimum, the following information:

- (1) the legal names and addresses of the user, provider, and producer;
- (2) contact representative for the applicant and telephone number;
- (3) specific description of the producer's and user's facility location including physical address;
- (4) specific description of the proposed industrial reclaimed water use site (if different than the producer's site);
- (5) the proposed end use for the industrial reclaimed water;
- (6) description of the waste source of the industrial reclaimed water;
- (7) the primary disposal method which would be used as an alternative to re-use;

(8) the volume of industrial reclaimed water proposed for end use and the frequency of application;

(9) effluent testing results;

(10) the location of the producer's and user's site in relation to the Edwards Aquifer, if applicable, and;

(11) liner certification, if applicable.

(c) If the end use is not on-site, the producer shall also provide all information described in §210.4 of this title (relating to Notification).

§210.56. Authorization Requirements.

(a) Requirements in other subchapters.

(1) Paragraphs (2) - (6) of this subsection do not apply to commingled water. The commingled wastewater is subject to all requirements of §§210.1 - 210.9 of this title (relating to Applicability; Purpose and Scope; Definitions; Notification; Authorization for the Use of Reclaimed Water; Responsibilities; Transfer and Conveyance of Reclaimed Water; Restrictions; and Enforcement), §§210.21 - 210.25 of this title (relating to Applicability; General Requirements; Storage

Requirements for Reclaimed Water; Irrigation Using Reclaimed Water; and Special Design Criteria for Reclaimed Water Systems), and §§210.31 - 210.36 of this title (relating to Applicability; Specific Uses of Reclaimed Water; Quality Standards for Using Reclaimed Water; Sampling and Analysis; Guidelines for Certain Distribution Systems; and Record Keeping and Reporting).

(2) Except as specified in this subchapter, the requirements for a reclaimed water producer, provider, and user described in Subchapters A - D of this chapter (relating to General Provisions; General Requirements for the Production, Conveyance, and Use of Reclaimed Water; Quality Criteria and Specific Uses For Reclaimed Water; and Alternative and Pre-Existing Reclaimed Water Systems) apply to a producer, provider, and user of industrial reclaimed water.

(3) A producer, provider, or user of industrial reclaimed water is not required to treat industrial water or hold a permit for treatment and disposal as described in §210.1 and §210.5(a) of this title.

(4) A producer who uses industrial reclaimed water on-site only is not required to comply with §210.4 of this title. The producer must comply with all applicable requirements of this subchapter pertaining to the industrial reclaimed water use.

(5) The requirements of §210.25(e), (f), and (h) of this title do not apply to the producer, provider, or user of industrial reclaimed water used on-site only.

(6) The requirements of §§210.22(a) and (e) and 210.31 - 210.36 of this title, do not apply to the producer, provider, or user of industrial reclaimed water.

(b) General requirements. Producers required to obtain Level I authorization to use industrial reclaimed water under this subchapter must comply with the following:

(1) have an authorized means of disposal as an alternative to reuse, which includes one or more of the following:

(A) have authority to discharge under a permit;

(B) have authority to route to a publicly-owned treatment works (POTW); or

(C) have the ability to recycle the industrial reclaimed water in a manner that does not discharge into or adjacent to water in the state;

(2) have an end use which includes one or more of the following and is on-site:

(A) irrigation, including landscape irrigation;

(B) fire protection;

(C) dust suppression and soil compaction;

(D) maintenance of impoundments;

(E) irrigation of non-food crops, including, but not limited to, sod farms and silviculture; and

(F) irrigation of pastures for milking animals.

(3) If the producer's facility is within the service area of a POTW, the producer must provide notice to the POTW of the producer's intent to use industrial wastewater under this subchapter.

(4) The distribution, use, and storage of industrial reclaimed water may not cause or result in nuisance conditions.

(5) The producer, provider, and user also shall comply with all applicable rules under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(c) Eligible Level I authorizations not able to meet §210.56(b). If the producer is eligible for Level I authorization but cannot meet the requirements of subsection (b) of this section, the producer shall submit an application for a Level II authorization to use reclaimed water.

(d) Industrial reclaimed limitations for Level II authorizations.

(1) The producer shall comply with the limitations and monitoring frequencies outlined in subparagraphs (A) - (C) of this paragraph for an authorization request which has been approved by the executive director:

(A) total organic carbon is limited to 55 milligrams per liter and shall be monitored once per month by grab sample;

(B) pH is limited to a minimum of 6.0 standards units (su) and a maximum of 9.0 su and shall be monitored once per week by grab sample; and

(C) the executive director may include additional limitations or increased monitoring frequencies based on information provided by the applicant, or any other available information.

(2) Sampling shall be conducted only if industrial reclaimed water use occurs during the monitoring period. If industrial reclaimed water use occurs less than the specified frequency, samples shall be obtained during use.

(e) General or individual permits. Level II authorization does not change any general or individual permit limits or requirements for an industrial wastewater discharge activity.

(f) Irrigation requirements.

(1) The provider or user shall comply with all requirements regarding irrigation in §210.24 of this title, as well as the requirements of this subchapter.

(2) Irrigation practices shall be designed and managed to prevent contamination of groundwater or surface water and to prevent the occurrence of nuisance conditions. Tail water control facilities shall be provided, where necessary, to prevent the discharge of any industrial reclaimed water from irrigated lands into or adjacent to water in the state.

(3) No industrial reclaimed water may be land applied when the ground is frozen or saturated or during rainfall events.

(4) When applying industrial reclaimed water to land, a buffer area must be maintained around water wells to prevent the possibility of waste transport to groundwater via the well or well casing. Industrial reclaimed water shall not be applied within 250 feet of a private water well (used for domestic or irrigation use) or 500 feet of a public water supply well.

(5) The user shall provide adequate maintenance of the irrigation facilities to ensure that the facilities are in good working condition.

(g) Storage requirements.

(1) All industrial reclaimed water retention, holding, and transfer ponds shall be operated in such a manner as to maintain a minimum freeboard of two feet.

(2) Ponds shall not be used for disposal.

(h) Liner requirements. Under Level I and Level II authorizations, industrial reclaimed water is considered equivalent to Type I reclaimed water. The producer, provider, or user shall comply with liner requirements outlined in §210.23 of this title.

(i) Off-site use.

(1) Any proposed use of industrial reclaimed water which is not considered on-site must comply with the requirements in the following sections in addition to the applicable requirements of this subchapter:

(A) §210.4 of this title;

(B) §210.6 of this title;

(C) §210.7 of this title; and

(D) §210.25 of this title.

(2) If the producer provides domestic water or wastewater services to the public such as at a university, hospital, hotel, or similar institution then all exposed or buried piping receiving industrial reclaimed water constructed within the boundaries of the industrial facility is exempt from the color coding requirements of §210.25 of this title.

(j) Authorization to use industrial reclaimed water. Authorization to use industrial reclaimed water is separate from the general and individual permit requirements for wastewater discharges under Chapter 205 and Chapter 305 of this title (relating to General Permits for Waste Discharges; and Consolidated Permits).

§210.57. Sampling and Record Keeping Requirements.

(a) Level I authorizations. No additional sampling or monitoring is required by the producer, user, or provider other than the requirements already established in this subchapter.

(b) Level II authorizations.

(1) Sampling.

(A) The producer shall sample the reclaimed water after final treatment, if any, but before distribution to a provider or user and analyze such samples to assure that the water quality meets the limitations required by the authorization. The producer shall sample for the parameters listed

in §210.56(d) of this title (relating to Authorization Requirements) and any additional parameters required by the executive director in the authorization.

(B) If any of the sample results exceed the limitations in the authorization, the producer may not use the wastewater, may not route the industrial wastewater to a user or provider, and shall use the means of disposal instead of reuse. The producer has the option to provide additional treatment to meet the limitations and, if the limitations are met, the water may be used as industrial reclaimed water.

(C) Analytical methods for the analyses shall meet the requirements specified in Chapter 319 of this title (related to General Regulations Incorporated into Permits).

(D) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(2) Recordkeeping requirements.

(A) The producer shall maintain records of notifications made to the executive director under this subchapter concerning industrial reclaimed water use.

(B) The producer shall maintain records of all monitoring activities. These records shall be readily available for inspection by the executive director for a minimum period of five years. Records of monitoring activities shall include:

- (i) date, time, and place of sample or measurement;
- (ii) identity of individual who collected the sample or made the measurement;
- (iii) date of analysis;
- (iv) identity of the individual and laboratory who performed the analysis;
- (v) the technique or method of analysis; and
- (vi) the results of the analysis or measurement.

(C) The user shall maintain an operating log which records irrigation activities and shall be readily available for inspection by the executive director for a minimum period of five years. The operating log shall record irrigation activities which include:

(i) the volume of industrial reclaimed water used for irrigation each day; and

(ii) the actual surface area wetted each day.

§210.58. Existing Authorizations.

(a) A person who has obtained executive director written approval to use industrial reclaimed water under this subchapter is authorized to continue as currently authorized.

(b) If a person is no longer authorized under a Level I authorization, the producer shall obtain authorization for the reuse of industrial wastewater within 180 days of the effective date of this subchapter.

§210.59. Executive Director Denial or Suspension Authorization.

(a) The executive director may deny or suspend an authorization request to use industrial reclaimed water under this subchapter based on potential or actual adverse impact to the environment or on close proximity to a public park, school, recreational area, spring, aquifer, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility, sewage treatment plant, or other location of concern. A determination of potential adverse impact may arise from consideration of such factors as, but not limited to, proposed flow rate, production rate, industrial

reclaimed water quality, nature of the groundwater, soils, or geology of the disposal area. In making a determination of potential adverse impacts, the executive director may also consider such other factors, as he deems appropriate.

(b) The following requirements apply to suspensions of authorizations.

(1) The suspension issued under this subchapter will include a statement that requires the executive director to provide written notice to a person stating that the executive director intends to suspend a person's authority to use reclaimed water under the authorization, including:

(A) a brief statement of the basis for this decision under this subsection;

(B) a statement by the executive director of whether the person shall immediately cease the use of industrial reclaimed water; and

(C) a deadline for obtaining authorization under Texas Water Code (TWC),

Chapter 26.

(2) The executive director may require the person whose authorization to use reclaimed water is suspended to apply for and obtain an individual permit.

(3) The executive director may suspend authorization to use industrial reclaimed water under an existing authorization issued under this subchapter for the following reasons:

(A) the quantity of industrial reclaimed water used, the type of waste or reclaimed water, or the type of operation does not comply with this chapter;

(B) the use, irrigation, or discharge causes a violation of the Texas Surface Water Quality Standards; or

(C) the wastewater used as industrial reclaimed water contains pollutants that cause or contribute to significant adverse effects on water quality. In making this determination, the executive director shall consider the following factors:

(i) the location of the end use for industrial reclaimed water;

(ii) the volume of wastewater used as industrial reclaimed water;

(iii) the quantity and nature of pollutants contained in the wastewater used as industrial reclaimed water;

(iv) whether the use of industrial reclaimed water would adversely affect groundwater quality, inconsistent with the policy specified in TWC, §26.401; and

(v) other factors relating to the protection of water quality.

(c) The compliance history of the producer, provider, and user will be evaluated prior to approval of any Level II authorization under this subchapter. Authorization may be suspended or denied or additional requirements may be established based on the evaluation of compliance history as outlined in Chapter 60 of this title (relating to Compliance History).

§210.60. Fees.

Each application submitted to the executive director for Level II authorization under this subchapter shall include a fee of \$100.