

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to amend §288.1 and §288.30.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 a new §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, 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 proposes to amend 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 proposes to amend §288.1, Definitions, to add a definition for “Best management practices.” The definition proposed 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” will be renumbered to accommodate the new term.

Subchapter C, Required Submittals

The commission proposes 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.

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

The commission proposes to amend §288.30(8) to specifically change the wording for “Other submissions” to “Additional submissions with a water right application for new or additional state water” to differentiate between the submission of water conservation plans to the commission and the additional submissions of water conservation plan submissions to the Board.

The commission proposes to add §288.30(10), Submissions to the executive administrator of the Texas Water Development Board, to contain the deadlines for water conservation and annual report submissions to the Board. This proposed 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 proposes to add §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.

The commission proposes to add §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 proposes to add §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 proposes to add §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 plans and annual reports as provided by TWC, §16.402, as added by SB 3 and HB 4, 80th Legislature.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules would require local governments owning or operating certain retail public utilities to submit water conservation plans to the Board and use appropriate best management practices. In addition, local governments currently required to submit water conservation plans to the agency would also be required to submit annual progress reports regarding plan implementation to the Board. Costs associated with developing and submitting water conservation plans and annual progress reports to the Board are not anticipated to be significant. Many local governments already have developed water conservation plans because such plans are considered to be part of good management practice, such plans may have been required by

water supply contracts, or such plans may have been required when applying for Board loans. The Board will review the plans and report results to the appropriate levels of government. The Board has been appropriated \$549,464 in general revenue funding in the 2008 and 2009 biennium to promote water conservation, but it is not known how much of this funding will be spent in review, administration, and reporting associated with water conservation plans.

The proposed rules implement the sections of SB 3 and HB 4, both of which were passed in the 80th Legislature, dealing with water conservation planning. These sections, as implemented by the proposed rules, would amend the TWC and: mandate the agency to require a retail public utility providing potable water service to 3,300 or more connections to submit a water conservation plan and annual progress reports to the executive administrator of the TWDB; require any entity currently required to submit a water conservation plan to the agency under other provisions of the TWC to also submit a copy of the plan to the executive administrator of the Board; and require all entities with water conservation plans to submit an annual progress report regarding water conservation plan implementation to the executive administrator of the Board. The Board must review these plans and annual reports to determine if they comply with minimum requirements. The agency and the Board are required by the legislation and proposed rule to identify minimum requirements for water conservation plans, deadlines for annual report submission, and provide for enforcement of the proposed rules.

Currently, the agency requires water conservation plans for entities that hold water rights of 1,000 acre-feet or more per year for non-irrigation purposes and for entities that hold water rights for 10,000 acre-

feet or more per year for irrigation. Staff estimates that the agency currently receives water conservation plans from 251 local governments that hold these types of water rights. These water conservation plans would continue to be submitted to the agency once every 5 years. Under the proposed rules, these water rights holders would also be required to also submit a copy of these plans to the Board along with annual progress reports regarding implementation.

Local governments currently sending the agency water conservation plans once every 5 years are not expected to incur significant costs to provide an additional copy of their plan to the Board. Nor are submissions of annual progress reports regarding implementation of the plans to the Board expected to significantly increase costs to local governments. Costs of providing copies of plans and annual reports will vary depending on the size and complexity of each document and whether they are prepared in house or by a consultant. For purposes of this fiscal note, copying costs are assumed to be 10 cents per page. Copying and mailing costs for a 200-page document could be as much as \$20 and \$5 to \$6 respectively. This fiscal note also assumes that annual report preparation will be done in-house. If a consultant is hired for report preparation, costs could range from a few hundred dollars to several thousand dollars depending on the size of the regulated entity.

The proposed rules will also require additional retail public utilities with 3,300 or more connections to prepare water conservation plans and submit them to the Board. Additionally, annual reports will have to be submitted. Staff estimates that there may be as many as 164 additional local governments that will be sending water conservation plans to the Board that are not, and will not be, submitted to the

agency. Staff believes that some of these local governments will already have water conservation plans in place, and therefore, no costs for plan development are expected to be incurred. If a local government operating a retail public utility with 3,300 or more connections does not currently have a water conservation plan, this fiscal note assumes that a water conservation plan will be developed in-house. If this is the case, plan development costs are not anticipated to be significant. If a consultant is hired, costs could range from a few hundred dollars to several thousand dollars depending on the size of the regulated entity. Mailing costs for a 200-page water conservation plan could be as much as \$5 to \$6 per year. This fiscal note also assumes that annual reports will be prepared in-house with no significant costs incurred and that estimated mailing costs could be as much as \$5 to \$6 per year for a 200-page report.

Staff also anticipates that having water conservation plans could aid local governments subject to the proposed rules to use existing water resources more efficiently. More efficient use of existing water resources could reduce infrastructure and expansion costs as well as the need to develop or obtain additional supplies of water in the future. The amount of cost savings would vary widely depending on system size and management practices. However, any costs of water conservation planning and annual reporting are expected to be more than offset by these types of savings.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be better conservation

and more efficient use of state groundwater and surface water.

Staff estimates that there may be as many as 24 non-profit organizations or large businesses that are already required to submit water conservation plans once every 5 years to the agency and that will have to provide an additional copy of the plan and an annual report to the Board under the proposed rules.

Staff also estimates that there may be as many as 11 additional non-profit or business owned retail public utilities with 3,300 or more connections not currently required to submit such plans that will be required under the proposed rules to provide water conservation plans and annual reports to the Board.

These 11 retail public utilities may already have developed water conservation plans because such plans are considered to be good management practice, such plans may have been required by water supply contracts, or such plans may have been required when applying for Board loans. If such a plan has not been developed, this fiscal note assumes that the plan will be developed in-house and development costs will be minimal. This fiscal note also assumes that annual reports will be prepared in-house.

Therefore, plan and report preparation costs are not anticipated to be significant. Copying and postage costs are expected to be minimal and in the same range as those incurred by local governments. If a consultant is hired, costs could range from a few hundred dollars to several thousand dollars depending on the size of the regulated entity. Staff also anticipates that having water conservation plans could aid the retail public utilities to use existing water resources more efficiently. More efficient use of existing water resources could reduce infrastructure and expansion costs as well as the need to develop or obtain additional supplies of water in the future. The amount of cost savings would vary widely depending on system size and management practices. However, any costs of water conservation

planning and annual reporting are expected to be more than offset by these types of savings.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Staff estimates that there may be as many as 2 small businesses and 2 micro-businesses not already required to submit water conservation plans to the agency that will be required to submit plans and reports to the Board. This fiscal note assumes that these plans and reports will be prepared in-house without incurring additional out of pocket costs. It is estimated that as many as 28 small businesses and 5 micro-businesses that submit water conservation plans to the agency will be required, under the proposed rules, to provide copies of those plans and annual progress reports to the Board. Copying costs are estimated to be 10 cents per page. For a 200-page document, copying could be as much as \$20 and postage costs could be as much as \$5 to \$6. Any preparation, copying, or postage cost increases are expected to be more than offset by savings associated more efficient use of existing water resources and infrastructure.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has 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 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 proposed rule is to implement water conservation provisions enacted in SB 3 and HB 4, 80th Legislature. Generally, the intent of these proposed 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 proposed rulemaking is not a “major environmental rule” because the proposed 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 proposed amendments will be significant with respect to the economy as a whole; therefore, the proposed 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 proposed 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 proposed rules will not be adopted solely under the general powers of the commission.

Based on the foregoing, the proposed 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 invites public comment regarding this draft regulatory impact analysis determination.

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

The proposed 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 proposed rules will constitute neither a statutory nor a constitutional taking of private real property. The proposed 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 proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal 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.

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 Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project Number 2007-025-288-PR. The comment period closes October 9, 2007. Copies of the proposed rules can be obtained from the commission's Web site at

http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Bill

Billingsley, Water Supply Division, at (512) 239-1697.

SUBCHAPTER A: WATER CONSERVATION PLANS

§288.1

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.102, which provides the commission the general powers to carry out duties under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. 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 proposed 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) [(3)] 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) [(4)] 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) [(5)] 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) [(6)] 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) [(7)] 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) [(8)] Mining use--The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(10) [(9)] 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) [(10)] 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) [(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. 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) [(12)] 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) [(13)] 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) [(14)] Public water supplier--An individual or entity that supplies water to the public for human consumption.

(16) [(15)] 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) [(16)] 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) [(17)] 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) [(18)] 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) [(19)] 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 SUMITTALS

§288.30

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.102, which provides the commission the general powers to carry out duties under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. 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 proposed 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 [Other] submissions with a water right application for new or additional 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 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 commission has enforcement authority over violations of the Texas Water Development Board's rules relating to water conservation plans and annual reports. 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 may notify the commission if the Texas Water Development Board determines that an entity has not complied with the minimum requirements established in the Texas Water Development Board's rules relating to water conservation plans and annual reports.