

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: February 8, 2023

DATE OF REQUEST: December 20, 2022

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

CAPTION: **Docket No. 2022-0725-RUL.** Consideration of the adoption of proposed change to 30 Texas Administrative Code (TAC) Chapter 210, Use of Reclaimed Water.

The adoption would amend Section 210.5 related to the requirements to obtain an authorization for the use of reclaimed water. This change would clarify under Section 210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. (Shannon Gibson, Michael Parr; Rule Project No. 2022-018-210-OW)

Cari-Michel LaCaille

Director

R. W. [Signature]

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Copy to CCC Secretary? NO YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 20, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

From: Cari-Michel La Caille, Director *CML 12/13/2022*
Office of Water

Docket No.: 2022-0725-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 210, Use of Reclaimed Water
Updates to Chapter 210 Use of Reclaimed Water
Rule Project No. 2022-018-210-OW

Background and reason(s) for the rulemaking:

The Office of Water is adopting rule changes to 30 Texas Administrative Code (TAC) Chapter 210 to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

The executive director is clarifying the timing of the application for efficient processing and as an incentive to promote reuse.

Scope of the rulemaking:

- A.) **Summary of what the rulemaking would do:** Amend §210.5 to clarify, specifically under §210.5(a), that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.
- B.) **Scope required by federal regulations or state statutes:** None.
- C.) **Additional staff recommendations that are not required by federal rule or state statute:** None.

Statutory authority:

- Texas Water Code (TWC), §5.120, requires the Texas Commission on Environmental Quality (TCEQ, agency, or commission) to administer the law for the maximum conservation and protection of the environment and natural resources of the state;
- TWC, §11.1271(e), requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier;
- TWC, §26.011, provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state;
- TWC, §26.027, authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state;
- TWC, §26.0271: “in any permit or amendment to a permit issued under chapter 26, at the request of the applicant the commission may authorize a wastewater treatment facility to contribute treated domestic wastewater produced by the facility as reclaimed water to a reuse water system if the commission has approved the use of reclaimed water from the wastewater treatment facility.”;

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- TWC, §26.034, provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes;
- TWC, §26.041, gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and
- TWC, §26.121, gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

Effect on the:

- A.) Regulated community:** The adopted rulemaking will affect the regulated community by making it clearer for Texas Pollutant Discharge Elimination System (TPDES) and Texas Land Application Permit (TLAP) applicants, and existing permittees, when an application to obtain an authorization to use reclaimed water may be submitted, specifically the availability of the option to submit Chapter 210 Use of Reclaimed Water applications concurrently with TPDES or TLAP permit applications.
- B.) Public:** The adopted rulemaking will provide a consistent interpretation of rule requirements.
- C.) Agency programs:** The adopted rulemaking will have no effect on agency programs.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held during the comment period in Austin.

Public Involvement Plan

Is a Public Involvement Plan Required? No.

Alternative Language Requirements

No.

Public comment:

The commission offered a public hearing on November 7, 2022. The comment period closed on November 8, 2022. No public comments were received.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

There are no anticipated stakeholder or legislative concerns because the scope of the rulemaking is limited to providing clarification to the existing rule requirements.

Will this rulemaking affect any current policies or require development of new policies?

The adopted rulemaking will affect the current policy by making it clearer for TPDES and TLAP applicants, and existing permittees, when an application to obtain an authorization to use reclaimed water may be submitted. This amendment will not require development of new policies.

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What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The alternative is to not initiate rulemaking. The Office of Water is recommending this rulemaking to provide clarifications in the rule. Failure to make these changes would result in continued misinterpretation of the intent of the rules.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** October 7, 2022

Anticipated *Texas Register* adoption publication date: February 24, 2023

Anticipated effective date: March 2, 2023

Six-month *Texas Register* filing deadline: April 5, 2023

Agency contacts:

Shannon Gibson, Rule Project Manager, Water Quality Division, (512) 239-4284

Michael Parr, Staff Attorney, Environmental Law Division, (512) 239-0611

Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

Attachments:

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Garrett Arthur
Robert Sadlier
Louis Herrin
Shannon Gibson
Michael Parr
Gwen Ricco

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §210.5(a)

Amended §210.5(a) is adopted *without change* to the proposed text as published in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6515) and, therefore, the rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking adoption will implement rule changes to 30 Texas Administrative Code (TAC) Chapter 210 (Use of Reclaimed Water) to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

Section by Section Discussion

The commission adopts the amendment to §210.5 (Authorization for the Use of Reclaimed Water), which contains the requirements to obtain an authorization for the use of reclaimed water. This change will clarify under §210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

The executive director (ED) is clarifying the timing of the application for efficient processing and as an incentive to promote reuse.

Final Regulatory Impact Determination

The TCEQ reviewed the rulemaking adoption in consideration of the regulatory analysis of

major environmental rules required by Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to TGC, §2001.0225(a) because it does not meet the definition of a “Major Environmental Rule” as defined in TGC, §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a “Major Environmental Rule” adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A “Major Environmental Rule” is 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 rulemaking adoption will amend the requirements in 30 TAC §210.5 for obtaining an authorization for the use of reclaimed water. This change will clarify under §210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. Certain aspects of the TCEQ’s rules for use of Reclaimed Water are intended to protect the environment or reduce risks to human health from environmental exposure. However, the rulemaking adoption will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor will the rulemaking adoption adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the commission finds that this rulemaking adoption does not fit the TGC,

§2001.0225 definition of "Major Environmental Rule."

Even if this rulemaking was a "Major Environmental Rule," this rulemaking adoption meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather adds clarity to the rules that implement state law, as the ED is making clear the timing of and application for use of Reclaimed Water to promote efficient processing and as an incentive to promote reuse. Third, this rulemaking does not come under a delegation agreement or contract with a federal program, and finally, is not being adopted under the TCEQ's general rulemaking authority. This rulemaking adoption is authorized under existing state law found in the Texas Water Code Chapter 26 (Water Quality Control) and §11.1271(e) that gives the commission authority to establish and regulate water quality, set standards to prevent the disposal of waste that is injurious to the public health, to control plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes, and specifically with §11.1271(e), requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The TCEQ evaluated the rulemaking adoption and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007.

The specific purpose of the rulemaking adoption is to amend 30 TAC Chapter 210 (Use of Reclaimed Water) to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. Promulgation and enforcement of the adopted rule amendments will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the rulemaking adoption does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These Chapter 210 rule amendments do not regulate property but instead regulate the use of Reclaimed Water. The primary purpose of the rulemaking is to amend 30 TAC §210.5(e), to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. The rulemaking adoption is reasonably taken to fulfill requirements of state law. Therefore, the rulemaking adoption will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that it is neither identified in

Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program.

The commission invited public comments regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on November 7, 2022. The comment period closed on November 8, 2022. No public comments were received.

SUBCHAPTER A: GENERAL PROVISIONS

§210.5

Statutory Authority

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts these amendments to TCEQ rules under Texas Water Code (TWC) Chapters 5, 11, and 26. TWC, §5.013 establishes the general jurisdiction of the commission, while TWC §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.011, provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.027, authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state. TWC, §26.0271 allows, at the request of an Applicant in any permit or amendment to a permit issued under Chapter 26, for the commission to authorize a wastewater treatment facility to contribute treated domestic wastewater, produced by the facility as reclaimed water, to a reuse water system if the commission has approved the use of reclaimed water from the wastewater treatment facility. TWC, §26.034, provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes. TWC, §26.041, gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state. Finally, TWC,

§11.1271(e), requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.120, 26.011, 26.027, 26.0271, 26.034, 26.041, 26.121, and 11.1271(e).

§210.5. Authorization for the Use of Reclaimed Water.

(a) Prior to discharging any reclaimed water to the waters in the state, the provider or user shall obtain a permit from the commission in accordance with the requirements of Chapter 305 of this title (relating to Consolidated Permits) except as provided for by §210.22(e) of this title (relating to General Requirements). The application for the required permit authorization to discharge reclaimed water may be submitted concurrently or after the permit application to treat and dispose of wastewater in accordance with the requirements of 30 TAC Chapter 305.

(b) The executive director may require a reclaimed water user to apply for and obtain a permit to utilize reclaimed water if the reclaimed water use poses potential or actual adverse impacts upon human health, soil and ground water resources, or aquatic life.

(c) For purposes of this chapter, no permit issued pursuant to Chapter 305 of this title (relating to Consolidated Permits) will be required for additional treatment required to meet the quality standards of §210.33 of this title (relating to Quality Standards for Using Reclaimed

Water), unless such additional treatment results in a discharge of wastewater into waters in the state.

(d) A reclaimed water provider or user who accepts effluent meeting the Type II quality criteria and that must also meet the Type I quality criteria for a proposed use must provide additional treatment for the proposed new use. The additional manner of treatment must be authorized by the executive director. The provider or user must notify and be granted an authorization from the executive director prior to engaging in such activity. Examples of such additional treatment may include processes for disinfection or filtration of the reclaimed water. Such authorization may be granted by the executive director after review of the proposed plans and specifications submitted to the executive director for the additional treatment. This request for authorization may be submitted to the executive director along with the notification required by §210.4 of this title (relating to Notification).

(e) If a provider or user elects to treat reclaimed water supplied by the provider or producer, respectively, to a quality better than the minimum standards of this chapter for the same use, such treatment does not require a permit or other additional authorization by the executive director.

(f) Any sewage sludge generated as a result of reclaimed water treatment undertaken pursuant to this section shall be managed in accordance with the requirements of Chapter 312 of this title (relating to Sludge Use, Disposal and Transportation).

No other statutes, articles, or codes are affected by the proposal.

§36.1. *Applicability.*

§36.2. *Definitions.*

§36.3. *Executive Director Action.*

§36.4. *Suspension or Adjustment Order.*

§36.5. *Conditions for Issuance of Suspension or Adjustment Order.*

§36.6. *Contents of a Suspension or Adjustment Order.*

§36.7. *Implementation of Water Conservation Plans and Drought Contingency Plans.*

§36.8. *Notice of and Opportunity for Hearing on the Issuance of a Suspension or Adjustment Order.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2022.

TRD-202203851

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 6, 2022

For further information, please call: (512) 239-2678



CHAPTER 210. USE OF RECLAIMED WATER SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §210.5

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §210.5.

Background and Summary of the Factual Basis for the Proposed Rules

The Office of Water is initiating rule changes to 30 Texas Administrative Code (TAC) Chapter 210 (Use of Reclaimed Water) to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

Section by Section Discussion

The proposed rulemaking would amend §210.5 (Authorization for the Use of Reclaimed Water), which contains the requirements to obtain an authorization for the use of reclaimed water. This change would clarify under §210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

The executive director (ED) is clarifying the timing of the application for efficient processing and as an incentive to promote reuse.

Fiscal Note: Costs to State and Local Government

Jené Bearnse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency

or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Ms. Bearnse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be clarification that the application may be submitted concurrently or at any time after submittal of an application for a permit to treat and dispose of wastewater.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The TCEQ reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to TGC, §2001.0225(a) because it does not meet the definition of a "Major Environmental Rule" as defined in TGC, §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a "Major Environmental Rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major Environmental Rule" is 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 or the state.

The ED's Office of Water is initiating rule changes to 30 TAC Chapter 210 (Use of Reclaimed Water) to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

The proposed rulemaking would amend the requirements in 30 TAC §210.5 for obtaining an authorization for the use of reclaimed water. This change would clarify under §210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater.

Certain aspects of the TCEQ's rules for use of Reclaimed Water are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the TGC, §2001.0225 definition of "Major Environmental Rule."

Even if this rulemaking was a "Major Environmental Rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather adds clarity to the rules that implement state law, as the ED is making clear the timing of and application for use of Reclaimed Water to promote efficient processing and as an incentive to promote reuse. Third, this rulemaking does not come under a delegation agreement or contract with a federal program, and finally, is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under existing state law found in the Texas Water Code Chapter 26 (Water Quality Control) and §11.1271(e) that gives the commission authority to establish and regulate water quality, set standards to prevent the disposal of waste that is injurious to the public health, to control plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes, and specifically with §11.1271(e), requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites pub-

lic comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

The commission invites public comment regarding the Draft Regulatory Impact Analysis during the public comment period. Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The TCEQ evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code (TGC), Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to amend 30 TAC Chapter 210 (Use of Reclaimed Water) to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. Promulgation and enforcement of the proposed rule amendments will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These Chapter 210 rule amendments do not regulate property but instead regulate the use of Reclaimed Water. The primary purpose of the proposed rule amendments is to amend 30 TAC §210.5(a), to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking would not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any

action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on Monday, November 7, 2022, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral

comments and/or want their attendance on record must register by Thursday, November 3, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for

participating in the hearing will be sent on Friday, November 4, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_M-TRmOWRhOTItMzViMS00YmQzLWFhODctNzNhM2Y4ZjRk-Mjg1%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22Is-BroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2022-018-210-OW. The comment period closes on November 8, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

Statutory Authority

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes these amendments to TCEQ rules under Texas Water Code (TWC) Chapters 5, 11, and 26. TWC, §5.013 establishes the general jurisdiction of the commission, while TWC §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.011, provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.027, authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state. TWC, §26.0271 allows, at the request of an Applicant in any permit or amendment to a permit issued under Chapter 26, for the commission to authorize a wastewater treatment facility to contribute treated domestic wastewater, produced by the facility as reclaimed water, to a reuse water system if the commission has approved the use of reclaimed water from the wastewater treatment facility. TWC, §26.034, provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes. TWC, §26.041, gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state. Finally, TWC, §11.1271(e), requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The proposed amendments implement TWC, §§5.013, 5.102, 5.103, 5.120, 26.011, 26.027, 26.0271, 26.034, 26.041, 26.121, and 11.1271(e).

§210.5. Authorization for the Use of Reclaimed Water.

(a) Prior to discharging any reclaimed water to the waters in the state, the provider or user shall obtain a permit from the commission in accordance with the requirements of Chapter 305 of this title (relating to Consolidated Permits) except as provided for by §210.22(e) of this title (relating to General Requirements). The application for the required permit authorization to discharge reclaimed water may be submitted concurrently or after the permit application to treat and dispose of wastewater in accordance with the requirements of 30 TAC Chapter 305.

(b) The executive director may require a reclaimed water user to apply for and obtain a permit to utilize reclaimed water if the reclaimed water use poses potential or actual adverse impacts upon human health, soil and ground water resources, or aquatic life.

(c) For purposes of this chapter, no permit issued pursuant to Chapter 305 of this title (relating to Consolidated Permits) will be required for additional treatment required to meet the quality standards of §210.33 of this title (relating to Quality Standards for Using Reclaimed Water), unless such additional treatment results in a discharge of wastewater into waters in the state.

(d) A reclaimed water provider or user who accepts effluent meeting the Type II quality criteria and that must also meet the Type I quality criteria for a proposed use must provide additional treatment for the proposed new use. The additional manner of treatment must be authorized by the executive director. The provider or user must notify and be granted an authorization from the executive director prior to engaging in such activity. Examples of such additional treatment may include processes for disinfection or filtration of the reclaimed water. Such authorization may be granted by the executive director after review of the proposed plans and specifications submitted to the executive director for the additional treatment. This request for authorization may be submitted to the executive director along with the notification required by §210.4 of this title (relating to Notification).

(e) If a provider or user elects to treat reclaimed water supplied by the provider or producer, respectively, to a quality better than the minimum standards of this chapter for the same use, such treatment does not require a permit or other additional authorization by the executive director.

(f) Any sewage sludge generated as a result of reclaimed water treatment undertaken pursuant to this section shall be managed in accordance with the requirements of Chapter 312 of this title (relating to Sludge Use, Disposal and Transportation).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2022.

TRD-202203853

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 6, 2022

For further information, please call: (512) 239-2678

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 427. TRAINING FACILITY CERTIFICATION

The Texas Commission on Fire Protection (commission) proposes amendments to §§427.5, 427.7, 427.9, 427.13, 427.18, 427.303, 427.305, 427.307, and 427.401, and new §§427.203, 427.205, 427.207, 427.209, 427.211, 427.213, 427.218, 427.219, and the repeal of §427.203 and §427.209 in 37 Texas Administrative Code Chapter 427 concerning Training Facility Certification.

BACKGROUND AND PURPOSE

The purpose of the proposed rules to Chapter 427 concerning Training Facility Certification, adding definitions, updating to current equipment, and updates to NFPA 1001 standards.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed rules are in effect, there will be no fiscal impact to state government by amending the noted rule sections to enhance firefighter safety.

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the rules are in effect the public benefit will be safer working conditions for firefighters serving Texas communities.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed rules are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these rules. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the rules are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will result in a decrease in fees paid to the agency by reducing the fees collected for certification renewals;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these rules. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

ENVIRONMENTAL IMPACT STATEMENT

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES

Docket No. 2022-0725-RUL

Rule Project No. 2022-018-210-OW

On February 8, 2023, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter 210, concerning Use of Reclaimed Water. The proposed rules were published for comment in the October 7, 2022 issue of the *Texas Register* (vol. 47 TexReg 6515-6694).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed