

The Texas Commission on Environmental Quality (commission) proposes amendments to §§288.1 - 288.5, 288.20 - 288.22, and 288.30.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2003, the 78th Legislature passed House Bill 2660, House Bill 2663, and Senate Bill 1094. House Bill 2660 amended Texas Water Code (TWC), §11.1271, and mandated that the commission require certain existing surface water right holders and future surface water right applicants to include specific, quantified five-year and ten-year targets for water savings in their water conservation plans by May 1, 2005. Amended TWC, §11.1271, also requires five-year and ten-year targets for water savings in the water conservation plans of future surface water right applicants and holders of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses. Finally, TWC, §11.1271, includes the deadline for the regulated community to submit its revised water conservation plans and implementation reports to the executive director.

House Bill 2663 amended TWC, §11.1272, to establish target quantified goals for drought contingency plans of wholesale and retail public water suppliers and irrigation districts to be achieved in periods of water shortages and drought by May 1, 2005. TWC, §11.1272, requires wholesale and retail public water suppliers and irrigation districts to amend their drought contingency plans to include quantified targets for water use reductions; however, these quantified targets are only guidelines.

Senate Bill 1094 created the Water Conservation Implementation Task Force (task force). This task force is required to advise the Texas Water Development Board and the commission on standardized

methodology for reporting and using municipal per capita water use data. To accomplish that goal, the task force developed and on January 26, 2004 approved a definition for “municipal use in gallons per capita per day.”

As required by House Bill 2660 and House Bill 2663, the commission is working in conjunction with the Texas Water Development Board to implement this legislation. Additionally, the commission proposes to include the definition of “Municipal use in gallons per capita per day,” as approved by the task force, in these amendments to ensure consistency in the use of the term between the Texas Water Development Board and the commission..

SECTION BY SECTION DISCUSSION

Throughout this rulemaking, the commission has made wording changes to bring the existing rule language into agreement with agency rule writing standards.

The commission specifically solicits comments on changes to ensure that entities preparing water conservation plans assess all reasonable water conservation measures in deciding what options to include and to ensure that the commission has adequate information for reviewing applications for new or amended permits to ensure that all appropriate conservation measures are included.

Subchapter A, Water Conservation Plans

The commission proposes amendments to this subchapter to implement House Bill 2660.

Amended §288.1, Definitions, would add a definition for municipal use in gallons per capita per day. House Bill 2660 requires target goals to be in “municipal use in gallons per capita per day” and the commission proposes the addition of this definition, as adopted by the task force, to ensure consistency between the commission and the Texas Water Development Board in the use of this term. Subsequent definitions would be renumbered to accommodate the new term.

Amended §288.2, Water Conservation Plans for Municipal Uses by Public Water Suppliers, contains revisions to the rule that would apply to water conservation plans for municipal uses by public water suppliers.

Amended §288.2(a)(1)(B) would specify that the current requirement for specification of conservation goals will remain in effect until May 1, 2005, to account for water conservation plans for municipal use by public water suppliers that are prepared before the statutory deadline of May 1, 2005.

New §288.2(a)(1)(C) would add the requirement that the public water supplier specify in its water conservation plans for municipal uses specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for “municipal use in gallons per capita per day” beginning May 1, 2005. Subsequent subparagraphs (C) - (J) would be moved to (D) - (K) to accommodate the new subparagraphs.

New §288.2(c) would require a public water supplier for municipal use to review and update its water conservation plan, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information.

Amended §288.3, Water Conservation Plans for Industrial or Mining Use, contains revisions to the rule that would apply to water conservation plans for industrial or mining use.

Amended §288.3(2) would specify that the current requirement for specification of conservation goals will remain in effect until May 1, 2005, to account for water conservation plans for industrial or mining uses that are prepared before the statutory deadline of May 1, 2005.

New §288.3(3) would add the requirement for industrial or mining water users to specify in their water conservation plans specific, quantified five-year and ten-year targets for water savings and the basis for the development of such goals beginning May 1, 2005. Subsequent paragraphs (3) - (6) would be renumbered as (4) - (7) to accommodate the new paragraph.

New §288.3(8) would require industrial or mining water users to review and update their water conservation plan, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information.

Amended §288.4, Water Conservation Plans for Agricultural Use, would contain the revisions to the rule that would apply to water conservation plans for agricultural use.

Amended §288.4(a)(1)(B) would state that the current requirement to specify conservation goals will remain in effect until May 1, 2005, to account for water conservation plans for agricultural uses that are prepared before the statutory deadline of May 1, 2005.

New §288.4(a)(1)(C) would add the requirement for an agricultural water user to specify in its water conservation plans specific, quantified five-year and ten-year targets for water savings and the basis for the development of such goals beginning May 1, 2005. Subsequent subparagraphs (C) - (F) would be moved to (D) - (F) to accommodate the new subparagraph.

Amended §288.4(a)(2)(D) would state that the current requirement to specify conservation goals will remain in effect until May 1, 2005, to account for water conservation plans for individual irrigation users that are prepared before the statutory deadline of May 1, 2005.

New §288.4(a)(2)(E) would add the requirement for individual irrigation users to specify in their water conservation plans 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 beginning May 1, 2005. Subsequent subparagraphs (E) - (J) would be moved to (F) - (K) to accommodate the new subparagraph.

Amended §288.4(a)(3)(B) would state that the current requirement to specify conservation goals would remain in effect until May 1, 2005, to account for water conservation plans for systems providing agricultural water to more than one user that are prepared before the statutory deadline of May 1, 2005.

New §288.4(a)(3)(C) would add the requirement for systems providing agricultural water to more than one user to specify in their water conservation plans specific, quantified five-year and ten-year targets for water savings including maximum allowable losses for the storage and distribution system.

Subsequent subparagraphs (C) - (J) would be moved to (D) - (K) to accommodate the new subparagraph.

New §288.4(c) would require agricultural water users to review and update their water conservation plan, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information.

Amended Section 288.5, Water Conservation Plans for Wholesale Water Suppliers, contains revisions to the rule that would apply to water conservation plans for wholesale water suppliers.

Amended §288.5(1)(B) would specify that the current requirement for specification of conservation goals remain in effect until May 1, 2005, to account for water conservation plans of wholesale water suppliers that are prepared before the statutory deadline of May 1, 2005.

New §288.5(1)(C) would add the requirement that wholesale water suppliers specify in their water conservation plans, 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, and the basis for the development of the

goals beginning May 1, 2005. Subsequent subparagraphs (C) - (I) would be moved to (D) - (J) to accommodate the new subparagraph.

New §288.5(3) would require the wholesale water supplier to review and update its water conservation plan, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information.

Subchapter B, Drought Contingency Plans

The commission proposes the amendments to this subchapter to implement House Bill 2663.

Amended §288.20, Drought Contingency Plans for Municipal Uses by Public Water Suppliers, contains revisions to the rule that would apply to drought contingency plans for municipal uses by public water suppliers.

New §288.20(a)(1)(F) would add the requirement that public water suppliers include in their drought contingency plans specific, quantified targets for water use reductions to be achieved during periods of water shortages or drought. New §288.20(a)(1)(F) would also add that the executive director, working with the executive administrator of the Texas Water Development Board, establish guidelines for drought contingency plans. Subsequent subparagraphs (F) - (I) would be moved to (G) - (J) to accommodate the new subparagraph.

Amended §288.21, Drought Contingency Plans for Irrigation Use, contains revisions to the rule that would apply to drought contingency plans for irrigation use.

New §288.21(a)(1)(D) would add the requirement that irrigation users include in their drought contingency plans specific, quantified targets for water use reductions to be achieved during periods of water shortages or drought. New §288.21(a)(1)(D) would also add that the executive director, working with the executive administrator of the Texas Water Development Board, establish guidelines for drought contingency plans. Subsequent subparagraphs (D) - (H) would be moved to (E) - (I) to accommodate the new subparagraph.

Amended §288.22, Drought Contingency Plans for Wholesale Water Suppliers, contains the revisions to the rule that would apply to drought contingency plans for wholesale water suppliers.

New §288.22(a)(6) would add the requirement that wholesale water suppliers include in their drought contingency plans specific and quantified targets for water use reductions to be achieved during periods of water shortages or drought. New §288.22(a)(6) would also add that the executive director, working with the executive administrator of the Texas Water Development Board, establish guidelines for drought contingency plans. Subsequent paragraphs (6) - (9) would be renumbered as (7) - (10) to accommodate the new paragraph.

Subchapter C, Required Submittals

The commission proposes the amendments to this subchapter to implement House Bill 2660 and House Bill 2663.

Amended §288.30, Required Submittals, contains the submittal requirements that would apply to both water conservation plans and drought contingency plans.

Amended §288.30(1) would change the water conservation plan submittal date to the executive director from no later than September 1, 1999, to no later than May 1, 2005, for the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other non-irrigation uses.

Amended §288.30(1) would also specify that after May 1, 2005, any revised water conservation plan submitted to the executive director within 90 days of adoption must include implementation reports listing the dates and descriptions of the conservation measures implemented.

Amended §288.30(2) would change the water conservation plan submittal date to the executive director from no later than September 1, 1999, to no later than May 1, 2005, for the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 10,000 acre-feet a year or more for irrigation use. Amended §288.30(2) would also specify that after May 1, 2005, any revised water conservation plan submitted to the executive director within 90 days of adoption shall include implementation reports listing the dates and descriptions of the conservation measures implemented.

Amended §288.30(3)(A) would change the drought contingency plan submittal date to the executive director from no later than September 1, 1999, to no later than May 1, 2005, for retail public water suppliers that provide water service to 3,300 or more connections.

Amended §288.30(3)(B) would change the drought contingency plan preparation and adoption date and availability for inspection of all retail public water suppliers from no later than September 1, 1999, to no later than May 1, 2005.

Amended §288.30(4) would change the drought contingency plan submittal date to the executive director from no later than September 1, 1999, to no later than May 1, 2005, for all wholesale public water suppliers.

Amended §288.30(5) would change the drought contingency plan submittal date to the executive director from no later than September 1, 1999, to no later than May 1, 2005, for all irrigation districts.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jan Washburn, Program Specialist in the Federal Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the agency or any other unit of state government. These amendments implement the legislative directive for specific, quantified five-year and ten-year targets for water usage reductions in the water conservation plans that certain water right holders already submit. Additionally, these amendments would require retail and wholesale water suppliers and irrigation districts to include

quantified targets in their drought contingency plans for water use reductions during times of drought or water shortages.

The commission developed water conservation plan templates for agricultural, mining, and municipal users. Entities are not required to use these templates, but there are certain requirements for specific information to be submitted in whatever format the entity chooses. These entities, therefore, should have experience collecting data on historical usage and detailing measures for water conservation. The commission's data indicates that the majority of the approximately 300 plans currently submitted already include conservation activities and targets. These proposed rules would require specific, quantified five and ten-year goals for water conservation plans, with the requirement for five and ten-year intervals being new. Commission staff estimates that the plans currently being submitted have an average time frame of five years. Since most of the submitted plans already include water conservation targets and have an average time frame of five years, it is estimated that minimal effort will be involved in implementing specific, quantified five and ten-year targets. The estimated increase in workload ranges from five to ten hours, on average, for each of the approximately 300 entities required to submit a plan. For drought contingency plans, the proposed amendments require only specific, quantified targets for reductions.

The major difference between a water conservation plan and a drought contingency plan is that water conservation plans require specific, quantified five and ten-year targets and drought contingency plans require only a specific, quantified target with no specified time frame. The commission developed drought contingency plan templates for wholesale and retail water suppliers which already include target

percentage reductions for water use at various stages of water shortages. These requirements affect approximately 1,300 entities, some of which are local governments. As many entities are already submitting targets in their drought contingency plans, it is estimated that the additional work involved as a result of these amendments will be minimal. Ms. Washburn determined that there will be no significant fiscal impact to units of local government as a result of these proposed rules.

PUBLIC BENEFITS AND COSTS

Ms. Washburn determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated from the proposed amendments are water conservation and improved planning to ensure water demands can be met. The proposed rules should further the reductions of water demand on public water supplies and the wastewater load on wastewater treatment plants, thus reducing or deferring capital infrastructure costs to local governments that provide water and wastewater services.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Ms. Washburn determined that there will be no significant fiscal implications to small or micro-businesses as a result of implementation of the proposed amendments for the first five years the proposed amendments are in effect. The amendments add one aspect to existing requirements for small and micro-businesses to prepare water conservation plans and/or drought contingency plans and those requirements are not anticipated to be significant. For the same reasons stated previously, it is estimated that minimal effort will be involved in implementing these specific, quantified targets for water conservation plans with an estimated increase in workload ranging from five to ten hours, on

average, for each entity required to submit a plan. Additionally, for the same reasons state previously, it is estimated that small and micro-businesses will not incur significant increases in their work loads by including specific, quantified targets in their drought contingency plans. It is estimated that there will be no significant fiscal impact to small and micro-businesses to implement the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 definition of a "major environmental rule" as defined in §2001.0225. A "major environmental rule" means 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.

The proposed amendments have two specific goals. First, they would require that wholesale and retail public water suppliers, irrigation districts, and other entities include identifiable and quantifiable target goals in their drought contingency plans. Second, the proposed amendments would require that all

water conservation plans include specific, quantified five-year and ten-year targets for water conservation. The proposed amendments create new requirements for wholesale and retail public water suppliers, irrigation districts, and some water rights holders; however, the new requirements are insignificant and will not adversely affect 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. Therefore, the commission concludes the rule amendments do not constitute a major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendment is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the proposed amendments to Chapter 288 do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the proposed rules do not exceed an express requirement of state law, rather they implement House Bill 2660 and House Bill 2663 from the 78th Legislature. Third, the amendments would not exceed a delegation agreement or

contract between the state and an agency of the federal government. Fourth, the commission does not propose these rules under the general powers of the agency but rather under the authority of TWC, §11.1271, which mandates the commission require certain existing surface water right holders and future surface water right applicants to include specific and quantified five and ten-year targets for water savings within their water conservation plans by May 1, 2005, and TWC, §11.1272, which requires the commission and the Texas Water Development Board by joint rule to identify quantified target goals for drought contingency plans of wholesale and retail public water suppliers and irrigation districts by May 1, 2005. These rules are also proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rule amendments because the proposed amendments are not a taking as defined in Chapter 2007, nor are they a constitutional taking of private real property. The specific purpose of the proposed amendments is twofold. First, they would require that wholesale and retail public water suppliers, irrigation districts, and other entities include specific, quantified target goals in their drought contingency plans. Second, the proposed amendments would require that all water

conservation plans include specific, quantified five-year and ten-year targets for water conservation. Additionally, these proposed rules do not apply to private real property. These proposed rules only require certain existing surface water right holders and future surface water right applicants to include specific and quantified five and ten-year targets for water savings within their water conservation plans by May 1, 2005, and require the commission and the Texas Water Development Board by joint rule to identify quantified target goals for drought contingency plans of wholesale and retail public water suppliers and irrigation districts by May 1, 2005.

Promulgation and enforcement of these proposed rules will not affect private real property which is the subject of the rules because the proposed amendments will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The proposed rules only apply to requirements of drought contingency plans and water conservation plans. Property values will not be decreased, because the rule amendments will not limit the use of real property.

Thus, these rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to 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 rulemaking for consistency with CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that this rulemaking does not impact any CMP goal or policy. This rulemaking will change the submission date for water conservation plans and drought contingency plans from September 1, 1999 to May 1, 2005 and will establish a new requirement that entities subject to Chapter 288 must specify five-year and ten-year quantified targets for water savings in their water conservation plans. Additionally, this rulemaking will require that entities review and update their water conservation plans, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information. Finally, this rulemaking will require the entities subject to Chapter 288 to include in their drought contingency plan specific and quantified targets for water use reduction during periods of water shortages and drought.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-004-288-WT. Comments must be received by 5:00 p.m. on May 24, 2004. For further information, please contact Kathy Ramirez, Office of Environmental Policy, Analysis, and Assessment, (512) 239-6757.

SUBCHAPTER A: WATER CONSERVATION PLANS

§§288.1 - 288.5

STATUTORY AUTHORITY

These amendments are proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and Texas Water Code, §11.1271, which provides the commission with the authority to require applicants for a new or amended water right to adopt conservation measures; and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

These proposed amendments implement Texas Water Code, §5.103 and §11.1271, and Texas Government Code, §2001.006.

§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 [means any] of the following activities:

(A) - (F) (No change.)

(2) - (10) (No change.)

(11) 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.

(12) [(11)] 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.

(13) [(12)] 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.

(14) [(13)] Public water supplier [Water Supplier] – An individual or entity that supplies water to the public for human consumption.

(15) [(14)] **Regional water planning group [Water Planning Group]** – A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

(16) [(15)] **Retail public water supplier [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.

(17) [(16)] **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.

(18) [(17)] **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).

(19) [(18)] **Wholesale public water supplier [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.

§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 shall provide information, where applicable, in response to the following.

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

(A) (No change.)

(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 gallons per capita per day;

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

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

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

(H) [(G)] 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) [(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 in order to optimize available water supplies; and

(J) [(I)] 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)~~ [(J)] documentation of coordination with the regional water planning groups [Regional Water Planning Groups] for the service area of the public water supplier in order to ensure [insure] consistency with the appropriate approved regional water plan [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 shall include the following elements:

(A) (No change.)

(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) - (iii) (No change.)

(iv) industrial; [and]

(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 [; 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 the [applicable] 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) - (C) (No change.)

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

(E) - (H) (No change.)

(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 [pursuant to] a memorandum of understanding between the commission and the Texas Water Development Board.

(c) Beginning May 1, 2005, a public water supplier for municipal use shall review and update its water conservation plan, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information.

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

(a) A water conservation plan for industrial or mining uses of water shall provide information, where applicable, in response to each of the following elements:

(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) 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;

(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;

(4) [(3)] 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;

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

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

(7) [(6)] 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) Beginning May 1, 2005, an industrial or mining water user shall review and update its water conservation plan, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information.

§288.4. Water Conservation Plans for Agricultural Use.

(a) A water conservation plan for agricultural use of water shall provide information, where applicable, in response to the following subsections.

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

(A) (No change.)

(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;

(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.

(D) [(C)] 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;

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

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

(G) [(F)] 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) - (C) (No change.)

(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;

(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;

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

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

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

(I) [(H)] 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;

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

(K) [(J)] 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) (No change.)

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

(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;

(D) [(C)] 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;

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

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

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

(H) [(G)] 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 [; 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;

(I) [(H)] 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;

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

(K) [(J)] documentation of coordination with the regional water planning groups [Regional Water Planning Groups] in order to ensure [insure] consistency with [the] 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 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 [pursuant to] a memorandum of understanding between the commission and that agency.

(c) Beginning May 1, 2005, an agricultural water user shall review and update its water conservation plan, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information.

§288.5. Water Conservation Plans for Wholesale Water Suppliers.

A water conservation plan for a wholesale water supplier shall provide information, where applicable, in response to each of the following paragraphs.

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

(A) (No change.)

(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 [said] goals, and a time frame for achieving these [those] goals;

(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, and the basis for the development of these goals.

(D) [(C)] 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;

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

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

(G) [(F)] 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;

(H) [(G)] 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;

(I) [(H)] 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

(J) ~~(I)~~ documentation of coordination with the regional water planning groups [Regional Water Planning Groups] for the service area of the wholesale water supplier in order to ensure [insure] 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) - (B) (No change.)

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

(D) (No change.)

(3) Review and update requirements. Beginning May 1, 2005, the wholesale water supplier shall review and update its water conservation plan, as appropriate, at least every five years, based on an assessment of previous five-year and ten-year targets and any other new or updated information.

SUBCHAPTER B: DROUGHT CONTINGENCY PLANS

§§288.20 - 288.22

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and Texas Water Code, §11.1272, which provides the commission with the authority to require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans; and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amendments implement Texas Water Code, §5.103 and §11.1272, and Texas Government Code, §2001.006.

§288.20. Drought Contingency Plans for Municipal Uses by Public Water Suppliers.

(a) A drought contingency plan for a retail public water supplier, where applicable, shall provide information in response to each of the following.

(1) Minimum requirements. Drought contingency plans shall include the following minimum elements.

(A) - (B) (No change.)

(C) The drought contingency plan must document coordination with the regional water planning groups [Regional Water Planning Groups] for the service area of the retail public water supplier to ensure [insure] consistency with the appropriate approved regional water plans.

(D) - (E) (No change.)

(F) The drought contingency plan must include specific, quantified targets for water use reductions to be achieved during periods of water shortage and drought. The entity preparing the plan shall establish the targets. The executive director, working with the executive administrator of the Texas Water Development Board, will establish guidelines for drought contingency plans.

(G) [(F)] The drought contingency plan must include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:

(i) curtailment of non-essential water uses; and

(ii) utilization of alternative water sources and/or alternative delivery mechanisms with the prior approval of the executive director as appropriate (e.g., interconnection with

another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).

(H) [(G)] The drought contingency plan must include the procedures to be followed for the initiation or termination of each drought response stage, including procedures for notification of the public.

(I) [(H)] The drought contingency plan must include procedures for granting variances to the plan.

(J) [(I)] The drought contingency plan must include procedures for the enforcement of [any] mandatory water use restrictions, including specification of penalties (e.g., fines, water rate surcharges, discontinuation of service) for violations of such restrictions.

(2) Privately-owned water utilities. Privately-owned water utilities shall prepare a drought contingency plan in accordance with this section and [shall] incorporate such plan into their tariff.

(3) Wholesale water customers. Any water supplier that receives all or a portion of its water supply from another water supplier shall consult with that supplier and shall include in the drought contingency plan appropriate provisions for responding to reductions in that water supply.

(b) - (c) (No change.)

§288.21. Drought Contingency Plans for Irrigation Use.

(a) A drought contingency plan for an irrigation use, where applicable, shall provide information in response to each of the following.

(1) Minimum requirements. Drought contingency plans for irrigation water suppliers shall include policies and procedures for the equitable and efficient allocation of water on a pro rata basis during times of shortage in accordance with Texas Water Code, §11.039. Such plans shall include the following elements as a minimum.

(A) (No change.)

(B) The drought contingency plan must document coordination with the regional water planning groups [Regional Water Planning Groups] to ensure [insure] consistency with the appropriate approved regional water plans.

(C) (No change.)

(D) The drought contingency plan must include specific, quantified targets for water use reductions to be achieved during periods of water shortage and drought. The entity preparing

the plan shall establish the targets. The executive director, working with the executive administrator of the Texas Water Development Board, will establish guidelines for drought contingency plans.

(E) [(D)] The drought contingency plan shall include methods for determining the allocation of irrigation supplies to individual users.

(E) [(E)] The drought contingency plan must [shall] include a description of the information to be monitored by the water supplier and the procedures to be followed for the initiation or termination of water allocation policies.

(G) [(F)] The drought contingency plan must [shall] include procedures for use accounting during the implementation of water allocation policies.

(H) [(G)] The drought contingency plan must [shall] include policies and procedures, if any, for the transfer of water allocations among individual users within the water supply system or to users outside the water supply system.

(I) [(H)] The drought contingency plan must [shall] include procedures for the enforcement of water allocation policies, including specification of penalties for violations of such policies and for wasteful or excessive use of water.

(2) Wholesale water customers. Any irrigation water supplier that receives all or a portion of its water supply from another water supplier shall consult with that supplier and shall include in the drought contingency plan, appropriate provisions for responding to reductions in that water supply.

(3) Protection of public water supplies. Any irrigation water supplier that also provides or delivers water to a public water supplier(s) shall consult with that public water supplier(s) and shall include in the plan, mutually agreeable and appropriate provisions to ensure an uninterrupted supply of water necessary for essential uses relating to public health and safety. Nothing in this provision shall be construed as requiring the irrigation water supplier to transfer irrigation water supplies to non-irrigation use on a compulsory basis or without just compensation.

(b) (No change.)

§288.22. Drought Contingency Plans for Wholesale Water Suppliers.

(a) A drought contingency plan for a wholesale water supplier shall include the following minimum elements.

(1) (No change.)

(2) The drought contingency plan must document coordination with the regional water planning groups [Regional Water Planning Groups] for the service area of the wholesale public water supplier to ensure [insure] consistency with the appropriate approved regional water plans.

(3) The drought contingency plan must [shall] include a description of the information to be monitored by the water supplier and specific criteria for the initiation and termination of drought response stages, accompanied by an explanation of the rationale or basis for such triggering criteria.

(4) The drought contingency plan must [shall] include a minimum of three drought or emergency response stages providing for the implementation of measures in response to water supply conditions during a repeat of the drought-of-record.

(5) The drought contingency plan must [shall] include the procedures to be followed for the initiation or termination of drought response stages, including procedures for notification of wholesale customers regarding the initiation or termination of drought response stages.

(6) The drought contingency plan must include specific, quantified targets for water use reductions to be achieved during periods of water shortage and drought. The entity preparing the plan shall establish the targets. The executive director, working with the executive administrator of the Texas Water Development Board, will establish guidelines for drought contingency plans.

(7) [(6)] The drought contingency plan must [shall] include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:

(A) pro rata curtailment of water deliveries to or diversions by wholesale water customers as provided in Texas Water Code, §11.039; and

(B) utilization of alternative water sources with the prior approval of the executive director as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).

(8) [(7)] The drought contingency plan must [shall] include a provision in every wholesale water contract entered into or renewed after adoption of the plan, including contract extensions, that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code, §11.039.

(9) [(8)] The drought contingency plan must [shall] include procedures for granting variances to the plan.

(10) [(9)] The drought contingency plan must [shall] include procedures for the enforcement of any mandatory water use restrictions including specification of penalties (e.g., liquidated damages, water rate surcharges, discontinuation of service) for violations of such restrictions.

(b) - (c) (No change.)

SUBCHAPTER C: REQUIRED SUBMITTALS

§288.30

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and Texas Water Code, §11.1271, which provides the commission with the authority to require applicants for a new or amended water right to adopt conservation measures; and Texas Water Code, §11.1272, which provides the commission with the authority to require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans; and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amendment implements Texas Water Code, §5.103, §11.1271, and §11.1272, and Texas Government Code, §2001.006.

§288.30. Required Submittals.

In addition to the water conservation and drought contingency plans required to be submitted with an application under §295.9 of this title (relating to Water Conservation and Drought Contingency Plans), water conservation and drought contingency plans are required as follows.

(1) Water conservation plans for municipal, industrial, and other non-irrigation uses.

The holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other non-irrigation uses shall develop, submit, and implement a water conservation plan meeting the requirements of Subchapter A of this chapter (relating to Water Conservation Plans). The water conservation plan must [shall] be submitted to the executive director not later than May 1, 2005 [September 1, 1999]. Thereafter, any revised plans must be submitted to the executive director within 90 days of adoption. The revised plans must include implementation reports listing the dates and descriptions of the conservation measures implemented. The requirement for a water conservation plan under this rule must [shall] not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(2) Water conservation plans for irrigation uses. The holder of an existing permit,

certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 10,000 acre-feet a year or more for irrigation uses shall develop, submit, and implement a water conservation plan meeting the requirements of Subchapter A of this chapter. The water conservation

plan must [shall] be submitted to the executive director not later than May 1, 2005 [September 1, 1999]. Thereafter, any revised plans must be submitted to the executive director within 90 days of adoption. The revised plans must include implementation reports listing the dates and descriptions of the conservation measures implemented. The requirement for a water conservation plan under this rule must [shall] not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(3) Drought contingency plans for retail public water suppliers. Retail public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter (relating to Drought Contingency Plans) to the executive director after adoption by its governing body. The retail public water system shall provide a copy of the plan to the regional water planning group [Regional Water Planning Group] for each region within which the water system operates. These drought contingency plans must [shall] be submitted as follows.

(A) For retail public water suppliers providing water service to 3,300 or more connections, the drought contingency plan must [shall] be submitted to the executive director not later than May 1, 2005 [September 1, 1999]. Thereafter, any revised plans must [shall] be submitted to the executive director within 90 days of adoption by the community water system. Any new retail public water suppliers providing water service to 3,300 or more connections shall prepare and adopt a drought contingency plan within 180 days of commencement of operation, and submit the plan to the executive director within 90 days of adoption.

(B) For all the retail public water suppliers, the drought contingency plan must [shall] be prepared and adopted not later than May 1, 2005 [September 1, 2000] and must [shall] be available for inspection by the executive director upon request. Thereafter, any new retail public water supplier providing water service to less than 3,300 connections shall prepare and adopt a drought contingency plan within 180 days of commencement of operation, and shall make the plan available for inspection by the executive director upon request.

(4) Drought contingency plans for wholesale public water suppliers. Wholesale public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter to the executive director not later than May 1, 2005 [September 1, 1999], after adoption of the drought contingency plan by the governing body of the water supplier. Thereafter, any new or revised plans must [shall] be submitted to the executive director within 90 days of adoption by the governing body of the wholesale public water supplier. Wholesale public water suppliers shall also provide a copy of the drought contingency plan to the regional water planning group [Regional Water Planning Group] for each region within which the wholesale water supplier operates.

(5) Drought contingency plans for irrigation districts. Irrigation districts shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter to the executive director not later than May 1, 2005 [September 1, 1999], after adoption by the governing body of the irrigation district. Thereafter, any new or revised plans must [shall] be submitted to the executive director within 90 days of adoption by the governing body of the irrigation district. Irrigation districts

shall also provide a copy of the plan to the regional water planning group [Regional Water Planning Group] for each region within which the irrigation district operates.

(6) Other submissions. A water conservation plan or drought contingency plan required to be submitted with an application in accordance with §295.9 of this title must [(relating to Water Conservation and Drought Contingency Plans) shall] also be subject to review and approval by the commission.

(7) Existing permits. The holder of an existing permit, certified filing, or certificate of adjudication shall not be subject to enforcement actions nor shall the permit, certified filing, or certificate of adjudication be subject to cancellation, either in part or in whole, based on the nonattainment [non-attainment] of goals contained within a water conservation plan submitted with an application in accordance with §295.9 of this title or by the holder of an existing permit, certified filing, or certificate of adjudication in accordance with the requirements of this section.