

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §288.1 and §288.30. Section §288.1 is adopted *without change* as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6060) and will not be republished. Section §288.30 is adopted *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In 2007, the 80th Legislature passed Senate Bill (SB) 3 and House Bill (HB) 4. Sections 2.04, 2.06 and 2.18 of SB 3 and Sections 4, 6 and 8 of HB 4 create new Texas Water Code (TWC) provisions related to water conservation plans. Currently, the requirements relating to water conservation plans and the commission are in TWC, §11.1271. The commission's rules related to water conservation plans are in Chapter 288.

Applicants for a new or amended water right and 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 uses, and 10,000 acre-feet a year or more for irrigation uses must submit a water conservation plan to the commission. These plans must include 5-year and 10-year targets established by the entity that submits the plan.

The new provisions passed by the legislature in 2007 include new submittal requirements for water conservation plans and that the commission provide for the enforcement of these requirements.

Section 2.04 of SB3 and Section 4 of HB 4 amend TWC, §11.002, by adding a definition for “Best management practices.”

Section 2.06 of SB 3 and section 6 of HB 4 amend TWC, Subchapter E, Chapter 13, by adding §13.146 that requires the commission to require retail public utilities that provide potable water service to 3,300 or more connections to submit a water conservation plan to the executive administrator of the Texas Water Development Board (Board). The plan must be based on specific targets and goals developed by the retail public utility and use appropriate best management practices.

Section 2.18 of SB 3 and Section 8 of HB 4 amend TWC, Chapter 16, by adding Subchapter K, §16.401 and §16.402, Water Conservation. This new subchapter requires the Board to implement a statewide public education awareness program; mandates that entities that are required to submit a copy of a water conservation plan to the commission to now submit a copy of the plan to the executive administrator of the Board; directs entities that are required to submit a plan to the executive administrator of the Board, directs entities that are required to submit a water conservation plan to the Board or the commission to annually report on their progress to the executive administrator of the Board; allows for commission enforcement of the new provisions; and requires that the Board and commission jointly adopt rules to identify the minimum requirements and submission deadlines required by Subchapter K and to provide for enforcement.

Finally, Section 18 of HB 4 requires that the Board and the commission jointly adopt rules as required by

TWC, §16.402(e), not later than January 1, 2008.

SECTION BY SECTION DISCUSSION

Subchapter A, Water Conservation Plans

The commission adopts this subchapter to implement water conservation plan provisions of SB 3 and HB 4 from the 80th Legislature. Sections 2.04, 2.06 and 2.18 of SB 3 and Sections 4, 6 and 8 of HB 4 create new TWC provisions related to water conservation.

The commission adopts §288.1, Definitions, to add a definition for “Best management practices.” The definition adopted by the commission is from the definition of “Best management practices” in TWC, §11.002, as amended by SB 3 and HB 4. TWC, §13.146, as added by SB 3 and HB 4, 80th Legislature, require that water conservation plans contain appropriate best management practices as defined by TWC, §11.002. The definitions following “Best management practices” are renumbered to accommodate the new term.

Subchapter C, Required Submittals

The commission adopts amendments to this subchapter to implement water conservation plan provisions of SB 3 and HB 4 from the 80th Legislature. Sections 2.04, 2.06 and 2.18 of SB 3 and Sections 4, 6 and 8 of HB 4 create new TWC provisions related to water conservation. In response to comment, the commission corrected the spelling of the word “submittal” in the heading to Subchapter C.

The commission adopts §288.30, Required Submittals, to contain the submittal requirements that would apply to water conservation plans.

The commission adopts §288.30(8) to specifically change the wording for “Other submissions” to “Additional submissions with a water right application” to differentiate between the submission of water conservation plans to the commission and the additional submissions of water conservation plan submissions to the Board. In response to comment, the commission removed the phrase “for new or additional state water” after the word “application” in the catchline.

The commission adopts §288.30(10), submissions to the executive administrator of the Texas Water Development Board, to contain the deadlines for water conservation plans and annual report submissions to the Board. This adopted new paragraph also provides for enforcement by the commission over violations of the Board’s rules relating to water conservation plans and annual reports as provided by TWC, §16.402, as added by SB 3 and HB 4, 80th Legislature.

The commission adopts §288.30(10)(A) to require retail public water suppliers providing water service to 3,300 or more connections to submit a water conservation plan to the executive administrator of the Board no later than May 1, 2009, and every five years after that date as provided by TWC, §13.146, as added by SB 3 and HB 4, 80th Legislature. In response to comment, the commission added the phrase “and using appropriate best management practices” after “... of Subchapter A of this chapter...”

The commission adopts §288.30(10)(B) to require each entity that is required to submit a water conservation plan to the commission to submit a copy of the plan to the executive administrator of the Board no later than May 1, 2009, and every five years after that date as provided by TWC, §16.402, as added by SB 3 and HB 4, 80th Legislature.

The commission adopts §288.30(10)(C) to mandate that each entity that is required to submit a water conservation plan to the Board or the commission also file an annual report with the Board on the entity's progress in implementing their plan not later than May 1, 2010, and annually thereafter as provided by TWC, §16.402, as added by SB 3 and HB 4, 80th Legislature.

The commission adopts §288.30(10)(D) to implement water conservation plan mandates of SB3 and HB4 to provide for enforcement by the commission over violations of the Board's rules relating to water conservation.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rule 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 the Texas Administrative Procedures Act. 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 specific intent of the adopted rule is to implement water conservation provisions enacted in SB 3 and HB 4, 80th Legislature. Generally, the intent of these adopted water conservation provisions is to protect the environment and benefit the waters of the state, thus furthering the state's policy of maintaining the biological soundness of the state's rivers, lakes, bays and estuaries.

The adopted rulemaking is not a "major environmental rule" because the adopted rules will not "adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state" because the rules are intended to conserve water for environmental reasons and for future beneficial uses. It is not anticipated that the cost of complying with the adopted amendments will be significant with respect to the economy as a whole; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

This rulemaking does not qualify as a major environmental rule because it will not have an adverse economic effect. Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, 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. This rulemaking does not meet any of these four applicability requirements because the adopted rules: 1) are specifically required by state law, namely the TWC, and do not exceed a standard set by federal law and; 2) do not exceed the express requirements of the TWC; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) the adopted rules will not be adopted solely under the general powers of the commission.

Based on the foregoing, the adopted rulemaking does not constitute a major environmental rule, and thus is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225

The commission invited public comment of the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted amendments to Chapter 288 and performed an analysis of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The intent of the adopted rules is to implement water conservation provisions enacted in SB 3 and HB 4, 80th Legislature.

The adopted rules would substantially advance the intent of the rulemaking by setting forth a definition of “Best management practices” and requiring the submission of water conservation plans and annual reports on the implementation of water conservation measures to the commission and the executive administrator of the Board.

Promulgation and enforcement of these adopted rules will constitute neither a statutory nor a constitutional taking of private real property. The adopted regulations do not adversely affect a landowner’s rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden nor restrict or limit the owner’s right to property. More specifically, these rules implement water conservation measures and reporting requirements which do not impose any burdens or restrictions on private real property. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 *et. seq.*, and therefore must be consistent with all applicable CMP goals and policies.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP

and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the coastal management program.

PUBLIC COMMENT

The public comment period for this rulemaking closed on October 9, 2007. The commission received comments from the National Wildlife Federation (NWF), Lone Star Chapter of the Sierra Club (Sierra Club), and Environmental Defense (ED).

NWF, Sierra Club, and ED suggested modifications to the proposed rules to clarify their applicability as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

NWF, Sierra Club, and ED commented that in the heading to Subchapter C the commission misspelled the word "submittal."

The commission responds that it has corrected the spelling in the heading to Subchapter C.

NWF, Sierra Club, and ED commented that in §288.30(8) the proposed new language referring to additional submissions "with a water right application for new or additional state water" is misleading

and confusing and suggest that the phrase “for new or additional state water” should be omitted. NWF, Sierra Club, and ED state that adding language purporting to limit additional submissions only to applications seeking new or additional state water would be inconsistent with 30 TAC §295.9(4) and would create ambiguity. Additionally, NWF, Sierra Club, and ED stated that the proposed limitation would be inconsistent with the Texas Supreme Court’s decision in *City of Marshall v. City of Uncertain*, 206 S.W.3rd 97 (Tex. 2006).

The commission acknowledges that 30 TAC §295.9(4) may require a water conservation plan and/or drought contingency plan for some water right applications that do not request either new or additional state water. In response to comments, the commission deleted the words “new or additional” in §288.30(8) to clarify that water conservation plans may be required for applications that do not require a new appropriation of state water. It was not the intention of the commission to change the commission’s practice of requiring water conservation plans by adding the words “new or additional.”

NWF, Sierra Club, and ED commented that the commission does not reference the term “best management practices” in its proposed or existing rule. NWF, Sierra Club, and ED suggest a change to the first sentence of §288.30(10)(A) to include the language “*and using appropriate best management practices*” after the phrase “...of this chapter....”

The commission agrees with the comment in reference to the term “best management practices” in the rule and adopts §288.30(10)(A) to include the language “and using appropriate best management practices.”

NWF, Sierra Club, and ED commented that the language of §288.30(10)(A) should address the situation where an existing supplier grows to the point of having to prepare a plan. NWF, Sierra Club, and ED also commented that the commission should include language in §288.20(10)(A) to ensure that retail water suppliers which are required to begin filing plans at some future date would file updates to such plans on the same deadlines as water suppliers currently subject to the rules.

The commission disagrees with the comment regarding the new 3,300 connection retail public utilities. The language in the first part of §288.30(10)(A) that requires retail public water supplies providing water service to 3,300 or more connections would include a utility that grows to 3,300 connections. The second part regarding “new” retail public utilities providing service to 3,300 connections would include any newly built system. The commission can require the water conservation plans to be submitted with the plans to construct a 3,300 connection system, whereas the changes suggested by the commenter would force the commission to wait until the “new” system is actually providing service to 3,300 connections. No change has been made in response to this comment.

NWF, Sierra Club, and ED stated that TWC, §16.402(b) requires each entity that is required to submit a water conservation plan also to report annually on progress in implementing the plan. NWF, Sierra Club, and ED stated that TWC, §16.402(e), directs the Texas Water Development Board and the TCEQ to jointly develop rules identifying minimum requirements and implementation deadlines for such reports. NWF, Sierra Club, and ED commented that the proposed rules do not address minimum requirements for annual reports and, therefore, NWF, Sierra Club, and ED assume that the commission will address this issue in a subsequent rulemaking.

The commission responds that the minimum requirements for the annual reports on progress in implementing water conservation plans that will be submitted to the Board will be included in the Board's rules and not in the commission's rules. TWC, §16.402(c), as amended by SB 3 and HB 4, 80th Legislature, requires that the executive administrator of the Board determine compliance with the minimum requirements. No change has been made in response to this comment.

SUBCHAPTER A: WATER CONSERVATION PLANS

§288.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the 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. Finally, TWC, §16.402(e), requires that the Board and the commission jointly adopt rules implementing provisions of SB 3 and HB 4 from the 80th Legislature.

The adopted amendment implements TWC, §11.002 and §16.402.

§288.1. Definitions.

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

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

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

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

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

(D) raising or keeping equine animals;

(E) wildlife management; and

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

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

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

(4) Conservation--Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or

increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

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

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

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

(8) Irrigation water use efficiency--The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are

not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

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

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

(11) Municipal use--The use of potable water within or outside a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity as well as the use of sewage effluent for certain purposes, including the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools, the use of potable water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens.

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

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

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

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

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

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

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

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

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

SUBCHAPTER C: REQUIRED SUBMITTALS

§288.30

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, which provides the commission the general powers to carry out duties under the 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, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in Chapter 13 of the TWC or implied in Chapter 13 of the TWC, necessary and convenient to the exercise of this power and jurisdiction. Finally, TWC, §16.402(e) requires that the board and the commission jointly adopt rules implementing provisions of House Bill 4 and Senate Bill 3 from the 80th Legislature.

The adopted amendment implements TWC, §13.146 and §16.402.

§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 be submitted to the executive director not later than May 1, 2005. Thereafter, the next revision of the water conservation plan for municipal, industrial, and other non-irrigation uses must be submitted not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive director within 90 days of adoption. The revised plans must include implementation reports. The requirement for a water conservation plan under this section must not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(2) Implementation report for municipal, industrial, and other non-irrigation uses. The implementation report must include:

(A) the list of dates and descriptions of the conservation measures implemented;

(B) data about whether or not targets in the plans are being met;

(C) the actual amount of water saved; and

(D) if the targets are not being met, an explanation as to why any of the targets are not being met, including any progress on that particular target.

(3) 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 be submitted to the executive director not later than May 1, 2005. Thereafter, the next revision of the water conservation plan for irrigation uses must be submitted not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive director within 90 days of adoption. The revised plans must include implementation reports. The requirement for a water conservation plan under this section must not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(4) Implementation report for irrigation uses. The implementation report must include:

(A) the list of dates and descriptions of the conservation measures implemented;

(B) data about whether or not targets in the plans are being met;

(C) the actual amount of water saved; and

(D) if the targets are not being met, an explanation as to why any of the targets are not being met, including any progress on that particular target.

(5) 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 for each region within which the water system operates. These drought contingency plans must be submitted as follows.

(A) For retail public water suppliers providing water service to 3,300 or more connections, the drought contingency plan must be submitted to the executive director not later than May 1, 2005. Thereafter, the retail public water suppliers providing water service to 3,300 or more connections shall submit the next revision of the plan not later than May 1, 2009, and every five years

after that date to coincide with the regional water planning group. Any revised plans must 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 be prepared and adopted not later than May 1, 2005 and must be available for inspection by the executive director upon request. Thereafter, the retail public water suppliers shall prepare and adopt the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. 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.

(6) 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, after adoption of the drought contingency plan by the governing body of the water supplier. Thereafter, the wholesale public water suppliers shall submit the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any new or revised plans must 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 for each region within which the wholesale water supplier operates.

(7) 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, after adoption by the governing body of the irrigation district. Thereafter, the irrigation districts shall submit the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any new or revised plans must 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 for each region within which the irrigation district operates.

(8) Additional submissions with a water right application for state water. A water conservation plan or drought contingency plan required to be submitted with an application in accordance with §295.9 of this title must also be subject to review and approval by the commission.

(9) 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 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.

(10) Submissions to the executive administrator of the Texas Water Development Board.

(A) Water conservation plans for retail public water suppliers. For retail public water suppliers providing water service to 3,300 or more connections, a water conservation plan meeting the minimum requirements of Subchapter A of this chapter and using appropriate best management practices must be developed, implemented, and submitted to the executive administrator of the Texas Water Development Board not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive administrator 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 water conservation plan within 180 days of commencement of operation, and submit the plan to the executive administrator of the Texas Water Development Board within 90 days of adoption.

(B) Water conservation plans. Each entity that is required to submit a water conservation plan to the commission shall submit a copy of the plan to the executive administrator of the Texas Water Development Board not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group.

(C) Annual reports. Each entity that is required to submit a water conservation plan to the Texas Water Development Board or the commission, shall file a report not later than May 1, 2010, and annually thereafter to the executive administrator of the Texas Water Development Board on the entity's progress in implementing the plan.

(D) Violations of the Texas Water Development Board's rules. The water conservation plans and annual reports shall comply with the minimum requirements established in the Texas Water Development Board's rules. The Texas Water Development Board shall notify the commission if the Texas Water Development Board determines that an entity has not complied with the Texas Water Development Board rules relating to the minimum requirements for water conservation plans or submission of plans or annual reports. The commission shall take appropriate enforcement action upon receipt of notice from the Texas Water Development Board.