

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

To: Commissioners Date: November 14, 2016

Thru: Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director  
Office of Water

Subject: Docket No. 2015-1015-RUL

The attached document contains revisions in double underline/double strikeout. Back-up material for Rule Project No. 2015-029-295-OW / HB 2031 and HB 4097: Marine Seawater Desalination was filed on September 30, 2016 for the October 19, 2016, Agenda. At the October 19, 2016, Agenda the commissioners' continued the rule project to the November 2, 2016, Agenda and subsequently to the November 16, 2016, Agenda.

At agenda on October 19, 2016, the commissioners' directed staff to revise the rulemaking to allow any person to submit comments; consider whether additional language is necessary in 30 TAC §297.209 to assess the quality of the methods being utilized to minimize impingement and entrainment; and, consider whether the rule language concerning environmental flows is consistent with the law and protective of the environment. Based on staff's reconsideration, staff has made the following changes:

### **CHANGES TO THE ADOPTED PREAMBLE/RULE for 30 TAC Chapter 295**

- §295.300(c) was revised to identify requirements related to compliance with subsection (a)(1) and (2) as paragraph "(1)" and to add "(2) the person has provided a written statement of facility-specific reasonable measures to minimize impingement and entrainment that will be implemented at the proposed facility in accordance with the requirements set out in §297.209 of this title (relating to Impingement and Entrainment)."
- §295.304(b)(9) was revised to remove the word "affected" and to add that the "commission, executive director, and applicant" can request a contested case hearing.
- §295.306(d)(8) was revised to remove the word "affected."
- §295.306(d)(10) was revised to add that the "commission, executive director, and applicant" can request a contested case hearing.
- The Section by Section Discussion and Response to Comments sections and the

Executive Summary were revised for consistency with the changes to the rule language.

#### **CHANGES TO THE ADOPTED PREAMBLE/RULE for 30 TAC Chapter 297**

- §297.204(b) was revised to add "to ensure the ecologically sound environment of the bays and estuaries".
- New §297.209(a) was added "(a) A desalination facility for diverting seawater or marine seawater must employ reasonable measures to minimize impingement and entrainment."
- §297.209(b) was revised to add the word "must" and delete the word "shall".
- New §297.209(c) was revised to add "under subsections (b) and (d)(1) of this section must include: (1) the location and depth of the proposed intake; (2) the timing of the proposed diversions; (3) the physical and performance specifications of the proposed diversion systems and screen barriers, including the size of the screen openings and the maximum flow-through screen velocity; and (4) documentation that the proposed combination of technologies, management practices, and operational methods represent reasonable measures to minimize impingement and entrainment" and deleting "shall" and "the maximum flow-through screen velocity; the size of the screen openings; documentation that the proposed combination of technologies, management practices, and operational measures represent the best technology available for impingement reduction; the depth of the intake; the timing of the diversions; and documentation of the specifications of the proposed physical screen barriers and diversion systems" to clarify the type of information an applicant would need to submit to document the measures used to avoid impingement and entrainment."
- New §297.209(d) was added:

"(d) A person that diverts seawater or marine seawater and to which §295.300(a) of this title (relating to Applicability) does not apply must submit a written statement of facility-specific, reasonable measures to minimize impingement and entrainment that will be implemented at the proposed desalination facility in accordance with §295.300(c) of this title. The written statement must include the information set forth in subsection (c) of this section.

"(1) The measures employed at such a facility are deemed reasonable if:

"(A) the person submits to the executive director, with a copy to the Texas Parks and Wildlife Department, a written statement of the facility-specific measures that that the person intends to employ at the proposed facility to minimize impingement and entrainment;

"(B) within 60 days of the later of the executive director's receipt and Texas Parks and Wildlife Department's receipt of the submittal under this subsection, the executive director does not indicate that the submittal is deficient by issuing comments or requesting additional information; and

"(C) the person employs the measures described in the submittal under this subsection or if applicable, the amended submittal under paragraph (4) of this subsection.

"(2) The executive director may require a person to make a submittal as described in this subsection.

"(3) The executive director shall review any submittal under this subsection or amended submittals under paragraph (4) of this subsection within 60 days of

receiving it.

"(4) If the executive director issues any comment or requests additional information relevant to any submittal under this section, the person may amend its submittal up to two times beyond its initial submittal."

- The Section by Section Discussion and Response to Comments sections and the Executive Summary were revised for consistency with the changes to the rule language.

**Attachments:**

Revised Executive Summary

Revised 30 TAC Chapter 295 adopted preamble/rule

Revised 30 TAC Chapter 297 adopted preamble/rule

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Erin Chancellor  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
Kathy Ramirez  
Kris Hogan