

Effective: December 8, 2016

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Permanent Rule Change

Rule Project No. 2015-029-295-OW
HB 2031 and HB 4097: Marine Seawater Desalination

Chapter 39
Public Notice
Subchapter O

Chapter 295
Water Rights, Procedural
Subchapter G

Chapter 297
Water Rights, Substantive
Subchapter K

Chapter 318
Marine Seawater Desalination Discharges
Subchapters A, B, C, and D

1. Purpose. This change transmittal provides the pages that reflect changes and additions to the Texas Commission on Environmental Quality (commission) Volume of Permanent Rules.
2. Explanation of Change. On November 16, 2016, the commission adopted the following:

Section 39.902 and §39.903 were adopted *with changes* to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3839) and, therefore, were republished. Section 39.901 was adopted *without change* to the proposed text and, therefore, was not republished.

Sections 295.300 - 295.306 were adopted *with changes* to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3845) and, therefore, were republished.

Sections 297.200 - 297.202 and §§297.205 - 297.210 were adopted *with changes* to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3852) and, therefore, were republished. Section

297.203 and §297.204 were adopted *without changes* to the proposed text and, therefore, were not republished.

Sections 318.1, 318.2, 318.5, 318.9, 318.22, 318.41, 318.42, and 318.61 were adopted *with changes* to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3857) and, therefore, were republished. Sections 318.3, 318.4, 318.6 - 318.8, 318.21, 318.23 - 318.30, 318.40, 318.43, and 318.60 were adopted *without changes* to the proposed text and, therefore, were not republished.

3. Effects of Change. The adoption implements House Bill (HB) 2031, 84th Texas Legislature, 2015, relating to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater and HB 4097, 84th Texas Legislature, 2015, relating to seawater desalination projects.

The adopted rules in Chapter 39 provide an expedited public notice process for treated marine seawater discharges and off-shore discharges from the marine seawater desalination project.

The adopted rules in Chapters 295 and 297 implement the directive in Texas Water Code (TWC), Chapter 18, and corresponding amendments to the TWC in order to address marine seawater desalination projects. In addition, the rulemaking is adopted to implement the directive in TWC, §11.1405 and §26.0272, and corresponding amendments to the TWC in order to address seawater desalination for industrial purposes.

The adopted rulemaking expedites permitting and related processes for: 1) the diversion of marine seawater and conveyance of treated marine seawater in the bed and banks of a watercourse in accordance with TWC, Chapter 18; and 2) the diversion of seawater for desalination and use for industrial purposes in accordance with TWC, §11.1405.

The adopted rules in new Chapter 318 provide an expedited permitting process for treated marine seawater discharges (e.g. the resulting freshwater from the desalination process) and off-shore discharges (wastewater discharges from the marine seawater desalination project into the Gulf of Mexico at a point located three or more miles off-shore). Near-shore discharges (wastewater discharges from the marine seawater desalination project into the Gulf of Mexico at a point located less than three miles off-shore) are subject to the Texas Pollutant Discharge Elimination System program and must be processed in accordance with existing permitting procedures, however the executive director will make every reasonable effort to expedite the review of these applications.

Under the adopted rules, the permitting process for treated marine seawater

discharges contains streamlined applications, reduced review periods, use of email, reduced applicant response times, a single web-based notice, and a shorter public comment period. For treated marine seawater discharges, the executive director will review timely public comments and develop a response to comments. In accordance with TWC, §18.005(e)(1), the public may request a public meeting and/or a contested case hearing on treated marine seawater discharges.

Under the adopted rules, the permitting process for off-shore discharges also contains streamlined applications, reduced review periods, use of email, reduced applicant response times, a single web-based notice, and a shorter public comment period. For off-shore discharges, the executive director will review timely public comments and develop a final technical summary instead of a response to comments. In accordance with TWC, §18.005(e)(3), there is no opportunity for a public meeting or contested case hearing for off-shore discharges.