

The Texas Commission on Environmental Quality (commission) adopts new §§321.301, 321.303, 321.305, 321.307, 321.309, 321.311, 321.313, 321.315, 321.317, 321.319, 321.321, 321.323, and 321.325.

Sections 321.301, 321.305, 321.307, 321.309, 321.311, 321.313, 321.317, 321.321, 321.323, and 321.325 are adopted *without changes* to the proposed text as published in the June 20, 2008 in the *Texas Register* (33 Tex Reg 4809) and will not be republished.

Sections 321.303, 321.315 and 321.319 are adopted *with changes* to the proposed text and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopted rule language to authorize the construction and operation of reclaimed water production facilities in response to a petition to initiate rulemaking. The rule provides a streamlined process to authorize the construction and operation of reclaimed water production facilities at a location other than a permitted domestic wastewater treatment facility.

The rule applies to permitted wastewater treatment facility owners who wish to produce reclaimed water at a site other than the permitted domestic wastewater treatment facility. The rule provides wastewater treatment facility owners with a streamlined process to obtain authorization to construct and operate reclaimed water production facilities. These facilities would be located near reclaimed water users and would save the cost of transporting or piping reclaimed water from the permitted wastewater treatment facility to these users.

SECTION BY SECTION DISCUSSION

Adopted new §321.301, Purpose and Applicability, explains that the purpose of the adopted rule is to provide a mechanism for owners of domestic wastewater treatment facilities to treat wastewater closer to reclaimed water users. The applicability portion provides that the owner of the reclaimed water production facility is required to be the same person as the owner of the permitted domestic wastewater treatment facility. This requirement ensures that there is no opportunity for the operation of the reclaimed water production facility to interfere with the operation of the permitted wastewater treatment facility. The applicability also provides that the authorization is automatically cancelled if the wastewater discharge permit is not in effect. The domestic wastewater treatment facility must be authorized for the treatment and disposal of domestic wastewater since reclaimed water will be sent through the collection system to the domestic wastewater treatment facility during times when there is no demand from the reclaimed water user.

Adopted new §321.303, Definitions, incorporates, by reference, the definitions in 30 TAC Chapter 210, Use of Reclaimed Water, 30 TAC Chapter 305, Consolidated Permits, and includes definitions for specific terms that apply to this subchapter. The definitions section ensures that the regulated community and the public are aware of the specific terminology used in this subchapter. In response to a comment by the City of Dallas, the list of apparatuses used as examples of treatment units in paragraph (3), (aeration basins, splitter boxes, bar screens, clarifiers, on-site lift stations) was deleted to avoid the possible interpretation that the list was exhaustive. The list was intended as examples of treatment units, not as all possible treatment units.

Adopted new §321.305, General Requirements, provides that the applicant must have a domestic wastewater permit and the reclaimed water production facility authorization does not alter the permitted flow or effluent limits of the permitted domestic wastewater treatment facility. The flow or effluent limits of a permitted wastewater facility may be changed only by amending the permit. In addition, the applicant is required to have an authorization to reuse reclaimed water or apply for authorization concurrently under Chapter 210. The applicant must have authorization for the use of the reclaimed water for the reclaimed water production facility authorization to be useful.

Adopted new §321.307, Restrictions, prohibits the owner of a reclaimed water production facility from accepting any trucked or hauled wastes and from discharging wastewater or pollutants into water in the state. These provisions will prevent operational problems at the facility and will protect the quality of the reclaimed water, human health, and the environment. The adopted rule also prohibits the reclaimed water production facility from exceeding the hydraulic capacity or being authorized at a flow rate that could cause interference with the domestic wastewater treatment facility. This requirement ensures that the permitted wastewater treatment facility is able to continue to operate in a manner that protects human health and the environment.

Adopted new §321.309, Application Requirements, includes requirements for the application for reclaimed water production facilities so that the executive director has all the information necessary to evaluate the application and requires the application to comply with other commission rules.

Adopted new §321.311, Application Review, describes the process the executive director will use to: review the application; notify the applicant to publish notice (if required); and return the application if insufficient information is submitted by the applicant.

Adopted new §321.313, Authorization, includes specific requirements, including, design criteria, a prohibition of issuing an authorization to applicants with a poor compliance history rating, and provisions for filing a motion to overturn the executive director's final action on an authorization. The design criteria ensure that the facility is designed and constructed to protect human health and the environment over the life span of the facility. Applicants with poor compliance histories may not be authorized under this streamlined process; however, they may apply for an individual domestic wastewater permit to authorize the reclaimed water production facility. The motion to overturn provides a mechanism for the applicant, public interest counsel or other person to request the commission to review a reclaimed water production facility authorization.

Adopted new §321.315, Design Requirements, requires reclaimed water production facilities to meet the design criteria according to the requirements of 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Treatment Systems, with minor exceptions, and to convey all wastewater to the domestic wastewater treatment facility when not in operation. The rule requires reclaimed water production facilities to be designed and operated to minimize odor.

Adopted new §321.317, Buffer Zone Requirements, includes general site selection requirements to protect groundwater and surface water and specific requirements relating to unsuitable site characteristics. The adopted rule includes two options for meeting buffer zone requirements: enhanced buffer zone and

standard buffer zone requirements. If the owner requests authorization using the enhanced buffer zone, the reclaimed water production facility must meet one of three buffer zone options: placing the treatment units within a building with a 150-foot buffer zone; placing the treatment units within a building with air exhaust systems and odor control technology with a 50-foot buffer zone; or an extended 300-foot buffer zone. The enhanced buffer zone ensures that under normal operating conditions, odor from the facility should not reach adjoining property. If the owner requests authorization without an enhanced buffer zone designation, the reclaimed water production facility must have a buffer zone of 150 feet from the nearest property line. The applicant may meet these requirements by ownership or by legal restriction of the buffer zone area.

Adopted new §321.319, Public Notice Requirements, includes notice requirements, both published and posted, for reclaimed water production facilities that do not meet the enhanced buffer zone designation. The owner of a reclaimed water production facility that meets the enhanced buffer zone designation is not required to publish notice or post signage.

Adopted new §321.321, Additional Reclaimed Water Production Facility Requirements, includes operator requirements for the reclaimed water production facility and notification requirements for the applicant. This requirement ensures that the operator of the reclaimed water production facility has the training and knowledge necessary to properly operate the facility. This section also requires the applicant to notify the executive director at least 45 days prior to completion and at least 45 days prior to operation of a reclaimed water production facility. This requirement ensures that the executive director has opportunities to inspect the reclaimed water production facility during construction and prior to operation.

Adopted new §321.323, Enforcement, includes enforcement criteria for reclaimed water production facilities. The rule is consistent with other commission enforcement procedures.

Adopted new §321.325, Fees, includes application fees for reclaimed water production facilities. The adopted rule includes an application fee of \$300 and an annual water quality fee of \$800 for a constructed facility or \$400 for a facility that has not been constructed.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. A major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rule is not a major environmental rule because the specific intent of the rule is to provide owners of domestic wastewater treatment facilities with the ability to construct reclaimed water production facilities to produce reclaimed water at a site other than a permitted domestic wastewater treatment facility. Protection of the environment and reducing risks to human health is not the specific intent; however, environmental protection and protection of human health may be a consequence of the rule. Moreover, because the rule will not 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 it is not a major environmental rule. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted rule does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission solicited public comment regarding this draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to provide owners of domestic wastewater treatment facilities with the ability to construct reclaimed water production facilities to produce reclaimed water at a site other than a permitted domestic wastewater treatment facility. Promulgation and enforcement of these rules will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the adopted rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. 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 editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

PUBLIC COMMENT

The commission offered a public hearing on this proposal in Austin on July 15, 2008, at the commission's central office located at 12100 Park 35 Circle. The comment period closed on July 21, 2008. No comments were received at the hearing.

The commission received timely comments which expressed support for the rulemaking from the City of Fort Worth, the City of Midland, Malcolm Pirnie, Inc., the North Texas Municipal Water District, the San Antonio River Authority, the Texas Association of Clean Water Agencies, the Texas Water Conservation Association, and the Water Environment Association of Texas. The commission also received a late comment from the San Antonio Water System, which also expressed support for the rulemaking. In addition, the City of Dallas and the City of Midland provided specific comments on the rulemaking.

RESPONSE TO COMMENTS

§321.303(3)

Comment

The City of Dallas commented that the list of treatment units included in the definition of treatment unit is inadequate to describe many new treatment technologies such as membrane bioreactors but instead includes common treatment units typically present in activated sludge facilities. The City of Dallas

requests that additional wording is added to the definition to allow for new treatment technologies or other treatment units not listed to be used in these reclaimed water production facilities.

Response

The commission agrees that the list of treatment units included in the definition (aeration basins, splitter boxes, bar screens, clarifiers, on-site lift stations) was not inclusive of newer treatment technologies and could have been interpreted as an inclusive list. The commission deleted the list of treatment units from the definition of treatment unit.

§329.315(a)

Comment

The City of Dallas comments that the requirements in 30 TAC Chapter 317, Design Criteria for Sewerage Systems, are inadequate for newer wastewater treatment technologies, such as membrane bioreactor facilities, that will likely be used for these reclaimed water production facilities.

Response

The commission agrees with this comment and has changed the design criteria requirements for these facilities to the requirements in Chapter 217, Design Criteria for Domestic Wastewater Treatment Systems. These rules became effective on August 28, 2008 and include criteria for membrane bioreactor facilities and other newer wastewater treatment technologies.

§321.319(b)

Comment

The City of Midland provided comments in response to the commission's request for input concerning the need to post signage at the reclaimed water production facility site during the application review period.

The City of Midland stated that a requirement to post signage is not necessary since most of the reclaimed water production facilities that will be constructed pursuant to these rules will be within the jurisdiction of municipalities and subject to land use regulations, and therefore, adequate site notice and signage will be addressed locally. However, the City of Midland is not opposed to including signage requirements in the rule during the application period and has provided proposed signage language for consideration.

Response

The commission appreciates the comment. The rule includes new §321.319(b) with signage requirements for applicants that do not qualify for an enhanced buffer zone designation.

§321.321(a)

Comment

The City of Dallas requested that although the rules do not prohibit the operator of the reclaimed water production facility to operate more than one facility, the rules would be clearer if this was stated.

Response

The commission does not agree that the rules need to be revised to state that the operator may be able to operate more than one wastewater treatment facility. Operators or wastewater facility operations companies are regulated by Chapter 30, Subchapter J, Wastewater Operators And Operations Companies. These rules do not prohibit an operator or a wastewater operations company from operating more than one facility.

§321.321(b)

Comment

The City of Dallas comments that the operator of the reclaimed water production facility should not be required to be at the same level of license or at a higher level of license than the operator of the permitted domestic wastewater treatment facility. The reclaimed water production facility is likely to be located a significant distance from the permitted domestic wastewater treatment facility and therefore it is unlikely that both the facilities will have the same individual as their operator. The City of Dallas comments that a lower classification operator for the reclaimed water production facility than for the permitted domestic wastewater treatment facility may be sufficient.

Response

The commission does not agree that a lower classification operator for the reclaimed water production facility than for the permitted domestic wastewater treatment facility is sufficient. The requirement states that the operator of the reclaimed water production facility must hold the same or higher level license as the operator of the associated wastewater treatment facility. A higher classification of operator at the reclaimed water production facility is an option but is not required. The reclaimed water production facility must be operated in a manner that does not affect permitted flow or effluent limits or cause operational interference or a permit violation.

SUBCHAPTER P: RECLAIMED WATER PRODUCTION FACILITIES

§§321.301, 321.303, 321.305, 321.307, 321.309, 321.311, 321.313, 321.315, 321.317, 321.319, 321.321, 321.323, and 321.325

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §5.701 which authorizes the commission to charge fees; §7.002, which authorizes the commission to enforce the TWC; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted new sections would implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 5.701, 7.002, 26.011, and 26.027.

§321.301. Purpose and Applicability.

(a) The purpose of this subchapter is to establish authorization procedures, general design criteria, and operational requirements for reclaimed water production facilities and thereby promote the beneficial use of reclaimed water that may be substituted for potable water or raw water.

(b) This subchapter authorizes a reclaimed water production facility to produce reclaimed domestic wastewater at a site other than a permitted domestic wastewater treatment facility.

(c) A reclaimed water production facility authorized according to this subchapter is not required to hold a wastewater discharge permit from the commission, except as provided in §210.5 of this title (relating to Authorization for the Use of Reclaimed Water).

(d) A reclaimed water production facility may be authorized only if the owner of the reclaimed water production facility is also an owner of the associated domestic wastewater treatment facility that is permitted by the commission.

(e) If the wastewater discharge permit for the domestic wastewater treatment facility associated with a reclaimed water production facility expires, lapses, is surrendered, suspended, or revoked, the authorization to operate the reclaimed water production facility is automatically cancelled.

§321.303. Definitions.

All definitions in Texas Water Code, §26.001 and 30 TAC Chapters 210 and 305 of this title (relating to Use of Reclaimed Water, and Consolidated Permits) shall apply to this subchapter and are incorporated by reference. Specific definitions of words or phrases used in this subchapter are as follows:

(1) **Authorization**--a written document issued by the commission allowing an owner to construct and operate a reclaimed water production facility in accordance with the provisions of this subchapter.

(2) **Reclaimed Water Production Facility**--a domestic wastewater treatment facility authorized in accordance with this subchapter that treats municipal wastewater for reuse on an as-needed basis and is located at a different location from the permitted domestic wastewater treatment facility.

(3) **Treatment unit**--Any apparatus necessary for treating wastewater located at the reclaimed water production facility.

§321.305. General Requirements.

(a) An applicant for authorization to produce reclaimed water at a reclaimed water production facility must have:

(1) a domestic wastewater permit for a domestic wastewater treatment facility that is located at the terminus of the collection system to which the reclaimed water production facility is or will be connected; and

(2) an authorization to use reclaimed water under Chapter 210 of this title (relating to the Use of Reclaimed Water).

(b) Applications for reclaimed water production facilities and for authorization to beneficially reuse reclaimed water under Chapter 210 of this title may be submitted concurrently.

(c) The authorization of a reclaimed water production facility does not alter the permitted flow or effluent limits of the associated domestic wastewater treatment facility.

§321.307. Restrictions.

(a) A reclaimed water production facility may not discharge wastewater or pollutants into water in the state.

(b) The hydraulic capacity of the reclaimed water production facilities may not individually nor collectively exceed the permitted hydraulic capacity of the associated domestic wastewater treatment facility.

(c) A reclaimed water production facility may not be authorized at a flow rate that could cause interference with the operation of the domestic wastewater treatment facility or a violation of the domestic wastewater treatment facility's permit.

(d) A reclaimed water production facility may not treat or dispose of sludge. All sludge must be conveyed through the collection system to the permitted domestic wastewater treatment facility, treated, and disposed of in accordance with the facility's permit and all applicable rules.

(e) The owner may not accept trucked or hauled wastes at a reclaimed water production facility.

(f) Authorization under this chapter does not convey or alter any property right and does not grant any exclusive privilege.

§321.309. Application Requirements.

(a) An applicant shall comply with the provisions of §§305.43, 305.44, and 305.47 of this title (relating to Who Applies; Signatories to Applications; and Retention of Application Data).

(b) An application for an authorization of a reclaimed water production facility under this subchapter must be made on forms prescribed by the executive director.

(c) An applicant shall submit one original application with attachments to the executive director and one additional copy of the application with attachments to the appropriate regional office. Additional copies may be required as noted in the application.

(d) The application must contain, at a minimum, the following information:

- (1) the applicant's name, mailing address, and telephone number;
- (2) the wastewater permit number of the associated domestic wastewater treatment facility;
- (3) a brief description of the nature of the reclaimed water use;
- (4) the signature of the applicant, in accordance with §305.44 of this title;
- (5) a copy of a recorded deed or tax records showing ownership, or a copy of a contract or lease agreement between the applicant and the owner of any lands to be used for the reclaimed water production facility;
- (6) a copy of the applicant's reuse authorization issued under Chapter 210 of this title (relating to Use of Reclaimed Water), or a copy of a concurrent application;
- (7) a preliminary design report for the reclaimed water production facility that includes the design flow, design calculations, the size of the adopted treatment units, a flow diagram, and the adopted effluent quality;
- (8) a buffer zone map and report indicating how the reclaimed water production facility will meet buffer zone requirements;

(9) a County General Highway Map (with scale clearly shown) to identify the relative location of the domestic wastewater treatment facility, the main lines of the collection system, and the reclaimed water production facility and at least a one-mile area surrounding the reclaimed water production facility;

(10) one original (remainder in color copies, if required) United States Geological Survey 7.5-minute quadrangle topographic map or an equivalent high quality color copy showing the boundaries of land owned, operated or controlled by the applicant and to be used as a part of the reclaimed water production facility. The map shall extend at least a one-mile beyond the facility boundaries and shall be sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the one-mile area; and

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, and undeveloped.

(11) any other information requested by the executive director.

§321.311. Application Review.

(a) The executive director will review all applications for reclaimed water production facility authorizations for administrative and technical completeness.

(b) If an application has either an administrative or technical deficiency, the applicant will be asked to submit additional information no later than 30 days following the date of the request.

(c) If additional information is not timely submitted or is insufficient to complete the application, the executive director may return the application without refunding the application fee.

(d) If the application is both administratively and technically complete, the executive director will:

(1) proceed with processing the application; and

(2) if applicable, notify the applicant to publish notice according to §321.319 of this title (relating to Public Notice Requirements).

§321.313. Authorization.

(a) The executive director shall not authorize a reclaimed water production facility unless the following conditions are met:

(1) the applicant has obtained plans and specifications approval for the reclaimed water production facility according to the design criteria according to §321.315 of this title (relating to Design Requirements); and

(2) the applicant has an authorization according to Chapter 210 of this title (relating to Use of Reclaimed Water).

(b) The executive director shall not authorize a reclaimed water production facility owned or operated by an applicant that has a compliance history rating of poor, as defined by Chapter 60 of this title (relating to Compliance History).

(c) The executive director shall not authorize a reclaimed water production facility that discharges to a domestic wastewater treatment facility that has a compliance history site rating of poor, as defined by Chapter 60 of this title.

(d) The applicant, public interest counsel or other persons may file with the Office of the Chief Clerk a motion to overturn the executive director's final action on an authorization for a reclaimed water production facility under §50.139(a), (b), and (d) - (g) of this title (relating to Motion to Overturn Executive Director's Decision).

§321.315. Design Requirements.

(a) Plans and specifications for a reclaimed water production facility must meet the design criteria and the operation, maintenance, and safety requirements in Chapter 217 of this title (relating to Design Criteria for Wastewater Treatment Systems) except for redundant treatment units or processes, including power supplies, if the design incorporates sufficient provisions to ensure the effluent quality meets the required limits in the event of a failure of a power supply or a treatment unit or process.

(b) The reclaimed water production facility must be designed to convey all wastewater to the domestic wastewater treatment facility any time the facility is not in operation.

(c) The reclaimed water production facility must be designed to convey all sludge received or produced by the facility to the domestic wastewater treatment facility. Sludge may be held in an aerated storage vessel for discharge to the collection system if the entire sludge contents are completely discharged at least once within every 24-hour period.

(d) The reclaimed water production facility must be designed and operated to minimize odor and other nuisance conditions.

(e) The following treatment processes and units are prohibited:

(1) unaerated primary treatment units (including Imhoff tanks and primary clarifiers);

(2) trickling filters;

(3) pond or lagoon treatment systems;

(4) flow equalization basins; and

(5) unenclosed screenings storage containers.

§321.317. Buffer Zone Requirements.

(a) A reclaimed water production facility must comply with §309.12 of this title (relating to Site Selection to Protect Groundwater or Surface Water).

(b) A reclaimed water production facility must comply with §309.13 (a) - (d) of this title (relating to Unsuitable Site Characteristics).

(c) A reclaimed water production facility that does not qualify for an enhanced buffer zone designation must locate each treatment unit at least 150 feet from the nearest property line.

(d) To qualify for an enhanced buffer zone designation, a reclaimed water production facility must comply with one of the following buffer zone requirements:

(1) A treatment unit not located in a building may not be located closer than 300 feet to the nearest property line;

(2) A treatment unit located within an enclosed building that is not equipped with exhaust air systems and odor control technology may not be located closer than 150 feet of the nearest property line; or

(3) A treatment unit located within an enclosed building equipped with exhaust air systems and odor control technology may not be located closer than 50 feet of the nearest property line.

(e) An applicant must own or have sufficient property interest to the land necessary to meet the buffer zone requirements so that residential structures are prohibited within the buffer zone. An applicant must submit sufficient evidence of its property interest to demonstrate the reclaimed water production facility meets the applicable buffer zone.

§321.319. Public Notice Requirements.

(a) Public notice is not required if an applicant for a reclaimed water production facility qualifies for an enhanced buffer zone designation in accordance with §321.317(d) of this title (relating to Buffer Zone Requirements).

(b) An applicant for a reclaimed water production facility that does not qualify for an enhanced buffer zone designation shall place a sign at the proposed site during the public comment period as defined in subsection (c)(3) of this section.

(1) The sign must include no less than two-inch, black, block-lettering on a white background. The sign must include the following information:

(A) the legal name and address of the applicant;

(B) notice that the applicant has applied for authorization to construct a reclaimed water production facility at the site;

(C) how the public may provide comments to the TCEQ; and

(D) where copies of the application, executive director's technical summary, and draft authorization may be reviewed.

(2) The sign placed at the site shall be located at or near the site main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director must approve the variations before signs are posted.

(c) An applicant for a reclaimed water production facility that does not qualify for an enhanced buffer zone designation shall publish notice of the executive director's preliminary determination on the application at least once in a newspaper of general circulation in the county where the reclaimed water production facility is located or adopted to be located. The notice shall be published at the applicant's expense.

(1) The applicant must publish notice no later than 30 days after receiving instructions to publish notice from the Texas Commission on Environmental Quality's (TCEQ's) Office of the Chief Clerk. The notice must include:

(A) the legal name of the applicant and the address of the applicant;

(B) a brief summary of the information included in the application;

(C) the location of the reclaimed water production facility;

(D) the location and mailing address where the public may provide comments to the TCEQ;

(E) the public location or the publicly accessible internet Web site where copies of the application, executive director's technical summary, and authorization may be reviewed;

(F) an opportunity for the public to submit comments on the application and executive director's technical summary; and

(G) instructions to the public on how to request a public meeting for a new reclaimed water production facility.

(2) The applicant must file with the Office of the Chief Clerk no later than 30 days after receiving the instruction to publish the notice of the executive director's preliminary determination on the application, and if applicable the notice of public meeting:

(A) a signed affidavit from the publisher acknowledging that the notice was published and the date of publication; and

(B) a copy of the newspaper clipping.

(3) The public comment period begins on the first date the notice is published and ends 30 days later unless a public meeting is held. If a public meeting is held, the public comment period ends either 30 days after the initial notice is published or at the conclusion of the public meeting, whichever is later.

(4) The public may submit written comments to the Office of the Chief Clerk during the comment period detailing how the application for the reclaimed water production facility fails to meet the

technical requirements or conditions of this rule. The executive director will consider all comments received during the comment period.

(5) The public may submit a written request for a public meeting to the Office of the Chief Clerk during the comment period.

(A) The executive director will determine if there is significant interest to hold a public meeting.

(B) If the executive director determines that there is significant interest to hold a public meeting:

(i) TCEQ staff will facilitate the meeting; and

(ii) the applicant will:

(I) arrange accommodations for the public meeting to be held in the county where the reclaimed water production facility will be located; and

(II) publish notice of the public meeting in the same newspaper as the initial notice was published at least 30 days prior to the meeting.

(iii) At the public meeting the applicant will:

(I) describe the adopted reclaimed water production facility and provide maps and other facility data; and

(II) provide a sign-in sheet for attendees to register their names and addresses and furnish the sheet to the executive director.

(B) A public meeting held under this rule is not an evidentiary proceeding.

(6) The TCEQ Office of the Chief Clerk will mail the executive director's decision and final technical summary on which the decision was based to the applicant, persons whose names and addresses appear legibly on the sign-in sheet from the public meeting, and persons who submitted written comments.

§321.321. Additional Reclaimed Water Production Facility Requirements.

(a) The owner shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater facility operations companies holding a valid license or registration according to the requirements of Chapter 30, Subchapter J of this title (relating to Wastewater Operators And Operations Companies).

(b) The operator or wastewater facility operations company shall have the same level of license or higher as the operator license of the permitted domestic wastewater treatment facility associated with the reclaimed water production facility.

(c) The owner shall notify the executive director at least 45 days prior to completion and at least 45 days prior to operation of a reclaimed water production facility.

§321.323. Enforcement.

(a) If an owner of a reclaimed water production facility fails to comply with the terms of its authorization, this subchapter, or other regulations and statutes within the jurisdiction of the commission, the executive director may take enforcement action as provided by the Texas Water Code and in accordance with Chapter 70 of this title (relating to Enforcement).

(b) The executive director may revoke any reclaimed water production facility authorization due to noncompliance with the authorization, this subchapter, the requirements of Chapter 210 of this title (relating to Use of Reclaimed Water), or other regulations and statutes within the jurisdiction of the commission, but only after notice and the opportunity for hearing.

§321.325. Fees.

(a) An applicant shall include an application fee of \$300.

(b) An owner of a reclaimed water production facility authorized under this subchapter shall pay an annual water quality fee in the following amount:

(1) \$800 for a constructed facility; or

(2) \$400 for a facility that has not been constructed.