

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 7, 2025

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Cari-Michel La Caille, Director
Office of Water

Subject: Docket No. 2024-0897-RUL / Non-Rule Project No. 2023-137-321-OW
Revised Back-up for Commission Approval for Rulemaking Adoption
Chapter 321, Control of Certain Activities by Rule
Chapter 210, Use of Reclaimed Water
Domestic Reuse Alternative Disposal Method
Strikethrough and Highlighted Version of the Adoption Preambles for 30
TAC Chapter 210

In the back-up package filed for Rule Project No. 2023-137-321-OW / Domestic Reuse Alternative Disposal Method, the agency erroneously referred to the title of 30 Texas Administrative Code (TAC) Chapter 309, Subchapter C as “Land Disposal of Sewage Effluent” rather than the correct title “Land Application of Sewage Effluent”. That language has been updated in strikethrough and highlighted text on page 2 of the preamble and in the rule language under 30 TAC §210.2(b) on page 15. Original back-up materials for this rulemaking project were filed on January 24, 2025.

Attachments:
Adoption Preamble 30 TAC Chapter 210

cc: Chief Clerk, 7 copies

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§210.1, 210.2, 210.3, and 210.4.

Section 210.4 is adopted with changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 *TexReg* 8320), and therefore will be republished. Sections 210.1, 210.2, and 210.3 are adopted without changes to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 1289, 88th Texas Regular Legislative Session (2023), amended the Texas Water Code (TWC), Chapter 26, by adding §26.02715. The bill allows a wastewater treatment facility that treats domestic wastewater for reuse to dispose of the treated wastewater without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system and has consent of the operator of the wastewater collection system that will receive the treated wastewater, and any treatment facility that will further treat the water.

TCEQ is adopting amendments to Title 30 of the Texas Administrative Code (30 TAC) Chapter 210 (Use of Reclaimed Water), Subchapter A (General Provisions) to clarify the applicability of 30 TAC Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities), and related definitions.

Section by Section Discussion

Amended §210.1, *Applicability*, is restructured into subsections for clarity. Existing provisions

restructured under new subsection (b), are amended to clarify that the requirements of this chapter are not applicable to the use of treated wastewater identified in a water quality permit authorizing disposal by irrigation. Existing provisions restructured under new subsection (c)(1), are amended to clarify requirements for reclaimed water producers that have a domestic wastewater discharge 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. Amended subsection (c) also add requirements under new subsection (c)(2) for reclaimed water producers that obtain consent from an associated domestic wastewater treatment facility and collection system to which the reclaimed water production facility is or will be connected, then the use of reclaimed water would be permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

Amended §210.2, *Purpose and Scope*, expands the list of regulatory citations associated with the definition of reclaimed water activity types to include reference to Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities) and Chapter 309, Subchapter C of this title (relating to Land Disposal **Application** of Sewage Effluent). The amended section clarifies the reference to Chapter 297, Subchapter A of this title (relating to Definitions and Applicability of Substantive Water Rights). Additionally, the amended section adds new subsection (e) to clarify that a producer must obtain an approved Texas Pollutant Discharge Elimination System (TPDES) permit, Texas Land Application Permit (TLAP), or permit under 30 TAC Chapter 321, Subchapter P, of this title prior to commencement of construction and operation of the treatment facility.

Amended §210.3, *Definitions*, adds a definition for “associated domestic wastewater treatment facility”. Subsequent definitions are renumbered. The amended section clarifies the definition of “permit or permitted” by adding appropriate regulatory citations to TWC, §5.581 (relating to Definitions), Chapter 305 of this title (relating to Consolidated Permits), and Chapter 321, Subchapter P. The amended section also clarifies that the definition is applicable to a wastewater treatment facility or reclaimed water production facility. Additionally, the amended section updates a reference of “Agency” to “commission” and updates a reference of Chapter “317” to “217” for clarity and consistency.

Amended §210.4, *Notification*, adds a reference to the permits described in 210.2(e) that contain reclaimed water quality requirements for entities that obtain consent to dispose of reclaimed water through the wastewater collection system to an associated domestic wastewater treatment facility for final treatment and disposal. This section is revised from proposal to update an existing reference to Chapter 213 (relating to Edwards Aquifer).

Final Regulatory Impact Determination

TCEQ reviewed the amended rules 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 Texas Legislature enacted SB 1289, amending the TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), by adding § 26.02715 to the TWC. The intent is to provide more flexibility in TCEQ’s rules for Wastewater Treatment and Reclaimed Water Production Facilities, related to *Use of Reclaimed Water*, found in 30 TAC Chapters 321 and 210.

SB 1289 directed TCEQ to provide flexibility, through rulemaking, for facilities that use domestic wastewater treated onsite for reuse (reclaimed water), to dispose of any reclaimed water without an additional permit under certain conditions.

A Reclaimed Water Producer is currently authorized to use its treated reclaimed water only if it obtains a permit for an alternative means of disposal during times when there is no demand for its reclaimed water. TCEQ rules also require that the owner of any RWPF authorized by TCEQ, be the owner of a wastewater treatment facility permitted by TCEQ.

SB 1289 instructs TCEQ to promulgate rules that authorize facilities to convey reclaimed water

to a willing “associated domestic wastewater treatment facility” and its wastewater collection system, as an “alternative means of disposal,” as required under 30 TAC Chapter 210.

SB 1289 also prohibits TCEQ from requiring an owner of a RWPF to be the owner of the associated domestic wastewater treatment facility that is permitted by TCEQ.

SB 1289 directs TCEQ to amend TCEQ rules in 30 TAC Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities), which relate to facilities treating domestic wastewater for reuse purposes (“Reclaimed Water”). The simplistic changes to 30 TAC Chapter 210 (Use of Reclaimed Water), Subchapter A (General Provisions) are minor but necessary for clarity and consistency with proposed amended 30 TAC Chapter 321.

Specifically, SB 1289 instructs TCEQ to adopt rules that authorize RWPFs to dispose of treated reclaimed water without an additional permit, if the RWPF disposes of the treated reclaimed water through an “associated domestic wastewater treatment facility” and its wastewater collection system, after receiving consent from the owner and operator of the associated domestic wastewater treatment facility that will receive the reclaimed water for further or final treatment and disposal.

Therefore, the specific intent of the adopted rulemaking is related to providing flexibility, in the form of additional options for facilities that produce reclaimed water, as identified in SB 1289.

Certain aspects of TCEQ’s Reclaimed Water Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking

will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted 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 adopted 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 amends authorizations in state law and TCEQ rules. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in SB 1289 in the 88th Texas Regular Legislative Session (2023) and implements existing state law. Because this adoption 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 invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted 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 adopted rulemaking is to implement the legislative amendments to the TWC in SB 1289 by amending TCEQ's Reclaimed Water Rules to expand the regulatory options for disposal of reclaimed water, as identified in SB 1289. The adopted rulemaking will substantially advance the stated purpose of SB 1289 by adopting new rule language that provides for disposal of reclaimed water without an additional permit under the conditions identified in SB 1289.

Promulgation and enforcement of the adopted rules 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 adopted 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. The primary purpose of the adopted rules is to implement SB 1289 by providing for the authorization, under conditions identified in SB 1289, for disposal of reclaimed water without an additional permit when conveyed to an associated domestic wastewater treatment facility. This adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

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

Public comment

The commission offered a public hearing on November 12, 2024. The 30-day comment period closed on November 12, 2024. The commission received 3 public comments from an individual, Maverick Water Group, and City of Austin Watershed Protection Department.

Comment 1:

Mr. Joseph Hamel commented, 321.305(d) - If the consent under §321.305(a)(1)(B) is withdrawn by the collection system or associated domestic wastewater treatment facility owner(s), the authorization to operate the reclaimed water production facility without an alternate disposal permit is terminated. Bad reference. There is no §321.305(a)(1)(B).

Response 1:

TCEQ thanks Mr. Hamel for noting this error. The erroneous reference has been corrected to §321.305(a)(2).

Comment 2:

MWG commented they appreciate and support Texas Senate Bill 1289, authored by Chairman Perry, and TCEQ's implementing rules ("SB 1289 implementation").

MWG commented that SB 1289 implementation provides clear guidelines for water reuse, which will encourage investment, promote more efficient and effective water management practices.

MWG commended TCEQ for its straightforward approach on SB 1289 implementation.

Specifically, the proposed changes to 30 TAC 210 and 30 TAC 321 provide clarity on TCEQ's process to encourage sustainable management of our state's precious water resources. Clear, balanced rules for beneficially reusing water without unnecessary burdens are critical to

delivering the water Texas needs as stated in the Texas Water Plan.

Response 2:

TCEQ acknowledges and thanks MWG for their appreciation and support of SB 1289 and TCEQ's implementation strategy. No changes have been made in response to this comment.

Comment 3:

WPD commented that the following corrections are needed to existing rule text:

- Chapter 210.4 (Notifications) in §210.4(d): The reference to Chapter 313 should be corrected to reference Chapter 213.
- Chapter 210.6 (5): The reference to Chapter 317 should be corrected to reference Chapter 217.

Response 3:

TCEQ thanks WPD for noting these needed corrections. The reference under 30 TAC §210.4(d) has been corrected to state Chapter 213 (Edwards Aquifer). The rule text in 30 TAC §210.6 was not revised during this limited-scope rulemaking to implement SB 1289, and the correction to this subsection will be incorporated during a subsequent rulemaking.

Comment 4:

WPD commented that Chapter 210 does not explicitly require monitoring of the soil moisture or nutrient balance for soil as required in Chapter 309.20 for Texas Land Application Permits (TLAP). WPD noted the proposed change to §210.2 does not ensure compliance with the requirements of §309.20. WPD recommends the following edit: "(b) The commission has defined other types of reclaimed water activity in separate regulations, including Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities), Chapter 309

[§309.20] of this title (relating to Land Application of Sewage Effluent), and Chapter 297 [§297.1] of this title (relating to Definitions). These regulations do not modify those definitions or requirements. The term reclaimed water is limited in scope for the purpose of this rule as defined in §210.3 of this title (relating to Definitions).”

Response 4:

Rules established under Chapter 309 relate to the land application of wastewater effluent as a method of disposal. Rules established under Chapter 210 relate to the beneficial reuse of reclaimed water as an alternative option to final disposal methods. The cited language references applicable definitions contained in Chapter 309 but not requirements. No changes have been made in response to this comment.

Comment 5:

WPD recommended the addition of standards on reclaimed water irrigation to Chapter 210 for environmentally sensitive areas such as the Edwards Aquifer Recharge Zone and a prohibition on reclaimed water irrigation within proximity to permeable features such as caves, sinkholes, faults, and fractures. For example, the City of Austin’s Land Development Code prohibits wastewater irrigation within 150 feet from these environmentally sensitive features.

Response 5:

TCEQ thanks WPD for recommending these additions. The relevant sections of Chapter 210 were not opened during this limited-scope rulemaking to implement SB 1289, and these recommended additions will be reviewed and addressed during a subsequent rulemaking. No changes have been made in response to this comment.

Comment 6:

WPD commented that the TCEQ strategy of allowing Reclaimed Water Production Facilities (RWPF) authorizations combined with Chapter 210 reclaimed water user authorizations in place of TLAP permits represents a reduction in application, monitoring, and design requirements by simply receiving letters from an owner and operator of a collection system and associated wastewater treatment plant who agree to accept all reclaimed water that is not in demand from the Chapter 210 reclaimed water users associated with the RWPF. The rule changes to 30 TAC 321 and Chapter 210 implement those reductions of protections in accordance with SB 1289. Any failures of this new system should receive appropriate enforcement from TCEQ due to the increased risks to the environment from the proposed changes.

Response 6:

TCEQ acknowledges and thanks WPD for their comment. TCEQ concurs the proposed amendments to 30 TAC Chapters 321 and 210 are in accordance with SB 1289 and noncompliance with the proposed amendments would be investigated and addressed as appropriate by TCEQ's Office of Compliance and Enforcement. No changes have been made in response to this comment.

SUBCHAPTER A: GENERAL PROVISIONS

§§210.1 – 210.9

Statutory Authority

The Texas Commission on Environmental Quality (commission or TCEQ) adopts these amendments to TCEQ rules under the authority of Texas Water Code (TWC). 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, §26.02715 authorizes disposal of Reclaimed Water without an additional permit under certain conditions.

The amendments implement Senate Bill 1289, 88th Texas Regular Legislative Session (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.02715.

§210.1. Applicability.

(a) This chapter applies to the reclaimed water producer, provider, and user. [If the entity which is the producer of the reclaimed water is the same as the user, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water.]

(b) This chapter does not apply to treatment or disposal of wastewater permitted by the commission in accordance with the requirements of Chapter 305 of this title (relating to Consolidated Permits), or to the use[r] of such treated wastewater identified in a water quality [the producer's wastewater discharge] permit authorizing disposal by irrigation. This chapter does not apply to those systems authorized under Chapter 285 of this title (relating to On-Site Wastewater Treatment) which utilizes surface irrigation as an approved disposal method.

(c) If the entity which is the producer of the reclaimed water is the same as the user and:

(1) has 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, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water; or

(2) obtains consent from an associated domestic wastewater treatment facility and collection system to which the reclaimed water production facility is or will be connected to be used as an alternative means of disposal during times when there is no demand for the use of the reclaimed water, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

§210.2. Purpose and Scope.

(a) The purpose of this chapter is to establish general requirements, quality criteria, design, and operational requirements for the beneficial use of reclaimed water which may be substituted for potable water and/or raw water. As defined and specified in this chapter, the requirements must be met by producers, providers, and/or users of reclaimed water. Specific use categories are defined with corresponding reclaimed water quality requirements. These criteria are intended to allow the safe utilization of reclaimed water for conservation of surface and groundwater; to ensure the protection of public health; to protect ground and surface waters; and to help ensure an adequate supply of water resources for present and future needs.

(b) The commission has defined other types of reclaimed water activity in separate regulations, including Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities), Chapter [§] 309 [.20] of this title (relating to Land Disposal Application of Sewage Effluent), and Chapter [§] 297 [.1] of this title (relating to Definitions and Applicability). These regulations do not modify those definitions. The term reclaimed water is limited in scope for the purpose of this rule as defined in §210.3 of this title (relating to Definitions).

(c) Approval by the executive director of a reclaimed water use project under this chapter does not affect any existing water rights. If applicable, a reclaimed water use authorization in no way affects the need of a producer, provider and/or user to obtain a separate water right authorization from the commission.

(d) Reclaimed water projects approved under this chapter do not require a new or amended waste discharge permit from the commission except as provided in §210.5 of this

title (relating to Permits Required). Persons who desire to develop projects not specifically authorized by this chapter may seek authorization pursuant to provisions of Subchapter D or apply for a new or amended waste discharge permit under Chapter 305 of this title (relating to Consolidated Permits).

(e) A producer of reclaimed water must obtain an approved Texas Pollutant Discharge Elimination System (TPDES) permit, Texas Land Application Permit (TLAP), or authorization under 30 TAC Chapter 321, Subchapter P, of this title prior to commencement of construction and operation of the treatment facility.

§210.3. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Associated Domestic Wastewater Treatment Facility – a commission-authorized wastewater treatment facility located at the terminus of the collection system that consents to the acceptance of treated effluent, untreated effluent, and sludge from a reclaimed water production facility for final treatment and disposal.

(2) [1] Beneficial use--An economic use of wastewater in accordance with the purposes, applicable requirements, and quality criteria of this chapter, and which takes the place of potable and/or raw water that could otherwise be needed from another source. The use of reclaimed water in a quantity either less than or the economically optimal amount may be considered a beneficial use as long as it does not constitute a nuisance.

(3) [2] BOD₅--Five-day biochemical oxygen demand.

(4) [3] CBOD₅--Five-day carbonaceous biochemical oxygen demand.

(5) [4] CFU--Colony forming units.

(6) [5] Domestic wastewater--Waste and wastewater from humans or household operations that are discharged to a wastewater collection system or otherwise enters a treatment works. Also, this includes waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation, including greywater and blackwater, that is disposed in an on-site wastewater system as defined in Chapter 285 of this title (relating to On-Site Wastewater Treatment).

(7) [6] DRASTIC--A classification system for comparing land units on the basis of their vulnerability to ground-water pollution, a detailed description of which is found in Appendix 1 of this chapter.

Figure 1: 30 TAC 210.3

APPENDIX 1

DRASTIC - An Approach to Ground-Water Pollution Potential Mapping

DRASTIC was developed as a tool for comparing land units on the basis of their vulnerability to ground-water pollution. Artificial classification of natural systems, including aquifers, has been used for years. A system for ranking ground-water pollution potential which took into consideration a relatively large number of parameters had not been developed, however. Through a consensus process, a group sponsored by the National Water Well Association and

the Robert S. Kerr Environmental Research Laboratory developed the methodology described in limited detail here.

DRASTIC is a systematic approach for assessing the ground-water pollution potential of hydrogeologic settings. The DRASTIC system is a methodology which involves delineation of hydrogeologic settings and data analysis to develop a single index number which represents the sensitivity of that setting to ground-water pollution potential. The system to some degree depends on subjective, but skilled judgement by the user (Texas Water Commission, 1989).

Hydrogeologic settings are delineated based on seven parameters which are used to develop an index number for each setting. The parameters have been organized to create the acronym DRASTIC.

DRASTIC stands for:

- D - Depth to water
- R - Annual recharge
- A - Aquifer media
- S - Soil media
- T - Topography
- I - Vadose zone impact
- C - Hydraulic conductivity

After index numbers are developed, maps can be constructed to present a graphic display of the pollution potential. Two maps can be generated using the DRASTIC methodology, a map depicting general vulnerability to ground-water pollution and another specifically aimed at pollution from certain agricultural practices.

A generic contaminant is used for this methodology. The contaminant is introduced at the land surface as a solid or liquid and travels to the aquifer with recharge waters derived from precipitation. Mobility of the contaminant is assumed to be equal to that of groundwater and attenuation processes are assumed to go on in the soil, Vadose zone and aquifer.

Parameters used in the DRASTIC system are divided into ranges with corresponding ratings. Rating values depend on the impact of the factor on contamination potential. The general and agricultural DRASTIC evaluations use the same ranges and rating values, but the weighting of parameters changes. Weighting represents an attempt to define the relative importance of each factor in its ability to affect pollution transport to and within the aquifer and it creates the differences between the general and agricultural indices (Texas Water Commission, 1989).

Two pollution potential numbers, one for generalized pollution sources and one for pollution due to agricultural activities, are derived for each hydrogeologic setting. The formula for the index number is:

$$I = (Dr \times Dw) + (Rr \times Rw) + (Ar \times Aw) + (Sr \times Sw) + (Tr \times Tw) + (Ir \times Iw) + (Cr \times Cw)$$

I = DRASTIC index number
D, R, A, S, T, I, C - parameters

r - rating
w - weight

Maps are labeled with designations for the hydrogeologic settings and pollution potential numbers and the indices are then divided into ranges for color coding of the final maps.

More detailed information may be found in *DRASTIC: A standardized system for evaluating ground water pollution potential using hydrogeologic settings*: U.S. Environmental Protection Agency, EPA/600/2-87/035, authored by L. Allen, T. Bennett, J. H. Lehr, R. J. Petty and G. Hackett.

(8) [7] Edwards Aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally. (See Chapter 213 of this title (relating to Edwards Aquifer).)

(9) [8] Edwards Aquifer Recharge zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 213 of this title (relating to Edwards Aquifer).)

(10) [9] Food crop--Any crops intended for direct human consumption.

(11) [10] Initial holding pond--An impoundment which first receives reclaimed water from a producer at the quality levels established by this chapter, not including subsequent holding ponds.

(12) [11] Geometric mean--The n th root of the product of all measurements made in a particular period of time, for example in a month's time, where n equals the number of measurements made. In the alternative, the geometric mean can also be computed as the antilogarithm of the sum of the logarithm of each measurement made. Where any measurement using either computation method equals zero, it must be substituted with the value of one.

(13) [12] l--Liter.

(14) [13] Landscape impoundment--Body of reclaimed water which is used for aesthetic enjoyment or which otherwise serves a function not intended to include contact recreation.

(15) [14] Leak detection system--A system or device designed, constructed, maintained, and operated with a pond that is capable of immediately detecting a release of leachate or reclaimed water that migrates through a liner. The system may typically include a leachate collection system along with either leak detection sensors or view ports.

(16) [15] Municipal wastewater--Waste or wastewater discharged into a publicly owned or a privately owned sewerage treatment works primarily consisting of domestic waste.

(17) [16] mg/l--Milligram per liter.

(18) [17] NTU--Nephelometric turbidity units.

(19) [18] Nuisance--Any distribution, storage, or use of reclaimed water, in such concentration and of such duration that is or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(20) [19] On-channel pond--An impoundment wholly or partially within a definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. The water may flow continuously or intermittently, and if intermittently, with some degree of regularity, dependent on the characteristics of the source or sources.

(21) [20] Permit or permitted--A written document issued by the commission or executive director in accordance with Texas Water Code (TWC), Section 5.581, Chapter 305 of this title (relating to Consolidated Permits), and Chapter 321, Subchapter P of this title (related to Reclaimed Water Production Facilities) which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified

wastewater treatment or reclaimed water production facility [for waste discharge, including a wastewater discharge permit].

(22) [21] Pond system--Wastewater facility in which primary treatment followed by stabilization ponds are used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria. (See Chapter 217 [317] of this title (relating to the Design Criteria for Domestic Wastewater [Sewerage] Systems).)

(23) [22] Producer--A person or entity that produces reclaimed water by treating domestic wastewater or municipal wastewater, in accordance with a permit or other authorization of the commission [Agency], to meet the quality criteria established in this chapter.

(24) [23] Provider--A person or entity that distributes reclaimed water to a user(s) of reclaimed water. For purposes of this chapter, the reclaimed water provider may also be a reclaimed water producer.

(25) [24] Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use, pursuant to the provisions of this chapter and other applicable rules and permits.

(26) [25] Restricted landscaped area--Land which has vegetative cover to which public access is controlled in some manner. Access may be controlled by either legal means (e.g.

state or city ordinance) or controlled by some type of physical barrier (e.g., fence or wall).

Example of such areas are: golf courses; cemeteries; roadway rights-of-way; median dividers.

(27) [26] Restricted recreational impoundment--Body of reclaimed water in which recreation is limited to fishing, boating and other non-contact [non-contract] recreational activities.

(28) [27] Single grab sample--An individual sample collected in less than 15 minutes.

(29) [28] Spray irrigation—Application of finely divided water droplets using artificial means.

(30) [29] Subsequent holding pond--A pond or impoundment which receives reclaimed water from an initial holding pond where the quality of the water changes after management in the initial holding pond, due to factors which may include:

(A) the addition of water occurs such as contributions from surface water or ground water sources, but not including contributions of reclaimed water, domestic wastewater, or municipal wastewater;

(B) some type of utilization of the reclaimed water for a beneficial use occurs; or

(C) commingling of reclaimed water with surface water runoff where it occurs between storage in an initial holding pond and the subsequent holding pond.

(31) [30] Surface irrigation--Application of water by means other than spraying so that contact between the edible portion of any food crop and the irrigation water is prevented.

(32) [31] Type I reclaimed water use--Use of reclaimed water where contact between humans and the reclaimed water is likely.

(33) [32] Type II reclaimed water use--Use of reclaimed water where contact between humans and the reclaimed water is unlikely.

(34) [33] Unrestricted landscaped area--Land which has had its plant cover modified and access to which is uncontrolled. Examples of such areas are: parks; school yards; greenbelts; residences.

(35) [34] User--Person or entity utilizing reclaimed water for a beneficial use, in accordance with the requirements of this chapter. A reclaimed water user may also be a producer or a provider.

§210.4. Notification.

(a) Before providing reclaimed water to another for a use allowable under this chapter, the reclaimed water provider shall notify the executive director and obtain written approval to provide the reclaimed water. The notification shall include:

(1) a description of the intended use of the reclaimed water, including quantity, quality, origin, and location and purpose of intended use;

(2) a clear indication of the means for compliance with this chapter, including documentation that a user will be apprised of their responsibilities under this chapter as a part of the water supply contract or other binding agreement;

(3) evidence in a water supply contract or other binding agreement of the provider's authority to terminate reclaimed water use that is noncompliant with this chapter; and

(4) an operation and maintenance plan that is required under ordinance or is to be a part of the water supply contract or other binding agreement, where applicable, and which shall contain, as a minimum, the following:

(A) a labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines;

(B) the measures that will prevent unauthorized access to reclaimed water facilities (e.g., secured valves);

(C) procedures for monitoring reclaimed water transfers and use;

(D) steps the user must utilize to minimize the risk of inadvertent human exposure;

(E) schedules for routine maintenance;

(F) a plan for carrying out provider employee training and safety relating to reclaimed water treatment, distribution, and management; and

(G) contingency plan for remedy of system failures, unauthorized discharges, or upsets.

(b) If the provider is not the producer, a description of the origin of the reclaimed water, its quality based upon the parameters contained in the underlying [waste discharge] permit(s) described in §210.2(e), as applicable, and a signed agreement from the producer authorizing the transfer of the reclaimed water to the provider. If applicable, a reclaimed water provider or user may need to obtain a separate water right authorization from the commission.

(c) A producer who chooses to use reclaimed water for a beneficial use only within the boundaries of a wastewater treatment facility permitted by the commission, may do so without notification otherwise required by this section. In such instances, the producer is still required to comply with all applicable requirements of this chapter pertaining to the reclaimed water use.

(d) If effluent is to be used for irrigation within the Edwards Aquifer recharge zone, plans and specifications for the disposal system must be submitted to the executive director for review and approval prior to construction of the facility in accordance with Chapter 210 of this title (relating to Edwards Aquifer).

(e) Major changes from a prior notification for use of reclaimed water must be approved by the executive director. A major change includes:

(1) a change in the boundary of the approved service area not including the conversion of individual lots within a subdivision to reclaimed water use;

(2) the addition of a new producer;

(3) major changes in the intended use, such as conversion from irrigation of a golf course to residential irrigation; or

(4) changes from either Type I or Type II uses to the other.

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 6, 2025

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Cari-Michel La Caille, Director
Office of Water

Subject: Docket No. 2024-0897-RUL / Non-Rule Project No. 2023-137-321-OW
Revised Back-up for Commission Approval for Rulemaking Adoption
Chapter 321, Control of Certain Activities by Rule
Chapter 210, Use of Reclaimed Water
Domestic Reuse Alternative Disposal Method
Highlighted Version of the Adoption Preambles for 30 TAC Chapter 321
and Chapter 210

In the back-up package filed for Rule Project No. 2023-137-321-OW / Domestic Reuse Alternative Disposal Method, the agency erroneously left out the response to comment section of the Adoption Preambles for 30 TAC Chapter 321 and Chapter 210, responding to the comments received during the public comment period. That language has been added to these preambles on page 9 of each document. Original back-up materials for this rulemaking project were filed on January 24, 2025.

Attachments:
Adoption Preamble 30 TAC Chapter 321
Adoption Preamble 30 TAC Chapter 210

cc: Chief Clerk, 7 copies

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§321.301, 321.303, 321.305, 321.307, 321.309, 321.313, 321.315, 321.319, and 321.321.

Section 321.305 is adopted with changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 *TexReg* 8326), and therefore will be republished. Sections 321.301, 321.303, 321.307, 321.309, 321.313, 321.315, 321.319, and 321.321 are adopted without changes to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 1289, 88th Texas Regular Legislative Session (2023), amended the Texas Water Code (TWC), Chapter 26, by adding §26.02715. The bill allows a wastewater treatment facility that treats domestic wastewater for reuse to dispose of the treated wastewater without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system and has consent of the operator of the wastewater collection system that will receive the treated wastewater, and any treatment facility that will further treat the wastewater.

TCEQ is adopting amendments to Title 30 of the Texas Administrative Code (TAC) Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities) to allow a reclaimed water production facility to dispose of reclaimed water through a collection system to an associated domestic wastewater treatment facility by obtaining consent from the owner and operator of the collection system and the associated domestic wastewater treatment facility that will receive the reclaimed water for final treatment and disposal.

Section by Section Discussion

Amended §321.301, *Purpose and Applicability*, clarifies that an additional disposal or discharge permit from the commission is not required for reclaimed water production facilities that meet certain requirements. The amended section also clarifies that a reclaimed water production facility may be authorized to dispose of treated wastewater under this subchapter if the owner of the reclaimed water production facility has documented consent from the owner and operator of an associated domestic wastewater treatment facility, and the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected, if applicable.

Amended §321.303, *Definitions*, adds a new definition for Collection System. The subsequent definition is renumbered.

Amended §321.305, *General Requirements*, expands existing requirements to allow for a reclaimed water production facility with consent from the owner and operator of the associated domestic wastewater treatment facility and collection system to dispose of the treated wastewater through a wastewater collection system; and removes the requirement for a discharge or disposal permit for those facilities. The amended section clarifies that the authorization for a reclaimed water production facility does not alter the permitted flow or effluent limits of the associated domestic wastewater treatment facility. The amended section adds requirements for the owner or operator of the reclaimed water production facility to provide TCEQ with written notice of the termination of consent and confirmation that reclaimed water production facility operations have ceased within five working days of being notified that the consent has been withdrawn. This section has been revised from proposal to correct a reference added under new subsection 321.305(d) to read “321.305(a)(2).”

Amended §321.307, *Restrictions*, clarifies that the discharge of pollutants from a reclaimed water production facility to water in the state requires a Texas Pollutant Discharge Elimination System permit. The amended section establishes that sludge from a reclaimed water production facility that has obtained consent from the owner and operator of an associated domestic wastewater treatment facility, and the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected, must be conveyed to an associated domestic wastewater treatment facility through the collection system.

Amended §321.309, *Application Requirements*, clarifies that applications submitted under this subchapter must comply with §305.42(a) relating to *Application Required*. The amended section revises the requirement to provide a wastewater permit number for the permit number information required in a reclaimed water production facility authorization application. The amended section adds a requirement for reclaimed water production facilities seeking coverage for disposal through an associated domestic wastewater treatment facility to submit documentation of consent from the owner and operator of the associated domestic wastewater treatment facility and collection system, if applicable. Subsequent requirements are renumbered for clarity.

Amended §321.313, *Authorization*, clarifies that the executive director shall not authorize a reclaimed water production facility that disposes of treated reclaimed water through the collection system of an associated domestic wastewater treatment facility with an unsatisfactory compliance history rating. The amended section also updates the compliance history rating term “poor” to “unsatisfactory” for consistency with current agency terminology.

Amended §321.315, *Design Requirements*, clarifies that reclaimed water production facilities must be designed such that all wastewater is conveyed to the associated domestic wastewater treatment facility any time that the facility is not in operation. The amended section also clarifies that reclaimed water production facilities must be designed to convey all sludge to the associated domestic wastewater treatment facility.

Amended §321.319, *Public Notice Requirements*, clarifies that the applicant will describe the proposed reclaimed water production facility at a public meeting. In addition, a subsection was renumbered for consistency.

Amended §321.321, *Additional Reclaimed Water Production Facility Requirements*, clarifies the requirement for the operator of a reclaimed water production facility to have the same level of license or higher as the operator of the domestic or associated domestic wastewater treatment facility.

Final Regulatory Impact Determination

TCEQ reviewed the amended rules 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 Texas Legislature enacted SB 1289, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), by adding §26.02715 to the TWC. The intent is to increase the efficiency of water treatment and production facilities by providing more flexibility in TCEQ’s rules for Wastewater Treatment and Reclaimed Water Production Facilities, related to *Use of Reclaimed Water*, found in 30 TAC Chapters 321 and 210.

SB 1289 directs TCEQ to provide flexibility, through rulemaking, for facilities that use domestic wastewater treated for reuse (reclaimed water), to dispose of any reclaimed water without an additional permit under certain conditions.

Reclaimed water producers are currently authorized to use its treated reclaimed water only if it obtains a permit for an alternative means of disposal during times when there is no demand for its reclaimed water. TCEQ rules also require that the owner of any RWPF authorized by TCEQ, be the owner of a wastewater treatment facility permitted by TCEQ.

SB 1289 instructs TCEQ to promulgate rules that authorize facilities to convey reclaimed water to a willing “associated domestic wastewater treatment facility” and its wastewater collection system, as an “alternative means of disposal,” as required under 30 TAC Chapter 210.

SB 1289 also prohibits TCEQ from requiring an owner of a reclaimed water production facility to be the owner of the associated domestic wastewater treatment facility that is permitted by TCEQ.

SB 1289 directs TCEQ to amend TCEQ rules in 30 TAC Chapter 321, *Control of Certain Activities by Rule*, Subchapter P *Reclaimed Water Production Facilities*, which relate to facilities treating domestic wastewater for reuse purposes (“Reclaimed Water”).

Specifically, SB 1289 instructs TCEQ to adopt rules that authorize RWPFs to dispose of treated reclaimed water without an additional permit, if the RWPF disposes of the treated reclaimed water through an “associated domestic wastewater treatment facility” and its wastewater collection system, after receiving consent from the owner and operator of the associated domestic wastewater treatment facility that will receive the reclaimed water for further or final treatment and disposal.

Therefore, the specific intent of the adopted rulemaking is related to providing flexibility, in the form of additional options for facilities that produce reclaimed water, as identified in SB 1289.

Certain aspects of TCEQ’s Reclaimed Water Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor will the adopted 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 adopted 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 TGC, §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 amends authorizations in state law and TCEQ rules. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being adopted under TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in SB 1289 in the 88th Texas Regular Legislative Session (2023) and implements existing state law. Because this adoption 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 invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under 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 adopted rulemaking is to implement the legislative amendments to the TWC in SB 1289 by amending TCEQ's Reclaimed Water Rules to expand the regulatory options for disposal of reclaimed water, as identified in SB 1289. The adopted rulemaking will substantially advance the stated purpose of SB 1289 by adopting new rule language that provides for disposal of reclaimed water without an additional permit under the conditions identified in SB 1289.

Promulgation and enforcement of the adopted rules 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 adopted 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. The primary purpose of the adopted rules is to implement SB 1289

by providing for the authorization, under conditions identified in SB 1289, for disposal of reclaimed water without an additional permit when conveyed to an associated domestic wastewater treatment facility. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

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

Public comment

The commission offered a public hearing on November 1, 2024. The 30-day comment period closed on November 12, 2024. The commission received 3 public comments from an individual, Maverick Water Group, and City of Austin Watershed Protection Department.

Comment 1:

Mr. Joseph Hamel commented, 321.305(d) - If the consent under §321.305(a)(1)(B) is withdrawn by the collection system or associated domestic wastewater treatment facility owner(s), the authorization to operate the reclaimed water production facility without an alternate disposal

permit is terminated. Bad reference. There is no §321.305(a)(1)(B).

Response 1:

TCEQ thanks Mr. Hamel for noting this error. The erroneous reference has been corrected to §321.305(a)(2).

Comment 2:

MWG commented they appreciate and support Texas Senate Bill 1289, authored by Chairman Perry, and TCEQ's implementing rules ("SB 1289 implementation").

MWG commented that SB 1289 implementation provides clear guidelines for water reuse, which will encourage investment, promote more efficient and effective water management practices.

MWG commended TCEQ for its straightforward approach on SB 1289 implementation.

Specifically, the proposed changes to 30 TAC 210 and 30 TAC 321 provide clarity on TCEQ's process to encourage sustainable management of our state's precious water resources. Clear, balanced rules for beneficially reusing water without unnecessary burdens are critical to delivering the water Texas needs as stated in the Texas Water Plan.

Response 2:

TCEQ acknowledges and thanks MWG for their appreciation and support of SB 1289 and TCEQ's implementation strategy. No changes have been made in response to this comment.

Comment 3:

WPD commented that the following corrections are needed to existing rule text:

- Chapter 210.4 (Notifications) in §210.4(d): The reference to Chapter 313 should be corrected to reference Chapter 213.

- Chapter 210.6 (5): The reference to Chapter 317 should be corrected to reference Chapter 217.

Response 3:

TCEQ thanks WPD for noting these needed corrections. The reference under 30 TAC §210.4(d) has been corrected to state Chapter 213 (Edwards Aquifer). The rule text in 30 TAC §210.6 was not revised during this limited-scope rulemaking to implement SB 1289, and the correction to this subsection will be incorporated during a subsequent rulemaking.

Comment 4:

WPD commented that Chapter 210 does not explicitly require monitoring of the soil moisture or nutrient balance for soil as required in Chapter 309.20 for Texas Land Application Permits (TLAP). WPD noted the proposed change to §210.2 does not ensure compliance with the requirements of §309.20. WPD recommends the following edit: “(b) The commission has defined other types of reclaimed water activity in separate regulations, including Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities), Chapter 309 [§309.20] of this title (relating to Land Application of Sewage Effluent), and Chapter 297 [§297.1] of this title (relating to Definitions). These regulations do not modify those definitions or requirements. The term reclaimed water is limited in scope for the purpose of this rule as defined in §210.3 of this title (relating to Definitions).”

Response 4:

Rules established under Chapter 309 relate to the land application of wastewater effluent as a method of disposal. Rules established under Chapter 210 relate to the beneficial reuse of reclaimed water as an alternative option to final disposal methods. The cited language references applicable definitions contained in Chapter 309 but not requirements. No changes

have been made in response to this comment.

Comment 5:

WPD recommended the addition of standards on reclaimed water irrigation to Chapter 210 for environmentally sensitive areas such as the Edwards Aquifer Recharge Zone and a prohibition on reclaimed water irrigation within proximity to permeable features such as caves, sinkholes, faults, and fractures. For example, the City of Austin's Land Development Code prohibits wastewater irrigation within 150 feet from these environmentally sensitive features.

Response 5:

TCEQ thanks WPD for recommending these additions. The relevant sections of Chapter 210 were not opened during this limited-scope rulemaking to implement SB 1289, and these recommended additions will be reviewed and addressed during a subsequent rulemaking. No changes have been made in response to this comment.

Comment 6:

WPD commented that the TCEQ strategy of allowing Reclaimed Water Production Facilities (RWPF) authorizations combined with Chapter 210 reclaimed water user authorizations in place of TLAP permits represents a reduction in application, monitoring, and design requirements by simply receiving letters from an owner and operator of a collection system and associated wastewater treatment plant who agree to accept all reclaimed water that is not in demand from the Chapter 210 reclaimed water users associated with the RWPF. The rule changes to 30 TAC 321 and Chapter 210 implement those reductions of protections in accordance with SB 1289. Any failures of this new system should receive appropriate enforcement from TCEQ due to the increased risks to the environment from the proposed changes.

Response 6:

TCEQ acknowledges and thanks WPD for their comment. TCEQ concurs the proposed amendments to 30 TAC Chapters 321 and 210 are in accordance with SB 1289 and noncompliance with the proposed amendments would be investigated and addressed as appropriate by TCEQ's Office of Compliance and Enforcement. No changes have been made in response to this comment.

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, 321.325**

Statutory Authority

The Texas Commission on Environmental Quality (commission or TCEQ) adopts these amendments to TCEQ rules under the authority of Texas Water Code (TWC). 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, §26.02715. authorizes disposal of Reclaimed Water without an additional permit under certain conditions.

The amendments implement Senate Bill 1289, 88th Texas Regular Legislative Session (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.02715.

§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 or associated domestic wastewater treatment facility.

(c) A reclaimed water production facility authorized according to this subchapter is not required to hold a wastewater discharge or disposal 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 under this subchapter [only] if:

(1) the owner of the reclaimed water production facility is also the [an] owner of the associated domestic wastewater treatment facility that is permitted by the commission; or

(2) the owner of the reclaimed water production facility has documented consent, as required in §321.309(d)(11) of this title, from the owner and operator of an associated domestic wastewater treatment facility and, if applicable, the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected.

(e) If the wastewater discharge or disposal 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) Collection System--pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility, as defined in Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems).

(3) [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 domestic or associated [permitted] domestic wastewater treatment facility.

(4) [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; or [and]

(2) documented consent from the owner and operator of the wastewater collection system and associated domestic wastewater treatment facility to which the reclaimed water production facility is or will be connected; and

(3) 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 for [of] a reclaimed water production facility does not alter the permitted flow or effluent limits of the associated domestic wastewater treatment facility.

(d) If the consent under Section 321.305(a)(2) is withdrawn by the collection system or associated domestic wastewater treatment facility owner(s), the authorization to operate the reclaimed water production facility without an alternate disposal permit is terminated. The

owner or operator of the reclaimed water production facility must provide the executive director with written notice of the withdrawn consent, and confirmation that the reclaimed water production facility has ceased operation within five (5) business days after the owner or operator is notified that the consent has been withdrawn.

§321.307. Restrictions.

(a) A reclaimed water production facility may not discharge [wastewater or] pollutants into water in the state without a Texas Pollutant Discharge Elimination System permit.

(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 associated domestic wastewater treatment facility or a violation of the associated 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 associated [permitted] domestic wastewater treatment facility, treated, and disposed of in accordance with the associated 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 §§305.42(a), 305.43, 305.44, and 305.47 of this title (relating to Application Required; 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 proposed treatment units, a flow diagram, and the proposed [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) For reclaimed water production facilities seeking coverage for disposal through an associated domestic wastewater treatment facility, copies of the following documented consent must be submitted with the application:

(A) the documented consent from the owner and operator of the associated domestic wastewater treatment facility demonstrating that the facility has capacity to receive discharges of reclaimed water, untreated wastewater, and sludge from the reclaimed water production facility without exceeding or violating any permit requirements in the event that reclaimed water cannot be beneficially reused or the reclaimed water production facility is out of service.

(B) the documented consent from the owner of the collection system to which the reclaimed water production facility is or will be connected, if applicable.

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

§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 unsatisfactory [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 or associated domestic wastewater treatment facility that has a compliance history site rating of unsatisfactory [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 or associated 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 or associated 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.

§321.319. 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 proposed [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.

(C) [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 or associated 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.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§210.1, 210.2, 210.3, and 210.4.

Section 210.4 is adopted with changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 *TexReg* 8320), and therefore will be republished. Sections 210.1, 210.2, and 210.3 are adopted without changes to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 1289, 88th Texas Regular Legislative Session (2023), amended the Texas Water Code (TWC), Chapter 26, by adding §26.02715. The bill allows a wastewater treatment facility that treats domestic wastewater for reuse to dispose of the treated wastewater without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system and has consent of the operator of the wastewater collection system that will receive the treated wastewater, and any treatment facility that will further treat the water.

TCEQ is adopting amendments to Title 30 of the Texas Administrative Code (30 TAC) Chapter 210 (Use of Reclaimed Water), Subchapter A (General Provisions) to clarify the applicability of 30 TAC Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities), and related definitions.

Section by Section Discussion

Amended §210.1, *Applicability*, is restructured into subsections for clarity. Existing provisions

restructured under new subsection (b), are amended to clarify that the requirements of this chapter are not applicable to the use of treated wastewater identified in a water quality permit authorizing disposal by irrigation. Existing provisions restructured under new subsection (c)(1), are amended to clarify requirements for reclaimed water producers that have a domestic wastewater discharge 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. Amended subsection (c) also add requirements under new subsection (c)(2) for reclaimed water producers that obtain consent from an associated domestic wastewater treatment facility and collection system to which the reclaimed water production facility is or will be connected, then the use of reclaimed water would be permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

Amended §210.2, *Purpose and Scope*, expands the list of regulatory citations associated with the definition of reclaimed water activity types to include reference to Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities) and Chapter 309, Subchapter C of this title (relating to Land Disposal of Sewage Effluent). The amended section clarifies the reference to Chapter 297, Subchapter A of this title (relating to Definitions and Applicability of Substantive Water Rights). Additionally, the amended section adds new subsection (e) to clarify that a producer must obtain an approved Texas Pollutant Discharge Elimination System (TPDES) permit, Texas Land Application Permit (TLAP), or permit under 30 TAC Chapter 321, Subchapter P, of this title prior to commencement of construction and operation of the treatment facility.

Amended §210.3, *Definitions*, adds a definition for “associated domestic wastewater treatment facility”. Subsequent definitions are renumbered. The amended section clarifies the definition of “permit or permitted” by adding appropriate regulatory citations to TWC, §5.581 (relating to Definitions), Chapter 305 of this title (relating to Consolidated Permits), and Chapter 321, Subchapter P. The amended section also clarifies that the definition is applicable to a wastewater treatment facility or reclaimed water production facility. Additionally, the amended section updates a reference of “Agency” to “commission” and updates a reference of Chapter “317” to “217” for clarity and consistency.

Amended §210.4, *Notification*, adds a reference to the permits described in 210.2(e) that contain reclaimed water quality requirements for entities that obtain consent to dispose of reclaimed water through the wastewater collection system to an associated domestic wastewater treatment facility for final treatment and disposal. This section is revised from proposal to update an existing reference to Chapter 213 (relating to Edwards Aquifer).

Final Regulatory Impact Determination

TCEQ reviewed the amended rules 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 Texas Legislature enacted SB 1289, amending the TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), by adding § 26.02715 to the TWC. The intent is to provide more flexibility in TCEQ’s rules for Wastewater Treatment and Reclaimed Water Production Facilities, related to *Use of Reclaimed Water*, found in 30 TAC Chapters 321 and 210.

SB 1289 directed TCEQ to provide flexibility, through rulemaking, for facilities that use domestic wastewater treated onsite for reuse (reclaimed water), to dispose of any reclaimed water without an additional permit under certain conditions.

A Reclaimed Water Producer is currently authorized to use its treated reclaimed water only if it obtains a permit for an alternative means of disposal during times when there is no demand for its reclaimed water. TCEQ rules also require that the owner of any RWPF authorized by TCEQ, be the owner of a wastewater treatment facility permitted by TCEQ.

SB 1289 instructs TCEQ to promulgate rules that authorize facilities to convey reclaimed water

to a willing “associated domestic wastewater treatment facility” and its wastewater collection system, as an “alternative means of disposal,” as required under 30 TAC Chapter 210.

SB 1289 also prohibits TCEQ from requiring an owner of a RWPF to be the owner of the associated domestic wastewater treatment facility that is permitted by TCEQ.

SB 1289 directs TCEQ to amend TCEQ rules in 30 TAC Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities), which relate to facilities treating domestic wastewater for reuse purposes (“Reclaimed Water”). The simplistic changes to 30 TAC Chapter 210 (Use of Reclaimed Water), Subchapter A (General Provisions) are minor but necessary for clarity and consistency with proposed amended 30 TAC Chapter 321.

Specifically, SB 1289 instructs TCEQ to adopt rules that authorize RWPFs to dispose of treated reclaimed water without an additional permit, if the RWPF disposes of the treated reclaimed water through an “associated domestic wastewater treatment facility” and its wastewater collection system, after receiving consent from the owner and operator of the associated domestic wastewater treatment facility that will receive the reclaimed water for further or final treatment and disposal.

Therefore, the specific intent of the adopted rulemaking is related to providing flexibility, in the form of additional options for facilities that produce reclaimed water, as identified in SB 1289.

Certain aspects of TCEQ’s Reclaimed Water Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking

will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted 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 adopted 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 amends authorizations in state law and TCEQ rules. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in SB 1289 in the 88th Texas Regular Legislative Session (2023) and implements existing state law. Because this adoption 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 invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted 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 adopted rulemaking is to implement the legislative amendments to the TWC in SB 1289 by amending TCEQ's Reclaimed Water Rules to expand the regulatory options for disposal of reclaimed water, as identified in SB 1289. The adopted rulemaking will substantially advance the stated purpose of SB 1289 by adopting new rule language that provides for disposal of reclaimed water without an additional permit under the conditions identified in SB 1289.

Promulgation and enforcement of the adopted rules 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 adopted 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. The primary purpose of the adopted rules is to implement SB 1289 by providing for the authorization, under conditions identified in SB 1289, for disposal of reclaimed water without an additional permit when conveyed to an associated domestic wastewater treatment facility. This adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

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

Public comment

The commission offered a public hearing on November 12, 2024. The 30-day comment period closed on November 12, 2024. The commission received 3 public comments from an individual, Maverick Water Group, and City of Austin Watershed Protection Department.

Comment 1:

Mr. Joseph Hamel commented, 321.305(d) - If the consent under §321.305(a)(1)(B) is withdrawn by the collection system or associated domestic wastewater treatment facility owner(s), the authorization to operate the reclaimed water production facility without an alternate disposal permit is terminated. Bad reference. There is no §321.305(a)(1)(B).

Response 1:

TCEQ thanks Mr. Hamel for noting this error. The erroneous reference has been corrected to §321.305(a)(2).

Comment 2:

MWG commented they appreciate and support Texas Senate Bill 1289, authored by Chairman Perry, and TCEQ's implementing rules ("SB 1289 implementation").

MWG commented that SB 1289 implementation provides clear guidelines for water reuse, which will encourage investment, promote more efficient and effective water management practices.

MWG commended TCEQ for its straightforward approach on SB 1289 implementation.

Specifically, the proposed changes to 30 TAC 210 and 30 TAC 321 provide clarity on TCEQ's process to encourage sustainable management of our state's precious water resources. Clear, balanced rules for beneficially reusing water without unnecessary burdens are critical to

delivering the water Texas needs as stated in the Texas Water Plan.

Response 2:

TCEQ acknowledges and thanks MWG for their appreciation and support of SB 1289 and TCEQ's implementation strategy. No changes have been made in response to this comment.

Comment 3:

WPD commented that the following corrections are needed to existing rule text:

- Chapter 210.4 (Notifications) in §210.4(d): The reference to Chapter 313 should be corrected to reference Chapter 213.
- Chapter 210.6 (5): The reference to Chapter 317 should be corrected to reference Chapter 217.

Response 3:

TCEQ thanks WPD for noting these needed corrections. The reference under 30 TAC §210.4(d) has been corrected to state Chapter 213 (Edwards Aquifer). The rule text in 30 TAC §210.6 was not revised during this limited-scope rulemaking to implement SB 1289, and the correction to this subsection will be incorporated during a subsequent rulemaking.

Comment 4:

WPD commented that Chapter 210 does not explicitly require monitoring of the soil moisture or nutrient balance for soil as required in Chapter 309.20 for Texas Land Application Permits (TLAP). WPD noted the proposed change to §210.2 does not ensure compliance with the requirements of §309.20. WPD recommends the following edit: "(b) The commission has defined other types of reclaimed water activity in separate regulations, including Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities), Chapter 309

[§309.20] of this title (relating to Land Application of Sewage Effluent), and Chapter 297 [§297.1] of this title (relating to Definitions). These regulations do not modify those definitions or requirements. The term reclaimed water is limited in scope for the purpose of this rule as defined in §210.3 of this title (relating to Definitions).”

Response 4:

Rules established under Chapter 309 relate to the land application of wastewater effluent as a method of disposal. Rules established under Chapter 210 relate to the beneficial reuse of reclaimed water as an alternative option to final disposal methods. The cited language references applicable definitions contained in Chapter 309 but not requirements. No changes have been made in response to this comment.

Comment 5:

WPD recommended the addition of standards on reclaimed water irrigation to Chapter 210 for environmentally sensitive areas such as the Edwards Aquifer Recharge Zone and a prohibition on reclaimed water irrigation within proximity to permeable features such as caves, sinkholes, faults, and fractures. For example, the City of Austin’s Land Development Code prohibits wastewater irrigation within 150 feet from these environmentally sensitive features.

Response 5:

TCEQ thanks WPD for recommending these additions. The relevant sections of Chapter 210 were not opened during this limited-scope rulemaking to implement SB 1289, and these recommended additions will be reviewed and addressed during a subsequent rulemaking. No changes have been made in response to this comment.

Comment 6:

WPD commented that the TCEQ strategy of allowing Reclaimed Water Production Facilities (RWPF) authorizations combined with Chapter 210 reclaimed water user authorizations in place of TLAP permits represents a reduction in application, monitoring, and design requirements by simply receiving letters from an owner and operator of a collection system and associated wastewater treatment plant who agree to accept all reclaimed water that is not in demand from the Chapter 210 reclaimed water users associated with the RWPF. The rule changes to 30 TAC 321 and Chapter 210 implement those reductions of protections in accordance with SB 1289. Any failures of this new system should receive appropriate enforcement from TCEQ due to the increased risks to the environment from the proposed changes.

Response 6:

TCEQ acknowledges and thanks WPD for their comment. TCEQ concurs the proposed amendments to 30 TAC Chapters 321 and 210 are in accordance with SB 1289 and noncompliance with the proposed amendments would be investigated and addressed as appropriate by TCEQ's Office of Compliance and Enforcement. No changes have been made in response to this comment.

SUBCHAPTER A: GENERAL PROVISIONS

§§210.1 – 210.9

Statutory Authority

The Texas Commission on Environmental Quality (commission or TCEQ) adopts these amendments to TCEQ rules under the authority of Texas Water Code (TWC). 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, §26.02715 authorizes disposal of Reclaimed Water without an additional permit under certain conditions.

The amendments implement Senate Bill 1289, 88th Texas Regular Legislative Session (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.02715.

§210.1. Applicability.

(a) This chapter applies to the reclaimed water producer, provider, and user. [If the entity which is the producer of the reclaimed water is the same as the user, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water.]

(b) This chapter does not apply to treatment or disposal of wastewater permitted by the commission in accordance with the requirements of Chapter 305 of this title (relating to Consolidated Permits), or to the use[r] of such treated wastewater identified in a water quality [the producer's wastewater discharge] permit authorizing disposal by irrigation. This chapter does not apply to those systems authorized under Chapter 285 of this title (relating to On-Site Wastewater Treatment) which utilizes surface irrigation as an approved disposal method.

(c) If the entity which is the producer of the reclaimed water is the same as the user and:

(1) has 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, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water; or

(2) obtains consent from an associated domestic wastewater treatment facility and collection system to which the reclaimed water production facility is or will be connected to be used as an alternative means of disposal during times when there is no demand for the use of the reclaimed water, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

§210.2. Purpose and Scope.

(a) The purpose of this chapter is to establish general requirements, quality criteria, design, and operational requirements for the beneficial use of reclaimed water which may be substituted for potable water and/or raw water. As defined and specified in this chapter, the requirements must be met by producers, providers, and/or users of reclaimed water. Specific use categories are defined with corresponding reclaimed water quality requirements. These criteria are intended to allow the safe utilization of reclaimed water for conservation of surface and groundwater; to ensure the protection of public health; to protect ground and surface waters; and to help ensure an adequate supply of water resources for present and future needs.

(b) The commission has defined other types of reclaimed water activity in separate regulations, including Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities), Chapter [§] 309 [.20] of this title (relating to Land Disposal of Sewage Effluent), and Chapter [§] 297 [.1] of this title (relating to Definitions and Applicability). These regulations do not modify those definitions. The term reclaimed water is limited in scope for the purpose of this rule as defined in §210.3 of this title (relating to Definitions).

(c) Approval by the executive director of a reclaimed water use project under this chapter does not affect any existing water rights. If applicable, a reclaimed water use authorization in no way affects the need of a producer, provider and/or user to obtain a separate water right authorization from the commission.

(d) Reclaimed water projects approved under this chapter do not require a new or amended waste discharge permit from the commission except as provided in §210.5 of this

title (relating to Permits Required). Persons who desire to develop projects not specifically authorized by this chapter may seek authorization pursuant to provisions of Subchapter D or apply for a new or amended waste discharge permit under Chapter 305 of this title (relating to Consolidated Permits).

(e) A producer of reclaimed water must obtain an approved Texas Pollutant Discharge Elimination System (TPDES) permit, Texas Land Application Permit (TLAP), or authorization under 30 TAC Chapter 321, Subchapter P, of this title prior to commencement of construction and operation of the treatment facility.

§210.3. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Associated Domestic Wastewater Treatment Facility – a commission-authorized wastewater treatment facility located at the terminus of the collection system that consents to the acceptance of treated effluent, untreated effluent, and sludge from a reclaimed water production facility for final treatment and disposal.

(2) [1] Beneficial use--An economic use of wastewater in accordance with the purposes, applicable requirements, and quality criteria of this chapter, and which takes the place of potable and/or raw water that could otherwise be needed from another source. The use of reclaimed water in a quantity either less than or the economically optimal amount may be considered a beneficial use as long as it does not constitute a nuisance.

(3) [2] BOD₅--Five-day biochemical oxygen demand.

(4) [3] CBOD₅--Five-day carbonaceous biochemical oxygen demand.

(5) [4] CFU--Colony forming units.

(6) [5] Domestic wastewater--Waste and wastewater from humans or household operations that are discharged to a wastewater collection system or otherwise enters a treatment works. Also, this includes waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation, including greywater and blackwater, that is disposed in an on-site wastewater system as defined in Chapter 285 of this title (relating to On-Site Wastewater Treatment).

(7) [6] DRASTIC--A classification system for comparing land units on the basis of their vulnerability to ground-water pollution, a detailed description of which is found in Appendix 1 of this chapter.

Figure 1: 30 TAC 210.3

APPENDIX 1

DRASTIC - An Approach to Ground-Water Pollution Potential Mapping

DRASTIC was developed as a tool for comparing land units on the basis of their vulnerability to ground-water pollution. Artificial classification of natural systems, including aquifers, has been used for years. A system for ranking ground-water pollution potential which took into consideration a relatively large number of parameters had not been developed, however. Through a consensus process, a group sponsored by the National Water Well Association and

the Robert S. Kerr Environmental Research Laboratory developed the methodology described in limited detail here.

DRASTIC is a systematic approach for assessing the ground-water pollution potential of hydrogeologic settings. The DRASTIC system is a methodology which involves delineation of hydrogeologic settings and data analysis to develop a single index number which represents the sensitivity of that setting to ground-water pollution potential. The system to some degree depends on subjective, but skilled judgement by the user (Texas Water Commission, 1989).

Hydrogeologic settings are delineated based on seven parameters which are used to develop an index number for each setting. The parameters have been organized to create the acronym DRASTIC.

DRASTIC stands for:

- D - Depth to water
- R - Annual recharge
- A - Aquifer media
- S - Soil media
- T - Topography
- I - Vadose zone impact
- C - Hydraulic conductivity

After index numbers are developed, maps can be constructed to present a graphic display of the pollution potential. Two maps can be generated using the DRASTIC methodology, a map depicting general vulnerability to ground-water pollution and another specifically aimed at pollution from certain agricultural practices.

A generic contaminant is used for this methodology. The contaminant is introduced at the land surface as a solid or liquid and travels to the aquifer with recharge waters derived from precipitation. Mobility of the contaminant is assumed to be equal to that of groundwater and attenuation processes are assumed to go on in the soil, Vadose zone and aquifer.

Parameters used in the DRASTIC system are divided into ranges with corresponding ratings. Rating values depend on the impact of the factor on contamination potential. The general and agricultural DRASTIC evaluations use the same ranges and rating values, but the weighting of parameters changes. Weighting represents an attempt to define the relative importance of each factor in its ability to affect pollution transport to and within the aquifer and it creates the differences between the general and agricultural indices (Texas Water Commission, 1989).

Two pollution potential numbers, one for generalized pollution sources and one for pollution due to agricultural activities, are derived for each hydrogeologic setting. The formula for the index number is:

$$I = (Dr \times Dw) + (Rr \times Rw) + (Ar \times Aw) + (Sr \times Sw) + (Tr \times Tw) + (Ir \times Iw) + (Cr \times Cw)$$

I = DRASTIC index number
D, R, A, S, T, I, C - parameters

r - rating
w - weight

Maps are labeled with designations for the hydrogeologic settings and pollution potential numbers and the indices are then divided into ranges for color coding of the final maps.

More detailed information may be found in *DRASTIC: A standardized system for evaluating ground water pollution potential using hydrogeologic settings*: U.S. Environmental Protection Agency, EPA/600/2-87/035, authored by L. Allen, T. Bennett, J. H. Lehr, R. J. Petty and G. Hackett.

(8) [7] Edwards Aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally. (See Chapter 213 of this title (relating to Edwards Aquifer).)

(9) [8] Edwards Aquifer Recharge zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 213 of this title (relating to Edwards Aquifer).)

(10) [9] Food crop--Any crops intended for direct human consumption.

(11) [10] Initial holding pond--An impoundment which first receives reclaimed water from a producer at the quality levels established by this chapter, not including subsequent holding ponds.

(12) [11] Geometric mean--The n th root of the product of all measurements made in a particular period of time, for example in a month's time, where n equals the number of measurements made. In the alternative, the geometric mean can also be computed as the antilogarithm of the sum of the logarithm of each measurement made. Where any measurement using either computation method equals zero, it must be substituted with the value of one.

(13) [12] l--Liter.

(14) [13] Landscape impoundment--Body of reclaimed water which is used for aesthetic enjoyment or which otherwise serves a function not intended to include contact recreation.

(15) [14] Leak detection system--A system or device designed, constructed, maintained, and operated with a pond that is capable of immediately detecting a release of leachate or reclaimed water that migrates through a liner. The system may typically include a leachate collection system along with either leak detection sensors or view ports.

(16) [15] Municipal wastewater--Waste or wastewater discharged into a publicly owned or a privately owned sewerage treatment works primarily consisting of domestic waste.

(17) [16] mg/l--Milligram per liter.

(18) [17] NTU--Nephelometric turbidity units.

(19) [18] Nuisance--Any distribution, storage, or use of reclaimed water, in such concentration and of such duration that is or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(20) [19] On-channel pond--An impoundment wholly or partially within a definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. The water may flow continuously or intermittently, and if intermittently, with some degree of regularity, dependent on the characteristics of the source or sources.

(21) [20] Permit or permitted--A written document issued by the commission or executive director in accordance with Texas Water Code (TWC), Section 5.581, Chapter 305 of this title (relating to Consolidated Permits), and Chapter 321, Subchapter P of this title (related to Reclaimed Water Production Facilities) which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified

wastewater treatment or reclaimed water production facility [for waste discharge, including a wastewater discharge permit].

(22) [21] Pond system--Wastewater facility in which primary treatment followed by stabilization ponds are used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria. (See Chapter 217 [317] of this title (relating to the Design Criteria for Domestic Wastewater [Sewerage] Systems).)

(23) [22] Producer--A person or entity that produces reclaimed water by treating domestic wastewater or municipal wastewater, in accordance with a permit or other authorization of the commission [Agency], to meet the quality criteria established in this chapter.

(24) [23] Provider--A person or entity that distributes reclaimed water to a user(s) of reclaimed water. For purposes of this chapter, the reclaimed water provider may also be a reclaimed water producer.

(25) [24] Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use, pursuant to the provisions of this chapter and other applicable rules and permits.

(26) [25] Restricted landscaped area--Land which has vegetative cover to which public access is controlled in some manner. Access may be controlled by either legal means (e.g.

state or city ordinance) or controlled by some type of physical barrier (e.g., fence or wall).

Example of such areas are: golf courses; cemeteries; roadway rights-of-way; median dividers.

(27) [26] Restricted recreational impoundment--Body of reclaimed water in which recreation is limited to fishing, boating and other non-contact [non-contract] recreational activities.

(28) [27] Single grab sample--An individual sample collected in less than 15 minutes.

(29) [28] Spray irrigation—Application of finely divided water droplets using artificial means.

(30) [29] Subsequent holding pond--A pond or impoundment which receives reclaimed water from an initial holding pond where the quality of the water changes after management in the initial holding pond, due to factors which may include:

(A) the addition of water occurs such as contributions from surface water or ground water sources, but not including contributions of reclaimed water, domestic wastewater, or municipal wastewater;

(B) some type of utilization of the reclaimed water for a beneficial use occurs; or

(C) commingling of reclaimed water with surface water runoff where it occurs between storage in an initial holding pond and the subsequent holding pond.

(31) [30] Surface irrigation--Application of water by means other than spraying so that contact between the edible portion of any food crop and the irrigation water is prevented.

(32) [31] Type I reclaimed water use--Use of reclaimed water where contact between humans and the reclaimed water is likely.

(33) [32] Type II reclaimed water use--Use of reclaimed water where contact between humans and the reclaimed water is unlikely.

(34) [33] Unrestricted landscaped area--Land which has had its plant cover modified and access to which is uncontrolled. Examples of such areas are: parks; school yards; greenbelts; residences.

(35) [34] User--Person or entity utilizing reclaimed water for a beneficial use, in accordance with the requirements of this chapter. A reclaimed water user may also be a producer or a provider.

§210.4. Notification.

(a) Before providing reclaimed water to another for a use allowable under this chapter, the reclaimed water provider shall notify the executive director and obtain written approval to provide the reclaimed water. The notification shall include:

(1) a description of the intended use of the reclaimed water, including quantity, quality, origin, and location and purpose of intended use;

(2) a clear indication of the means for compliance with this chapter, including documentation that a user will be apprised of their responsibilities under this chapter as a part of the water supply contract or other binding agreement;

(3) evidence in a water supply contract or other binding agreement of the provider's authority to terminate reclaimed water use that is noncompliant with this chapter; and

(4) an operation and maintenance plan that is required under ordinance or is to be a part of the water supply contract or other binding agreement, where applicable, and which shall contain, as a minimum, the following:

(A) a labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines;

(B) the measures that will prevent unauthorized access to reclaimed water facilities (e.g., secured valves);

(C) procedures for monitoring reclaimed water transfers and use;

(D) steps the user must utilize to minimize the risk of inadvertent human exposure;

(E) schedules for routine maintenance;

(F) a plan for carrying out provider employee training and safety relating to reclaimed water treatment, distribution, and management; and

(G) contingency plan for remedy of system failures, unauthorized discharges, or upsets.

(b) If the provider is not the producer, a description of the origin of the reclaimed water, its quality based upon the parameters contained in the underlying [waste discharge] permit(s) described in §210.2(e), as applicable, and a signed agreement from the producer authorizing the transfer of the reclaimed water to the provider. If applicable, a reclaimed water provider or user may need to obtain a separate water right authorization from the commission.

(c) A producer who chooses to use reclaimed water for a beneficial use only within the boundaries of a wastewater treatment facility permitted by the commission, may do so without notification otherwise required by this section. In such instances, the producer is still required to comply with all applicable requirements of this chapter pertaining to the reclaimed water use.

(d) If effluent is to be used for irrigation within the Edwards Aquifer recharge zone, plans and specifications for the disposal system must be submitted to the executive director for review and approval prior to construction of the facility in accordance with Chapter 210 of this title (relating to Edwards Aquifer).

(e) Major changes from a prior notification for use of reclaimed water must be approved by the executive director. A major change includes:

(1) a change in the boundary of the approved service area not including the conversion of individual lots within a subdivision to reclaimed water use;

(2) the addition of a new producer;

(3) major changes in the intended use, such as conversion from irrigation of a golf course to residential irrigation; or

(4) changes from either Type I or Type II uses to the other.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: February 13, 2025

DATE OF REQUEST: January 24, 2025

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

CAPTION: Docket No. 2024-0897-RUL. Consideration of the adoption of amendment to 30 Texas Administrative Code (TAC) Chapter 321, Control of Certain Activities by Rule, Subchapter P, Reclaimed Water Production Facilities and 30 TAC Chapter 210, Use of Reclaimed Water, Subchapter A, General Provisions to implement Senate Bill 1289, 88th Regular Legislature.

The adopted rules will amend 30 TAC Chapter 321, Subchapter P, to revise Sections 321.301, 321.303, 321.305, 321.307, 321.309, 321.313, 321.315, 321.319, and 321.321 in 30 TAC Chapter 321, Subchapter P, to allow a wastewater treatment facility that treats domestic wastewater for reuse to dispose of the treated wastewater without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system. To do so requires consent of the operator of the wastewater collection system that will receive the treated wastewater and treatment facility that will further treat the water. The adopted rules will amend Sections 210.1, 210.2, 210.3, and 210.4 in 30 TAC Chapter 210, Subchapter A, to clarify regulatory citations associated with the definitions of reclaimed water activity types and the definition of 'Permit or Permitted.' The proposed rules were published in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8326). (Erika Crespo, Michael Parr; Rule Project No. 2023-137-321-OW)



Director

Robert Sadler

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Copy to CCC Secretary? NO ☒ YES ☐

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 24, 2025

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: **CML** Cari-Michel La Caille, Director
Office of Water

Docket No.: 2024-0897-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 321, Control of Certain Activities by Rule
Chapter 210, Use of Reclaimed Water
Domestic Reuse Alternative Disposal Method
Rule Project No. 2023-137-321-OW

Background and reason(s) for the rulemaking:

Currently, an entity seeking to produce reclaimed water must obtain, prior to construction and operation of a reclaimed water production facility (RWPF), authorization under 30 Texas Administrative Code (TAC) Chapter 321, Subchapter P, *Reclaimed Water Production Facilities*. An entity seeking to use reclaimed water produced at a RWPF must obtain a separate authorization under 30 TAC Chapter 210, *Use of Reclaimed Water*, which is an authorization to use the reclaimed water.

To obtain authorization under 30 TAC Chapter 321, Subchapter P, the owner of a RWPF is currently required to have a permit for a domestic wastewater treatment facility that will be used as the alternative disposal method when use of the reclaimed water is not an option (e.g., conditions don't allow for reuse, quality issues, plant upset, etc.).

The rulemaking will implement Senate Bill (SB or bill) 1289, 88th Regular Legislative Session, which amended Texas Water Code (TWC), Chapter 26, Subchapter B, *General Powers and Duties*, to add §26.02715, Disposal of Reclaimed Water to Wastewater Collection System, by allowing a wastewater treatment facility that treats domestic wastewater for reuse (i.e., a RWPF) to dispose of the treated wastewater (i.e., reclaimed water) without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system. To do so requires consent of the owner and operator of the wastewater collection system that will receive the treated wastewater and consent of the owner and operator of the treatment facility that will further treat the water.

The bill requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules to implement and enforce these provisions.

Water Quality Division (WQD) staff initiated additional changes to subsections of 30 TAC Chapter 321, Subchapter P, and Chapter 210 that will be revised to implement the bill. These additional changes are necessary to improve clarity and ensure readability of the revised rules by regulated entities.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking will amend 30 TAC Chapter 321, Subchapter P, to allow for disposal of reclaimed water through an associated domestic wastewater treatment facility by obtaining

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consent from the owner and operator of the associated domestic wastewater treatment facility that will receive the reclaimed water for final treatment and disposal. Specifically, the amended rules will:

- Add a definition for ‘collection system.’
- Expand existing requirements to allow an entity seeking authorization to construct and operate a RWPF under 30 TAC Chapter 321, Subchapter P, to obtain consent from the owner and operator of an associated wastewater treatment facility and collection system to be used as an alternative means of disposal.
- Add requirements for:
 - an entity seeking authorization to construct and operate a RWPF under 30 TAC Chapter 321, Subchapter P, that obtains consent from the owner and operator of an associated wastewater treatment facility and collection system to be used as an alternative means of disposal, to submit documentation of consent with their application; and
 - the owner or operator of a RWPF authorized under 30 TAC Chapter 321, Subchapter P, to provide TCEQ with written notice of the termination of consent and confirmation that RWPF operations have ceased within five working days of being notified that the consent has been withdrawn.
- Remove requirements for an entity seeking authorization to construct and operate a RWPF under 30 TAC Chapter 321, Subchapter P, to provide a wastewater permit number for an alternative means of disposal if the entity obtains consent from the owner and operator of an associated wastewater treatment facility and collection system to be used as an alternative means of disposal; and
- Revise the following existing provisions to clarify applicability of the rules of this subchapter to RWPFs that obtain consent for an alternative means of disposal for reclaimed water:
 - an authorization for a RWPF does not alter the permit or effluent limits of the associated domestic wastewater treatment facility;
 - the discharge of pollutants from a RWPF to water in the state requires a Texas Pollutant Discharge Elimination System (TPDES) permit;
 - applications submitted under this subchapter must comply with §305.42(a) relating to *Applications Required*;
 - the executive director shall not authorize a RWPF that discharges to an associated domestic wastewater treatment facility with an unsatisfactory compliance history rating;
 - RWPFs must be designed such that all wastewater is conveyed to the associated domestic wastewater treatment facility any time that the facility is not in operation;
 - RWPFs must be designed to convey all sludge to the associated domestic wastewater treatment facility; and
 - operator licensure requirements for the RWPF must be at the same level or higher than the domestic or associated domestic wastewater treatment facility.

The rulemaking will also amend 30 TAC Chapter 210, Subchapter A, *General Provisions*, to clarify applicability of the rules of the chapter and regulatory citations associated with the definitions of reclaimed water activity types and the definition of ‘Permit or Permitted.’ Specifically, the amended rules will:

- Restructure existing provisions under section §210.1 into subsections §§210.1(a), (b), and (c) for clarity and to improve readability by the regulated community.
- Add requirements (under new subsection §210.1(c)) for reclaimed water producers that obtain consent for an alternative means of disposal for reclaimed water, specifying the

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use of reclaimed water would be permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

- Clarify regulatory citations associated with the definitions of reclaimed water activity types and the definition of 'Permit or Permitted.'
- Add a reference to notification requirements for RWPF to clarify that the authorization for the RWPF will contain reclaimed water quality requirements for entities that obtain consent for an alternative means of disposal.

B.) Scope required by federal regulations or state statutes:

All changes adopted are a direct result of the passage of SB 1289 and the updates this bill made to TWC, Chapter 26, Subchapter B.

C.) Additional staff recommendations that are not required by federal rule or state statute:

WQD respectfully recommends the following additional changes that are not required by the bill:

- Revise an existing provision (under new subsection §210.1(b)), to clarify that the requirements of this chapter are not applicable to the use of treated wastewater identified in a water quality permit authorizing disposal by irrigation.
- Revise existing provisions (under new subsection §210.1(c)), to clarify requirements for reclaimed water producers that have a permit for a domestic wastewater treatment facility that is located at the terminus of the collection system to which the RWPF is or will be connected.
- Add new subsection §210.2(e) to clarify that a producer must obtain an approved TPDES permit, Texas Land Application Permit, or authorization under 30 TAC Chapter 321, Subchapter P, of this title prior to commencement of construction and operation of the treatment facility.
- Update the compliance rating term "poor" to "unsatisfactory" under both Chapter 321, Subchapter P, and Chapter 210 for consistency with current agency terminology.
- Restructure and revise existing provisions under Chapters 321 and 210 to improve the readability and ensure revised provisions associated with implementation of SB 1289 are easy to understand by regulated entities.

Statutory authority:

- 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;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; and
- TWC, §26.02715, which authorizes disposal of Reclaimed Water without an additional permit under certain conditions.

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Effect on the:

A.) Regulated community:

The adopted rulemaking provides an option for public and private water/wastewater utilities to obtain authorization for RWPFs throughout the state. Rulemaking will allow disposal of treated wastewater through a TPDES permitted facility's collection system. The existing rules already contain application and annual water quality fees, and an additional fiscal impact on the regulated community is not anticipated.

B.) Public:

No impact to the public is anticipated.

C.) Agency programs:

At this time, TCEQ has received and issued two authorizations for RWPFs that obtained consent to dispose of reclaimed water through the collection system for an associated domestic wastewater treatment facility. TCEQ has identified two existing RWPFs that will seek coverage under the amended rules, and TCEQ anticipates an overall increase in the number of applications to construct and operate a RWPF that will be received and processed under the amended Chapter 321 rules. TCEQ's Office of Compliance and Enforcement will be required to conduct investigations and respond to complaints for the additional facilities that will be able to seek coverage under the amended rules.

Stakeholder meetings:

Updates on this rulemaking were provided at the quarterly Water Quality Advisory Work Group (WQAWG) meetings hosted by TCEQ on October 24, 2023; January 16, 2024; April 16, 2024; July 16, 2024; and October 15, 2024. Regular updates will continue to be provided at the WQAWG meetings.

Public Involvement Plan:

A Public Involvement Plan is required for this rulemaking and has been prepared.

Alternative Language Requirements:

Alternative Language Requirements apply for this rulemaking (Spanish).

Public comment:

The adopted rule was published in the *Texas Register* on October 11, 2024. The commission held a hybrid public hearing on November 12, 2024. The 30-day public comment period closed on the same date. Three public comments were received from Mr. Joseph Hamel, Maverick Water Group, and City of Austin Watershed Protection Department.

The following revisions have been made from proposal in response to comments received:

- amended §210.4 is revised to update an existing reference to Chapter 213 (relating to Edwards Aquifer) for clarity and consistency with existing TCEQ rules; and

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- amended §321.305 is revised to correct an error in the reference to §321.305(a)(2) under §321.305(d).

No additional changes have been made in response to comments. Sections 210.4 and 321.305 are adopted with changes to the proposed text as published and will be republished.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

There are no anticipated controversial concerns or legislative interest expected, outside of interest in promoting the beneficial use of reclaimed water that may be substituted for potable or raw water throughout the state.

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

This rulemaking does not have any effect on current policies or require the development of new policies.

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

This rulemaking is required to implement SB 1289. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** October 11, 2024

Anticipated *Texas Register* adoption publication date: February 28, 2025

Anticipated effective date: March 6, 2025

Six-month *Texas Register* filing deadline: April 11, 2025

Agency contacts:

Erika Crespo, Rule Project Manager, Water Quality Division, (512) 239-1827

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

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

Attachments:

SB 1289

cc: Chief Clerk, 2 copies
Executive Director's Office
Krista Kyle
Jessie Powell
Office of General Counsel
Erika Crespo
Michael Parr
Gwen Ricco

AN ACT

relating to the disposal of reclaimed wastewater.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.02715 to read as follows:

Sec. 26.02715. DISPOSAL OF RECLAIMED WASTEWATER TO WASTEWATER COLLECTION SYSTEM. (a) A wastewater treatment facility or reclaimed water production facility that treats domestic wastewater for reuse may dispose of the treated wastewater without a permit for an alternative means of disposal if the facility:

(1) disposes of the treated wastewater through a wastewater collection system; and

(2) has the consent of the operator of:

(A) the wastewater collection system that will receive the treated wastewater; and

(B) any wastewater treatment facility that will further treat the treated wastewater.

(b) The owner of a reclaimed water production facility that meets the requirements of Subsection (a) may not be required to be the owner of an associated domestic wastewater treatment facility that is permitted by the commission.

(c) The commission shall adopt rules to implement and enforce this section.

SECTION 2. As soon as practicable after the effective date

1 of this Act, the Texas Commission on Environmental Quality shall
2 adopt the rules required by Section 26.02715, Water Code, as added
3 by this Act.

4 SECTION 3. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1289 passed the Senate on April 12, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1289 passed the House on May 24, 2023, by the following vote: Yeas 118, Nays 20, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§210.1, 210.2, 210.3, and 210.4.

Section 210.4 is adopted with changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 *TexReg* 8320), and therefore will be republished. Sections 210.1, 210.2, and 210.3 are adopted without changes to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 1289, 88th Texas Regular Legislative Session (2023), amended the Texas Water Code (TWC), Chapter 26, by adding §26.02715. The bill allows a wastewater treatment facility that treats domestic wastewater for reuse to dispose of the treated wastewater without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system and has consent of the operator of the wastewater collection system that will receive the treated wastewater, and any treatment facility that will further treat the water.

TCEQ is adopting amendments to Title 30 of the Texas Administrative Code (30 TAC) Chapter 210 (Use of Reclaimed Water), Subchapter A (General Provisions) to clarify the applicability of 30 TAC Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities), and related definitions.

Section by Section Discussion

Amended §210.1, *Applicability*, is restructured into subsections for clarity. Existing provisions

restructured under new subsection (b), are amended to clarify that the requirements of this chapter are not applicable to the use of treated wastewater identified in a water quality permit authorizing disposal by irrigation. Existing provisions restructured under new subsection (c)(1), are amended to clarify requirements for reclaimed water producers that have a domestic wastewater discharge 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. Amended subsection (c) also add requirements under new subsection (c)(2) for reclaimed water producers that obtain consent from an associated domestic wastewater treatment facility and collection system to which the reclaimed water production facility is or will be connected, then the use of reclaimed water would be permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

Amended §210.2, *Purpose and Scope*, expands the list of regulatory citations associated with the definition of reclaimed water activity types to include reference to Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities) and Chapter 309, Subchapter C of this title (relating to Land Disposal of Sewage Effluent). The amended section clarifies the reference to Chapter 297, Subchapter A of this title (relating to Definitions and Applicability of Substantive Water Rights). Additionally, the amended section adds new subsection (e) to clarify that a producer must obtain an approved Texas Pollutant Discharge Elimination System (TPDES) permit, Texas Land Application Permit (TLAP), or permit under 30 TAC Chapter 321, Subchapter P, of this title prior to commencement of construction and operation of the treatment facility.

Amended §210.3, *Definitions*, adds a definition for “associated domestic wastewater treatment facility”. Subsequent definitions are renumbered. The amended section clarifies the definition of “permit or permitted” by adding appropriate regulatory citations to TWC, §5.581 (relating to Definitions), Chapter 305 of this title (relating to Consolidated Permits), and Chapter 321, Subchapter P. The amended section also clarifies that the definition is applicable to a wastewater treatment facility or reclaimed water production facility. Additionally, the amended section updates a reference of “Agency” to “commission” and updates a reference of Chapter “317” to “217” for clarity and consistency.

Amended §210.4, *Notification*, adds a reference to the permits described in 210.2(e) that contain reclaimed water quality requirements for entities that obtain consent to dispose of reclaimed water through the wastewater collection system to an associated domestic wastewater treatment facility for final treatment and disposal. This section is revised from proposal to update an existing reference to Chapter 213 (relating to Edwards Aquifer).

Final Regulatory Impact Determination

TCEQ reviewed the amended rules 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 Texas Legislature enacted SB 1289, amending the TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), by adding § 26.02715 to the TWC. The intent is to provide more flexibility in TCEQ’s rules for Wastewater Treatment and Reclaimed Water Production Facilities, related to *Use of Reclaimed Water*, found in 30 TAC Chapters 321 and 210.

SB 1289 directed TCEQ to provide flexibility, through rulemaking, for facilities that use domestic wastewater treated onsite for reuse (reclaimed water), to dispose of any reclaimed water without an additional permit under certain conditions.

A Reclaimed Water Producer is currently authorized to use its treated reclaimed water only if it obtains a permit for an alternative means of disposal during times when there is no demand for its reclaimed water. TCEQ rules also require that the owner of any RWPF authorized by TCEQ, be the owner of a wastewater treatment facility permitted by TCEQ.

SB 1289 instructs TCEQ to promulgate rules that authorize facilities to convey reclaimed water

to a willing “associated domestic wastewater treatment facility” and its wastewater collection system, as an “alternative means of disposal,” as required under 30 TAC Chapter 210.

SB 1289 also prohibits TCEQ from requiring an owner of a RWPF to be the owner of the associated domestic wastewater treatment facility that is permitted by TCEQ.

SB 1289 directs TCEQ to amend TCEQ rules in 30 TAC Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities), which relate to facilities treating domestic wastewater for reuse purposes (“Reclaimed Water”). The simplistic changes to 30 TAC Chapter 210 (Use of Reclaimed Water), Subchapter A (General Provisions) are minor but necessary for clarity and consistency with proposed amended 30 TAC Chapter 321.

Specifically, SB 1289 instructs TCEQ to adopt rules that authorize RWPFs to dispose of treated reclaimed water without an additional permit, if the RWPF disposes of the treated reclaimed water through an “associated domestic wastewater treatment facility” and its wastewater collection system, after receiving consent from the owner and operator of the associated domestic wastewater treatment facility that will receive the reclaimed water for further or final treatment and disposal.

Therefore, the specific intent of the adopted rulemaking is related to providing flexibility, in the form of additional options for facilities that produce reclaimed water, as identified in SB 1289.

Certain aspects of TCEQ’s Reclaimed Water Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking

will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted 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 adopted 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 amends authorizations in state law and TCEQ rules. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in SB 1289 in the 88th Texas Regular Legislative Session (2023) and implements existing state law. Because this adoption 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 invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted 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 adopted rulemaking is to implement the legislative amendments to the TWC in SB 1289 by amending TCEQ's Reclaimed Water Rules to expand the regulatory options for disposal of reclaimed water, as identified in SB 1289. The adopted rulemaking will substantially advance the stated purpose of SB 1289 by adopting new rule language that provides for disposal of reclaimed water without an additional permit under the conditions identified in SB 1289.

Promulgation and enforcement of the adopted rules 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 adopted 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. The primary purpose of the adopted rules is to implement SB 1289 by providing for the authorization, under conditions identified in SB 1289, for disposal of reclaimed water without an additional permit when conveyed to an associated domestic wastewater treatment facility. This adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

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

Public comment

The commission offered a public hearing on November 12, 2024. The 30-day comment period closed on November 12, 2024. The commission received 3 public comments from an individual, Maverick Water Group, and City of Austin Watershed Protection Department.

SUBCHAPTER A: GENERAL PROVISIONS

§§210.1 – 210.9

Statutory Authority

The Texas Commission on Environmental Quality (commission or TCEQ) adopts these amendments to TCEQ rules under the authority of Texas Water Code (TWC). 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, §26.02715 authorizes disposal of Reclaimed Water without an additional permit under certain conditions.

The amendments implement Senate Bill 1289, 88th Texas Regular Legislative Session (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.02715.

§210.1. Applicability.

(a) This chapter applies to the reclaimed water producer, provider, and user. [If the entity which is the producer of the reclaimed water is the same as the user, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water.]

(b) This chapter does not apply to treatment or disposal of wastewater permitted by the commission in accordance with the requirements of Chapter 305 of this title (relating to Consolidated Permits), or to the use[r] of such treated wastewater identified in a water quality [the producer's wastewater discharge] permit authorizing disposal by irrigation. This chapter does not apply to those systems authorized under Chapter 285 of this title (relating to On-Site Wastewater Treatment) which utilizes surface irrigation as an approved disposal method.

(c) If the entity which is the producer of the reclaimed water is the same as the user and:

(1) has 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, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water; or

(2) obtains consent from an associated domestic wastewater treatment facility and collection system to which the reclaimed water production facility is or will be connected to be used as an alternative means of disposal during times when there is no demand for the use of the reclaimed water, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

§210.2. Purpose and Scope.

(a) The purpose of this chapter is to establish general requirements, quality criteria, design, and operational requirements for the beneficial use of reclaimed water which may be substituted for potable water and/or raw water. As defined and specified in this chapter, the requirements must be met by producers, providers, and/or users of reclaimed water. Specific use categories are defined with corresponding reclaimed water quality requirements. These criteria are intended to allow the safe utilization of reclaimed water for conservation of surface and groundwater; to ensure the protection of public health; to protect ground and surface waters; and to help ensure an adequate supply of water resources for present and future needs.

(b) The commission has defined other types of reclaimed water activity in separate regulations, including Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities), Chapter [§] 309 [.20] of this title (relating to Land Disposal of Sewage Effluent), and Chapter [§] 297 [.1] of this title (relating to Definitions and Applicability). These regulations do not modify those definitions. The term reclaimed water is limited in scope for the purpose of this rule as defined in §210.3 of this title (relating to Definitions).

(c) Approval by the executive director of a reclaimed water use project under this chapter does not affect any existing water rights. If applicable, a reclaimed water use authorization in no way affects the need of a producer, provider and/or user to obtain a separate water right authorization from the commission.

(d) Reclaimed water projects approved under this chapter do not require a new or amended waste discharge permit from the commission except as provided in §210.5 of this

title (relating to Permits Required). Persons who desire to develop projects not specifically authorized by this chapter may seek authorization pursuant to provisions of Subchapter D or apply for a new or amended waste discharge permit under Chapter 305 of this title (relating to Consolidated Permits).

(e) A producer of reclaimed water must obtain an approved Texas Pollutant Discharge Elimination System (TPDES) permit, Texas Land Application Permit (TLAP), or authorization under 30 TAC Chapter 321, Subchapter P, of this title prior to commencement of construction and operation of the treatment facility.

§210.3. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Associated Domestic Wastewater Treatment Facility – a commission-authorized wastewater treatment facility located at the terminus of the collection system that consents to the acceptance of treated effluent, untreated effluent, and sludge from a reclaimed water production facility for final treatment and disposal.

(2) [1] Beneficial use--An economic use of wastewater in accordance with the purposes, applicable requirements, and quality criteria of this chapter, and which takes the place of potable and/or raw water that could otherwise be needed from another source. The use of reclaimed water in a quantity either less than or the economically optimal amount may be considered a beneficial use as long as it does not constitute a nuisance.

(3) [2] BOD₅--Five-day biochemical oxygen demand.

(4) [3] CBOD₅--Five-day carbonaceous biochemical oxygen demand.

(5) [4] CFU--Colony forming units.

(6) [5] Domestic wastewater--Waste and wastewater from humans or household operations that are discharged to a wastewater collection system or otherwise enters a treatment works. Also, this includes waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation, including greywater and blackwater, that is disposed in an on-site wastewater system as defined in Chapter 285 of this title (relating to On-Site Wastewater Treatment).

(7) [6] DRASTIC--A classification system for comparing land units on the basis of their vulnerability to ground-water pollution, a detailed description of which is found in Appendix 1 of this chapter.

Figure 1: 30 TAC 210.3

APPENDIX 1

DRASTIC - An Approach to Ground-Water Pollution Potential Mapping

DRASTIC was developed as a tool for comparing land units on the basis of their vulnerability to ground-water pollution. Artificial classification of natural systems, including aquifers, has been used for years. A system for ranking ground-water pollution potential which took into consideration a relatively large number of parameters had not been developed, however. Through a consensus process, a group sponsored by the National Water Well Association and

the Robert S. Kerr Environmental Research Laboratory developed the methodology described in limited detail here.

DRASTIC is a systematic approach for assessing the ground-water pollution potential of hydrogeologic settings. The DRASTIC system is a methodology which involves delineation of hydrogeologic settings and data analysis to develop a single index number which represents the sensitivity of that setting to ground-water pollution potential. The system to some degree depends on subjective, but skilled judgement by the user (Texas Water Commission, 1989).

Hydrogeologic settings are delineated based on seven parameters which are used to develop an index number for each setting. The parameters have been organized to create the acronym DRASTIC.

DRASTIC stands for:

- D - Depth to water
- R - Annual recharge
- A - Aquifer media
- S - Soil media
- T - Topography
- I - Vadose zone impact
- C - Hydraulic conductivity

After index numbers are developed, maps can be constructed to present a graphic display of the pollution potential. Two maps can be generated using the DRASTIC methodology, a map depicting general vulnerability to ground-water pollution and another specifically aimed at pollution from certain agricultural practices.

A generic contaminant is used for this methodology. The contaminant is introduced at the land surface as a solid or liquid and travels to the aquifer with recharge waters derived from precipitation. Mobility of the contaminant is assumed to be equal to that of groundwater and attenuation processes are assumed to go on in the soil, Vadose zone and aquifer.

Parameters used in the DRASTIC system are divided into ranges with corresponding ratings. Rating values depend on the impact of the factor on contamination potential. The general and agricultural DRASTIC evaluations use the same ranges and rating values, but the weighting of parameters changes. Weighting represents an attempt to define the relative importance of each factor in its ability to affect pollution transport to and within the aquifer and it creates the differences between the general and agricultural indices (Texas Water Commission, 1989).

Two pollution potential numbers, one for generalized pollution sources and one for pollution due to agricultural activities, are derived for each hydrogeologic setting. The formula for the index number is:

$$I = (Dr \times Dw) + (Rr \times Rw) + (Ar \times Aw) + (Sr \times Sw) + (Tr \times Tw) + (Ir \times Iw) + (Cr \times Cw)$$

I = DRASTIC index number
D, R, A, S, T, I, C - parameters

r - rating
w - weight

Maps are labeled with designations for the hydrogeologic settings and pollution potential numbers and the indices are then divided into ranges for color coding of the final maps.

More detailed information may be found in *DRASTIC: A standardized system for evaluating ground water pollution potential using hydrogeologic settings*: U.S. Environmental Protection Agency, EPA/600/2-87/035, authored by L. Allen, T. Bennett, J. H. Lehr, R. J. Petty and G. Hackett.

(8) [7] Edwards Aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally. (See Chapter 213 of this title (relating to Edwards Aquifer).)

(9) [8] Edwards Aquifer Recharge zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 213 of this title (relating to Edwards Aquifer).)

(10) [9] Food crop--Any crops intended for direct human consumption.

(11) [10] Initial holding pond--An impoundment which first receives reclaimed water from a producer at the quality levels established by this chapter, not including subsequent holding ponds.

(12) [11] Geometric mean--The n th root of the product of all measurements made in a particular period of time, for example in a month's time, where n equals the number of measurements made. In the alternative, the geometric mean can also be computed as the antilogarithm of the sum of the logarithm of each measurement made. Where any measurement using either computation method equals zero, it must be substituted with the value of one.

(13) [12] l--Liter.

(14) [13] Landscape impoundment--Body of reclaimed water which is used for aesthetic enjoyment or which otherwise serves a function not intended to include contact recreation.

(15) [14] Leak detection system--A system or device designed, constructed, maintained, and operated with a pond that is capable of immediately detecting a release of leachate or reclaimed water that migrates through a liner. The system may typically include a leachate collection system along with either leak detection sensors or view ports.

(16) [15] Municipal wastewater--Waste or wastewater discharged into a publicly owned or a privately owned sewerage treatment works primarily consisting of domestic waste.

(17) [16] mg/l--Milligram per liter.

(18) [17] NTU--Nephelometric turbidity units.

(19) [18] Nuisance--Any distribution, storage, or use of reclaimed water, in such concentration and of such duration that is or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(20) [19] On-channel pond--An impoundment wholly or partially within a definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. The water may flow continuously or intermittently, and if intermittently, with some degree of regularity, dependent on the characteristics of the source or sources.

(21) [20] Permit or permitted--A written document issued by the commission or executive director in accordance with Texas Water Code (TWC), Section 5.581, Chapter 305 of this title (relating to Consolidated Permits), and Chapter 321, Subchapter P of this title (related to Reclaimed Water Production Facilities) which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified

wastewater treatment or reclaimed water production facility [for waste discharge, including a wastewater discharge permit].

(22) [21] Pond system--Wastewater facility in which primary treatment followed by stabilization ponds are used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria. (See Chapter 217 [317] of this title (relating to the Design Criteria for Domestic Wastewater [Sewerage] Systems).)

(23) [22] Producer--A person or entity that produces reclaimed water by treating domestic wastewater or municipal wastewater, in accordance with a permit or other authorization of the commission [Agency], to meet the quality criteria established in this chapter.

(24) [23] Provider--A person or entity that distributes reclaimed water to a user(s) of reclaimed water. For purposes of this chapter, the reclaimed water provider may also be a reclaimed water producer.

(25) [24] Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use, pursuant to the provisions of this chapter and other applicable rules and permits.

(26) [25] Restricted landscaped area--Land which has vegetative cover to which public access is controlled in some manner. Access may be controlled by either legal means (e.g.

state or city ordinance) or controlled by some type of physical barrier (e.g., fence or wall).

Example of such areas are: golf courses; cemeteries; roadway rights-of-way; median dividers.

(27) [26] Restricted recreational impoundment--Body of reclaimed water in which recreation is limited to fishing, boating and other non-contact [non-contract] recreational activities.

(28) [27] Single grab sample--An individual sample collected in less than 15 minutes.

(29) [28] Spray irrigation—Application of finely divided water droplets using artificial means.

(30) [29] Subsequent holding pond--A pond or impoundment which receives reclaimed water from an initial holding pond where the quality of the water changes after management in the initial holding pond, due to factors which may include:

(A) the addition of water occurs such as contributions from surface water or ground water sources, but not including contributions of reclaimed water, domestic wastewater, or municipal wastewater;

(B) some type of utilization of the reclaimed water for a beneficial use occurs; or

(C) commingling of reclaimed water with surface water runoff where it occurs between storage in an initial holding pond and the subsequent holding pond.

(31) [30] Surface irrigation--Application of water by means other than spraying so that contact between the edible portion of any food crop and the irrigation water is prevented.

(32) [31] Type I reclaimed water use--Use of reclaimed water where contact between humans and the reclaimed water is likely.

(33) [32] Type II reclaimed water use--Use of reclaimed water where contact between humans and the reclaimed water is unlikely.

(34) [33] Unrestricted landscaped area--Land which has had its plant cover modified and access to which is uncontrolled. Examples of such areas are: parks; school yards; greenbelts; residences.

(35) [34] User--Person or entity utilizing reclaimed water for a beneficial use, in accordance with the requirements of this chapter. A reclaimed water user may also be a producer or a provider.

§210.4. Notification.

(a) Before providing reclaimed water to another for a use allowable under this chapter, the reclaimed water provider shall notify the executive director and obtain written approval to provide the reclaimed water. The notification shall include:

(1) a description of the intended use of the reclaimed water, including quantity, quality, origin, and location and purpose of intended use;

(2) a clear indication of the means for compliance with this chapter, including documentation that a user will be apprised of their responsibilities under this chapter as a part of the water supply contract or other binding agreement;

(3) evidence in a water supply contract or other binding agreement of the provider's authority to terminate reclaimed water use that is noncompliant with this chapter; and

(4) an operation and maintenance plan that is required under ordinance or is to be a part of the water supply contract or other binding agreement, where applicable, and which shall contain, as a minimum, the following:

(A) a labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines;

(B) the measures that will prevent unauthorized access to reclaimed water facilities (e.g., secured valves);

(C) procedures for monitoring reclaimed water transfers and use;

(D) steps the user must utilize to minimize the risk of inadvertent human exposure;

(E) schedules for routine maintenance;

(F) a plan for carrying out provider employee training and safety relating to reclaimed water treatment, distribution, and management; and

(G) contingency plan for remedy of system failures, unauthorized discharges, or upsets.

(b) If the provider is not the producer, a description of the origin of the reclaimed water, its quality based upon the parameters contained in the underlying [waste discharge] permit(s) described in §210.2(e), as applicable, and a signed agreement from the producer authorizing the transfer of the reclaimed water to the provider. If applicable, a reclaimed water provider or user may need to obtain a separate water right authorization from the commission.

(c) A producer who chooses to use reclaimed water for a beneficial use only within the boundaries of a wastewater treatment facility permitted by the commission, may do so without notification otherwise required by this section. In such instances, the producer is still required to comply with all applicable requirements of this chapter pertaining to the reclaimed water use.

(d) If effluent is to be used for irrigation within the Edwards Aquifer recharge zone, plans and specifications for the disposal system must be submitted to the executive director for review and approval prior to construction of the facility in accordance with Chapter 210 of this title (relating to Edwards Aquifer).

(e) Major changes from a prior notification for use of reclaimed water must be approved by the executive director. A major change includes:

(1) a change in the boundary of the approved service area not including the conversion of individual lots within a subdivision to reclaimed water use;

(2) the addition of a new producer;

(3) major changes in the intended use, such as conversion from irrigation of a golf course to residential irrigation; or

(4) changes from either Type I or Type II uses to the other.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§321.301, 321.303, 321.305, 321.307, 321.309, 321.313, 321.315, 321.319, and 321.321.

Section 321.305 is adopted with changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 *TexReg* 8326), and therefore will be republished. Sections 321.301, 321.303, 321.307, 321.309, 321.313, 321.315, 321.319, and 321.321 are adopted without changes to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 1289, 88th Texas Regular Legislative Session (2023), amended the Texas Water Code (TWC), Chapter 26, by adding §26.02715. The bill allows a wastewater treatment facility that treats domestic wastewater for reuse to dispose of the treated wastewater without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system and has consent of the operator of the wastewater collection system that will receive the treated wastewater, and any treatment facility that will further treat the wastewater.

TCEQ is adopting amendments to Title 30 of the Texas Administrative Code (TAC) Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities) to allow a reclaimed water production facility to dispose of reclaimed water through a collection system to an associated domestic wastewater treatment facility by obtaining consent from the owner and operator of the collection system and the associated domestic wastewater treatment facility that will receive the reclaimed water for final treatment and disposal.

Section by Section Discussion

Amended §321.301, *Purpose and Applicability*, clarifies that an additional disposal or discharge permit from the commission is not required for reclaimed water production facilities that meet certain requirements. The amended section also clarifies that a reclaimed water production facility may be authorized to dispose of treated wastewater under this subchapter if the owner of the reclaimed water production facility has documented consent from the owner and operator of an associated domestic wastewater treatment facility, and the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected, if applicable.

Amended §321.303, *Definitions*, adds a new definition for Collection System. The subsequent definition is renumbered.

Amended §321.305, *General Requirements*, expands existing requirements to allow for a reclaimed water production facility with consent from the owner and operator of the associated domestic wastewater treatment facility and collection system to dispose of the treated wastewater through a wastewater collection system; and removes the requirement for a discharge or disposal permit for those facilities. The amended section clarifies that the authorization for a reclaimed water production facility does not alter the permitted flow or effluent limits of the associated domestic wastewater treatment facility. The amended section adds requirements for the owner or operator of the reclaimed water production facility to provide TCEQ with written notice of the termination of consent and confirmation that reclaimed water production facility operations have ceased within five working days of being notified that the consent has been withdrawn. This section has been revised from proposal to correct a reference added under new subsection 321.305(d) to read “321.305(a)(2).”

Amended §321.307, *Restrictions*, clarifies that the discharge of pollutants from a reclaimed water production facility to water in the state requires a Texas Pollutant Discharge Elimination System permit. The amended section establishes that sludge from a reclaimed water production facility that has obtained consent from the owner and operator of an associated domestic wastewater treatment facility, and the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected, must be conveyed to an associated domestic wastewater treatment facility through the collection system.

Amended §321.309, *Application Requirements*, clarifies that applications submitted under this subchapter must comply with §305.42(a) relating to *Application Required*. The amended section revises the requirement to provide a wastewater permit number for the permit number information required in a reclaimed water production facility authorization application. The amended section adds a requirement for reclaimed water production facilities seeking coverage for disposal through an associated domestic wastewater treatment facility to submit documentation of consent from the owner and operator of the associated domestic wastewater treatment facility and collection system, if applicable. Subsequent requirements are renumbered for clarity.

Amended §321.313, *Authorization*, clarifies that the executive director shall not authorize a reclaimed water production facility that disposes of treated reclaimed water through the collection system of an associated domestic wastewater treatment facility with an unsatisfactory compliance history rating. The amended section also updates the compliance history rating term “poor” to “unsatisfactory” for consistency with current agency terminology.

Amended §321.315, *Design Requirements*, clarifies that reclaimed water production facilities must be designed such that all wastewater is conveyed to the associated domestic wastewater treatment facility any time that the facility is not in operation. The amended section also clarifies that reclaimed water production facilities must be designed to convey all sludge to the associated domestic wastewater treatment facility.

Amended §321.319, *Public Notice Requirements*, clarifies that the applicant will describe the proposed reclaimed water production facility at a public meeting. In addition, a subsection was renumbered for consistency.

Amended §321.321, *Additional Reclaimed Water Production Facility Requirements*, clarifies the requirement for the operator of a reclaimed water production facility to have the same level of license or higher as the operator of the domestic or associated domestic wastewater treatment facility.

Final Regulatory Impact Determination

TCEQ reviewed the amended rules 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 Texas Legislature enacted SB 1289, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), by adding §26.02715 to the TWC. The intent is to increase the efficiency of water treatment and production facilities by providing more flexibility in TCEQ’s rules for Wastewater Treatment and Reclaimed Water Production Facilities, related to *Use of Reclaimed Water*, found in 30 TAC Chapters 321 and 210.

SB 1289 directs TCEQ to provide flexibility, through rulemaking, for facilities that use domestic wastewater treated for reuse (reclaimed water), to dispose of any reclaimed water without an additional permit under certain conditions.

Reclaimed water producers are currently authorized to use its treated reclaimed water only if it obtains a permit for an alternative means of disposal during times when there is no demand for its reclaimed water. TCEQ rules also require that the owner of any RWPF authorized by TCEQ, be the owner of a wastewater treatment facility permitted by TCEQ.

SB 1289 instructs TCEQ to promulgate rules that authorize facilities to convey reclaimed water to a willing “associated domestic wastewater treatment facility” and its wastewater collection system, as an “alternative means of disposal,” as required under 30 TAC Chapter 210.

SB 1289 also prohibits TCEQ from requiring an owner of a reclaimed water production facility to be the owner of the associated domestic wastewater treatment facility that is permitted by TCEQ.

SB 1289 directs TCEQ to amend TCEQ rules in 30 TAC Chapter 321, *Control of Certain Activities by Rule*, Subchapter P *Reclaimed Water Production Facilities*, which relate to facilities treating domestic wastewater for reuse purposes (“Reclaimed Water”).

Specifically, SB 1289 instructs TCEQ to adopt rules that authorize RWPFs to dispose of treated reclaimed water without an additional permit, if the RWPF disposes of the treated reclaimed water through an “associated domestic wastewater treatment facility” and its wastewater collection system, after receiving consent from the owner and operator of the associated domestic wastewater treatment facility that will receive the reclaimed water for further or final treatment and disposal.

Therefore, the specific intent of the adopted rulemaking is related to providing flexibility, in the form of additional options for facilities that produce reclaimed water, as identified in SB 1289.

Certain aspects of TCEQ’s Reclaimed Water Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor will the adopted 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 adopted 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 TGC, §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 amends authorizations in state law and TCEQ rules. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being adopted under TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in SB 1289 in the 88th Texas Regular Legislative Session (2023) and implements existing state law. Because this adoption 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 invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under 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 adopted rulemaking is to implement the legislative amendments to the TWC in SB 1289 by amending TCEQ's Reclaimed Water Rules to expand the regulatory options for disposal of reclaimed water, as identified in SB 1289. The adopted rulemaking will substantially advance the stated purpose of SB 1289 by adopting new rule language that provides for disposal of reclaimed water without an additional permit under the conditions identified in SB 1289.

Promulgation and enforcement of the adopted rules 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 adopted 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. The primary purpose of the adopted rules is to implement SB 1289

by providing for the authorization, under conditions identified in SB 1289, for disposal of reclaimed water without an additional permit when conveyed to an associated domestic wastewater treatment facility. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

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

Public comment

The commission offered a public hearing on November 1, 2024. The 30-day comment period closed on November 12, 2024. The commission received 3 public comments from an individual, Maverick Water Group, and City of Austin Watershed Protection Department.

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, 321.325**

Statutory Authority

The Texas Commission on Environmental Quality (commission or TCEQ) adopts these amendments to TCEQ rules under the authority of Texas Water Code (TWC). 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, §26.02715. authorizes disposal of Reclaimed Water without an additional permit under certain conditions.

The amendments implement Senate Bill 1289, 88th Texas Regular Legislative Session (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.02715.

§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 or associated domestic wastewater treatment facility.

(c) A reclaimed water production facility authorized according to this subchapter is not required to hold a wastewater discharge or disposal 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 under this subchapter [only] if:

(1) the owner of the reclaimed water production facility is also the [an] owner of the associated domestic wastewater treatment facility that is permitted by the commission; or

(2) the owner of the reclaimed water production facility has documented consent, as required in §321.309(d)(11) of this title, from the owner and operator of an associated domestic wastewater treatment facility and, if applicable, the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected.

(e) If the wastewater discharge or disposal 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) Collection System--pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility, as defined in Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems).

(3) [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 domestic or associated [permitted] domestic wastewater treatment facility.

(4) [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; or [and]

(2) documented consent from the owner and operator of the wastewater collection system and associated domestic wastewater treatment facility to which the reclaimed water production facility is or will be connected; and

(3) 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 for [of] a reclaimed water production facility does not alter the permitted flow or effluent limits of the associated domestic wastewater treatment facility.

(d) If the consent under Section 321.305(a)(2) is withdrawn by the collection system or associated domestic wastewater treatment facility owner(s), the authorization to operate the reclaimed water production facility without an alternate disposal permit is terminated. The

owner or operator of the reclaimed water production facility must provide the executive director with written notice of the withdrawn consent, and confirmation that the reclaimed water production facility has ceased operation within five (5) business days after the owner or operator is notified that the consent has been withdrawn.

§321.307. Restrictions.

(a) A reclaimed water production facility may not discharge [wastewater or] pollutants into water in the state without a Texas Pollutant Discharge Elimination System permit.

(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 associated domestic wastewater treatment facility or a violation of the associated 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 associated [permitted] domestic wastewater treatment facility, treated, and disposed of in accordance with the associated 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 §§305.42(a), 305.43, 305.44, and 305.47 of this title (relating to Application Required; 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 proposed treatment units, a flow diagram, and the proposed [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) For reclaimed water production facilities seeking coverage for disposal through an associated domestic wastewater treatment facility, copies of the following documented consent must be submitted with the application:

(A) the documented consent from the owner and operator of the associated domestic wastewater treatment facility demonstrating that the facility has capacity to receive discharges of reclaimed water, untreated wastewater, and sludge from the reclaimed water production facility without exceeding or violating any permit requirements in the event that reclaimed water cannot be beneficially reused or the reclaimed water production facility is out of service.

(B) the documented consent from the owner of the collection system to which the reclaimed water production facility is or will be connected, if applicable.

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

§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 unsatisfactory [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 or associated domestic wastewater treatment facility that has a compliance history site rating of unsatisfactory [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 or associated 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 or associated 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.

§321.319. 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 proposed [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.

(C) [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 or associated 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.

ratio of not more than 18 to 1. The numbers of students required to earn units shall be established by the commissioner. The allotment per unit shall be determined by the commissioner based on funds available.

(C) [(iii)] Any school district required to offer the program under paragraph (2)(A) of this subsection that has fewer than 10 students district-wide desiring to participate is not required to operate the program. However, those school districts shall [must] document that they have encouraged students' participation in multiple ways.

(D) [(iv)] Reimbursement payments [Payment] to school districts for summer school programs shall be based on units employed. This information shall [must] be submitted in a manner and according to a schedule established by the commissioner in order for a school district to be eligible for funding.

(2) [(B)] A school district shall maintain records of eligibility, attendance, and progress of students.

§89.1265. Program Evaluation.

(a) All school districts required to implement a bilingual [education] or English as a second language (ESL) program shall conduct an annual evaluation in accordance with Texas Education Code (TEC), §29.053, collecting a full range of data to determine program effectiveness to ensure student academic success. The annual evaluation report shall be presented to the board of trustees before November 1 of each year and the report shall be retained at the school district level in accordance with TEC, §29.062.

(b) Annual school district reports of educational performance shall reflect:

(1) the academic progress in the language(s) of instruction for emergent bilingual (EB) students by bilingual [education] and/or ESL program model;

(2) the extent to which EB [emergent bilingual] students are developing English proficiency by bilingual [education] and/or ESL program model, including proficiency in the partner language for students participating in a dual language immersion program model;

(3) the number of students who have been reclassified as English proficient and their continued academic progress after reclassification; and

(4) the number of teachers and aides trained and the frequency, scope, and results of the professional development in approaches and strategies that support second language acquisition.

(c) In addition, for those school districts that filed in the previous year and/or will be filing a bilingual [education] exception and/or ESL waiver in the current year, the annual district report of educational performance shall also reflect:

(1) the number of teachers for whom a bilingual [education] exception or ESL waiver was/is being filed;

(2) the number of teachers for whom a bilingual [education] exception or ESL waiver was filed in the previous year who successfully obtained certification;

(3) the frequency and scope of a comprehensive professional development plan, implemented as required under §89.1207 of this title (relating to Bilingual [Education] Exceptions and English as a Second Language Program Waivers), and results of such plan if a bilingual [education] exception and/or ESL waiver was filed in the previous school year; and

(4) the number of students under the bilingual [education] exception and/or [or] ESL waiver who were/are temporarily served with [in an] alternative methods [language program].

(d) School districts shall report to parents their child's English proficiency development [the progress of their child in acquiring English] as a result of participation in the program offered to EB [emergent bilingual] students.

(e) In alignment with the district improvement plan, each school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in TEC, §11.253, for the purpose of improving student performance for EB [emergent bilingual] students.

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 30, 2024.

TRD-202404697

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Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 10, 2024

For further information, please call: (512) 475-1497

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 210. USE OF RECLAIMED WATER

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§210.1 - 210.4

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§210.1 - 210.4.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking will implement Senate Bill (SB) 1289, 88th Texas Regular Legislative Session (2023), which amended the Texas Water Code (TWC), Chapter 26, by adding §26.02715. The bill allows a wastewater treatment facility that treats domestic wastewater for reuse to dispose of the treated wastewater without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system and has consent of the operator of the wastewater collection system that will receive the treated wastewater, and any treatment facility that will further treat the water.

The bill requires TCEQ to expand the existing requirements established under 30 Texas Administrative Code (TAC) Chapter 210 (Use of Reclaimed Water), Subchapter A (General Provisions) to clarify the applicability of 30 TAC Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities) and related definitions.

Section by Section Discussion

Proposed amended section §210.1, Applicability, would be restructured into subsections for clarity. Existing provisions restructured under new subsection (b), are proposed to be amended to clarify that the requirements of this chapter are not

applicable to the use of treated wastewater identified in a water quality permit authorizing disposal by irrigation. Existing provisions restructured under new subsection (c)(1), are proposed to be amended to clarify requirements for reclaimed water producers that have a domestic wastewater discharge 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. Proposed amended subsection (c) would also add requirements under proposed new subsection (c)(2) for reclaimed water producers that obtain consent from an associated domestic wastewater treatment facility and collection system to which the reclaimed water production facility is or will be connected, then the use of reclaimed water would be permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

Proposed amended section §210.2, Purpose and Scope, would expand the list of regulatory citations associated with the definition of reclaimed water activity types to include reference to Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities) and Chapter 309, Subchapter C of this title (relating to Land Application of Sewage Effluent). The proposed amended section would clarify reference to Chapter 297, Subchapter A of this title (relating to Definitions and Applicability). Additionally, the proposed amended section would add new subsection (e) to clarify that a producer must obtain an approved Texas Pollutant Discharge Elimination System (TPDES) permit, Texas Land Application Permit (TLAP), or permit under 30 TAC Chapter 321, Subchapter P, of this title prior to commencement of construction and operation of the treatment facility.

Proposed amended section §210.3, Definitions, would add a definition for "associated domestic wastewater treatment facility". Subsequent definitions would be renumbered. The proposed amended section would also clarify the definition of "permit or permitted" by adding appropriate regulatory citations to TWC, §5.581 (relating to Definitions), Chapter 305 of this title (relating to Consolidated Permits), and Chapter 321, Subchapter P. The proposed amended section would also clarify that the definition is applicable to a wastewater treatment facility or reclaimed water production facility. Additionally, the proposed amended section would update reference of "Agency" to "commission" and update reference of Chapter "317" to "217" for clarity and consistency.

Proposed amended section §210.4, Notification, would add a reference to the permits described in §210.2(e) that contain reclaimed water quality requirements for entities that obtain consent to dispose of reclaimed water through the wastewater collection system to an associated domestic wastewater treatment facility for final treatment and disposal.

Fiscal Note: Costs to State and Local Government

Kyle Girtten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal impacts may result for municipal wastewater treatment facilities as a result of implementation of the proposed rule. The rulemaking does not include any additional mandatory requirements for these entities. The rulemaking would not result in fiscal implications for TCEQ, state government, or other units of local government.

This rulemaking, in addition to concurrent rulemaking in Chapter 321, would allow for an alternative means for disposal of treated wastewater by allowing for reclaimed water production facilities

(RWPFs) to dispose of the water without an additional permit. Any of the 7,913 public domestic wastewater treatment facilities that agree to receive and treat the reclaimed water from the RWPF may incur additional costs for construction and operation. This potentially includes costs related to adding additional capacity, connection to collection systems, installation or modification of an influent monitoring system, and additional treatment or maintenance.

This rulemaking would also allow municipal entities to establish RWPFs without needing an additional permit for an alternative means of disposal, and without needing to construct, own, and operate an associated domestic wastewater treatment facility to be used as an alternative means of disposal. Therefore, the establishment and operation of such facilities could be done at a significantly lower cost than would otherwise have been possible.

In total, the costs or cost savings for municipal entities will depend on the amount of reclaimed water generated, used, and disposed of through the collection system of an associated domestic wastewater treatment facility.

Public Benefits and Costs

Mr. Girtten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistent with state law, specifically SB 1289 from the 88th Texas Regular Legislative Session (2023). The rulemaking would also benefit the public by providing an alternate mechanism for establishing RWPFs through eliminating the requirement to obtain a permit for an alternative method of disposal for reclaimed water. Allowing RWPFs to obtain consent to disposal of reclaimed water through the collection system of an associated domestic wastewater treatment facility is expected to increase the number of entities authorized to construct RWPFs within the State. An increase in reclaimed water production would increase the availability of water resources for a variety of uses, particularly during times of high demand such as during droughts.

This rulemaking, in addition to concurrent rulemaking in Chapter 321, would provide an alternative means for disposal of treated wastewater by allowing for RWPFs to dispose of the reclaimed water without an additional permit. Any of the 3,063 private domestic wastewater treatment facilities that agree to receive and treat the reclaimed water from the reclaimed water production facility may incur additional costs for construction and operation. This potentially includes costs related to adding additional capacity, connection to collection systems, installation or modification of an influent monitoring system, and additional treatment or maintenance.

This rulemaking would also allow private entities to establish RWPFs to do so without needing a permit for an alternative means of disposal, and without needing to construct, own, and operate an associated domestic wastewater treatment facility to be used as an alternative means of disposal. Therefore, the establishment and operation of such facilities could be done at a significantly lower cost than would otherwise have been possible.

In total, the costs or cost savings for industries or businesses will depend on the amount of reclaimed water generated, used, and disposed of through the collection system of an associated domestic wastewater treatment facility.

The proposed rulemaking could result in an increase or decrease in costs for individuals. The construction and operation of addi-

tional reclaimed water production infrastructure could result in higher water bills or additional fees that could be passed along to water users and consumers. However, cost savings could occur from additional reclaimed water production infrastructure because the increased availability of reclaimed water could alleviate demand on existing potable water resources during times of high demand or drought. This reduction in demand could lead to lower water bills for users and consumers.

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 will 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 amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule could positively affect the state's economy by increasing opportunities for manufacturers, suppliers, and operators of reclaimed water infrastructure. Additionally, streamlining existing regulations for obtaining an alternative method of disposal for reclaimed water could increase reclaimed water production infrastructure and could increase overall potable water resources. Increased availability of potable water resources could positively affect the state's economy.

Draft Regulatory Impact Analysis Determination

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) be-

cause 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 Texas Legislature enacted SB 1289, amending the TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), by adding §26.02715 to the TWC. The intent is to provide more flexibility in TCEQ's rules for 30 TAC 210 (Use of Reclaimed Water) and in 30 TAC Chapters 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities).

SB 1289 directed TCEQ to provide flexibility, through rulemaking, for facilities that use domestic wastewater treated onsite for reuse (reclaimed water), to dispose of any reclaimed water without an additional permit under certain conditions.

A Reclaimed Water Producer is currently authorized to use its treated reclaimed water only if it obtains a permit for an alternative means of disposal during times when there is no demand for its reclaimed water. TCEQ rules also require that the owner of any RWPF authorized by TCEQ, be the owner of a wastewater treatment facility permitted by TCEQ.

SB 1289 instructs TCEQ to promulgate rules that authorize facilities to convey reclaimed water to a willing "associated domestic wastewater treatment facility" and its wastewater collection system, as an "alternative means of disposal," as required under 30 TAC Chapter 210.

SB 1289 also prohibits TCEQ from requiring an owner of a RWPF to be the owner of the associated domestic wastewater treatment facility that is permitted by TCEQ.

SB 1289 directs TCEQ to amend TCEQ rules in 30 TAC Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities), which relate to facilities treating domestic wastewater for reuse purposes ("Reclaimed Water"). The simplistic changes to 30 TAC Chapter 210 (Use of Reclaimed Water), Subchapter A (General Provisions) are minor but necessary for clarity and consistency with proposed amended 30 TAC Chapter 321.

Specifically, SB 1289 instructs TCEQ to adopt rules that authorize RWPFs to dispose of treated reclaimed water without an additional permit, if the RWPF disposes of the treated reclaimed water through an "associated domestic wastewater treatment facility" and its wastewater collection system, after receiving consent from the owner and operator of the associated domestic wastewater treatment facility that will receive the reclaimed water for further or final treatment and disposal.

Therefore, the specific intent of the proposed rulemaking is related to providing flexibility, in the form of additional options for facilities that produce reclaimed water, as identified in SB 1289.

Certain aspects of TCEQ's Reclaimed Water Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking will 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 amends authorizations in state law and TCEQ rules. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under a specific state statute enacted in SB 1289 in the 88th Texas Regular Legislative Session (2023) and implements existing state law. 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 public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

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 implement the legislative amendments to the TWC in SB 1289 by amending TCEQ's Reclaimed Water Rules to expand the regulatory options for disposal of reclaimed water, as identified in SB 1289. The proposed rulemaking will substantially advance the stated purpose of SB 1289 by adopting new rule language that provides for disposal of reclaimed water without an additional permit under the conditions identified in SB 1289.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Government Code, 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. The primary purpose of the proposed rules is to implement SB 1289 by providing for the authorization, under conditions identified in SB 1289, for disposal of reclaimed water without an additional permit when conveyed to an associated domestic wastewater treatment facility. This proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, 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 November 12, 2024 at 10:00 a.m. in Building D, Room 191 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 November 7, 2024. 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 November 8, 2024, 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/join/19%3ameeting_Mzd-kZDBiNGltNzhhOS00ZDNkLTgzNTEtNGlwZTgwNjRjMWEx-%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%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 (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://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-137-321-OW. The comment period closes on November 12, 2024. 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 Erika Crespo, Water Quality Division, (512) 239-1827.

Statutory Authority

The commission proposes these amendments to the Texas Commission on Environmental Quality (TCEQ) rules under the Texas Water Code (TWC). 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, §26.02715 authorizes disposal of Reclaimed Water without an additional permit under certain conditions.

The amendments implement Senate Bill 1289, 88th Texas Regular Legislative Session (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.02715.

§210.1. *Applicability.*

(a) This chapter applies to the reclaimed water producer, provider, and user. ~~[If the entity which is the producer of the reclaimed water is the same as the user, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water.]~~

(b) This chapter does not apply to treatment or disposal of wastewater permitted by the commission in accordance with the requirements of Chapter 305 of this title (relating to Consolidated Permits), or to the use ~~[user]~~ of such treated wastewater identified in a water quality ~~[the producer's wastewater discharge]~~ permit authorizing disposal by irrigation. This chapter does not apply to those systems authorized under Chapter 285 of this title (relating to On-Site Wastewater Treatment) which utilizes surface irrigation as an approved disposal method.

(c) If the entity which is the producer of the reclaimed water is the same as the user and:

(1) has 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, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the

producer's wastewater permit and the permit provides for an alternative means of disposal during times when there is no demand for the use of the reclaimed water; or

(2) obtains consent from an associated domestic wastewater treatment facility and collection system to which the reclaimed water production facility is or will be connected to be used as an alternative means of disposal during times when there is no demand for the use of the reclaimed water, then the use of reclaimed water is permissible only if the use occurs after the wastewater has been treated in accordance with the producer's reuse authorization issued under this Chapter.

§210.2. *Purpose and Scope.*

(a) The purpose of this chapter is to establish general requirements, quality criteria, design, and operational requirements for the beneficial use of reclaimed water which may be substituted for potable water and/or raw water. As defined and specified in this chapter, the requirements must be met by producers, providers, and/or users of reclaimed water. Specific use categories are defined with corresponding reclaimed water quality requirements. These criteria are intended to allow the safe utilization of reclaimed water for conservation of surface and groundwater; to ensure the protection of public health; to protect ground and surface waters; and to help ensure an adequate supply of water resources for present and future needs.

(b) The commission has defined other types of reclaimed water activity in separate regulations, including Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities), Chapter 309 [§309.20] of this title (relating to Land Application of Sewage Effluent), and Chapter 297 [§297.1] of this title (relating to Definitions). These regulations do not modify those definitions. The term reclaimed water is limited in scope for the purpose of this rule as defined in §210.3 of this title (relating to Definitions).

(c) Approval by the executive director of a reclaimed water use project under this chapter does not affect any existing water rights. If applicable, a reclaimed water use authorization in no way affects the need of a producer, provider and/or user to obtain a separate water right authorization from the commission.

(d) Reclaimed water projects approved under this chapter do not require a new or amended waste discharge permit from the commission except as provided in §210.5 of this title (relating to Permits Required). Persons who desire to develop projects not specifically authorized by this chapter may seek authorization pursuant to provisions of Subchapter D or apply for a new or amended waste discharge permit under Chapter 305 of this title (relating to Consolidated Permits).

(e) A producer of reclaimed water must obtain an approved Texas Pollutant Discharge Elimination System (TPDES) permit, Texas Land Application Permit (TLAP), or authorization under 30 TAC Chapter 321, Subchapter P, of this title (relating to Reclaimed Water Production Facilities) prior to commencement of construction and operation of the treatment facility.

§210.3. *Definitions.*

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Associated Domestic Wastewater Treatment Facility - a commission-authorized wastewater treatment facility located at the terminus of the collection system that consents to the acceptance of treated effluent, untreated effluent, and sludge from a reclaimed water production facility for final treatment and disposal.

(2) ~~[(4)]~~ Beneficial use--An economic use of wastewater in accordance with the purposes, applicable requirements, and quality criteria of this chapter, and which takes the place of potable and/or raw

water that could otherwise be needed from another source. The use of reclaimed water in a quantity either less than or the economically optimal amount may be considered a beneficial use as long as it does not constitute a nuisance.

(3) [(2)] BOD₅ --Five-day biochemical oxygen demand.

(4) [(3)] CBOD₅ --Five-day carbonaceous biochemical oxygen demand.

(5) [(4)] CFU--Colony forming units.

(6) [(5)] Domestic wastewater--Waste and wastewater from humans or household operations that are discharged to a wastewater collection system or otherwise enters a treatment works. Also, this includes waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation, including greywater and blackwater, that is disposed in an on-site wastewater system as defined in Chapter 285 of this title (relating to On-Site Wastewater Treatment).

Figure: 30 TAC §210.3(6) (No change.)

(7) [(6)] DRASTIC--A classification system for comparing land units on the basis of their vulnerability to ground-water pollution, a detailed description of which is found in Appendix 1 of this chapter.

(8) [(7)] Edwards Aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally. (See Chapter 213 of this title (relating to Edwards Aquifer).)

(9) [(8)] Edwards Aquifer Recharge zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 213 of this title (relating to Edwards Aquifer).)

(10) [(9)] Food crop--Any crops intended for direct human consumption.

(11) [(10)] Initial holding pond--An impoundment which first receives reclaimed water from a producer at the quality levels established by this chapter, not including subsequent holding ponds.

(12) [(11)] Geometric mean--The nth root of the product of all measurements made in a particular period of time, for example in a month's time, where n equals the number of measurements made. In the alternative, the geometric mean can also be computed as the antilogarithm of the sum of the logarithm of each measurement made. Where any measurement using either computation method equals zero, it must be substituted with the value of one.

(13) [(12)] l--Liter.

(14) [(13)] Landscape impoundment--Body of reclaimed water which is used for aesthetic enjoyment or which otherwise serves a function not intended to include contact recreation.

(15) [(14)] Leak detection system--A system or device designed, constructed, maintained, and operated with a pond that is capable of immediately detecting a release of leachate or reclaimed water that migrates through a liner. The system may typically include a leachate collection system along with either leak detection sensors or view ports.

(16) [(15)] Municipal wastewater--Waste or wastewater discharged into a publicly owned or a privately owned sewerage treatment works primarily consisting of domestic waste.

(17) [(16)] mg/l--Milligram per liter.

(18) [(17)] NTU--Nephelometric turbidity units.

(19) [(18)] Nuisance--Any distribution, storage, or use of reclaimed water, in such concentration and of such duration that is or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(20) [(19)] On-channel pond--An impoundment wholly or partially within a definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. The water may flow continuously or intermittently, and if intermittently, with some degree of regularity, dependent on the characteristics of the source or sources.

(21) [(20)] Permit or permitted--A written document issued by the commission or executive director in accordance with Texas Water Code (TWC), §5.581, Chapter 305 of this title (relating to Consolidated Permits), and Chapter 321, Subchapter P of this title (relating to Reclaimed Water Production Facilities) which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified wastewater treatment or reclaimed water production facility [for waste discharge, including a wastewater discharge permit].

(22) [(21)] Pond system--Wastewater facility in which primary treatment followed by stabilization ponds are used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria. (See Chapter 217 [(347)] of this title (relating to the Design Criteria for Domestic Wastewater [Sewerage] Systems).)

(23) [(22)] Producer--A person or entity that produces reclaimed water by treating domestic wastewater or municipal wastewater, in accordance with a permit or other authorization of the commission [Agency], to meet the quality criteria established in this chapter.

(24) [(23)] Provider--A person or entity that distributes reclaimed water to a user(s) of reclaimed water. For purposes of this chapter, the reclaimed water provider may also be a reclaimed water producer.

(25) [(24)] Reclaimed water--Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use, pursuant to the provisions of this chapter and other applicable rules and permits.

(26) [(25)] Restricted landscaped area--Land which has vegetative cover to which public access is controlled in some manner. Access may be controlled by either legal means (e.g. state or city ordinance) or controlled by some type of physical barrier (e.g., fence or wall). Example of such areas are: golf courses; cemeteries; roadway rights-of-way; median dividers.

(27) [(26)] Restricted recreational impoundment--Body of reclaimed water in which recreation is limited to fishing, boating and other non-contact [non-contact] recreational activities.

(28) [(27)] Single grab sample--An individual sample collected in less than 15 minutes.

(29) [(28)] Spray irrigation--Application of finely divided water droplets using artificial means.

(30) [(29)] Subsequent holding pond--A pond or impoundment which receives reclaimed water from an initial holding pond where the quality of the water changes after management in the initial holding pond, due to factors which may include:

(A) the addition of water occurs such as contributions from surface water or ground water sources, but not including contributions of reclaimed water, domestic wastewater, or municipal wastewater;

(B) some type of utilization of the reclaimed water for a beneficial use occurs; or

(C) commingling of reclaimed water with surface water runoff where it occurs between storage in an initial holding pond and the subsequent holding pond.

(31) [(30)] Surface irrigation--Application of water by means other than spraying so that contact between the edible portion of any food crop and the irrigation water is prevented.

(32) [(31)] Type I reclaimed water use--Use of reclaimed water where contact between humans and the reclaimed water is likely.

(33) [(32)] Type II reclaimed water use--Use of reclaimed water where contact between humans and the reclaimed water is unlikely.

(34) [(33)] Unrestricted landscaped area--Land which has had its plant cover modified and access to which is uncontrolled. Examples of such areas are: parks; school yards; greenbelts; residences.

(35) [(34)] User--Person or entity utilizing reclaimed water for a beneficial use, in accordance with the requirements of this chapter. A reclaimed water user may also be a producer or a provider.

§210.4. Notification.

(a) Before providing reclaimed water to another for a use allowable under this chapter, the reclaimed water provider shall notify the executive director and obtain written approval to provide the reclaimed water. The notification shall include:

(1) a description of the intended use of the reclaimed water, including quantity, quality, origin, and location and purpose of intended use;

(2) a clear indication of the means for compliance with this chapter, including documentation that a user will be apprised of their responsibilities under this chapter as a part of the water supply contract or other binding agreement;

(3) evidence in a water supply contract or other binding agreement of the provider's authority to terminate reclaimed water use that is noncompliant with this chapter; and

(4) an operation and maintenance plan that is required under ordinance or is to be a part of the water supply contract or other binding agreement, where applicable, and which shall contain, as a minimum, the following:

(A) a labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines;

(B) the measures that will prevent unauthorized access to reclaimed water facilities (e.g., secured valves);

(C) procedures for monitoring reclaimed water transfers and use;

(D) steps the user must utilize to minimize the risk of inadvertent human exposure;

(E) schedules for routine maintenance;

(F) a plan for carrying out provider employee training and safety relating to reclaimed water treatment, distribution, and management; and

(G) contingency plan for remedy of system failures, unauthorized discharges, or upsets.

(b) If the provider is not the producer, a description of the origin of the reclaimed water, its quality based upon the parameters contained in the underlying [waste discharge] permit(s) described in §210.2(e) of this title (related to Purpose and Scope), as applicable, and a signed agreement from the producer authorizing the transfer of the reclaimed water to the provider. If applicable, a reclaimed water provider or user may need to obtain a separate water right authorization from the commission.

(c) A producer who chooses to use reclaimed water for a beneficial use only within the boundaries of a wastewater treatment facility permitted by the commission, may do so without notification otherwise required by this section. In such instances, the producer is still required to comply with all applicable requirements of this chapter pertaining to the reclaimed water use.

(d) If effluent is to be used for irrigation within the Edwards Aquifer recharge zone, plans and specifications for the disposal system must be submitted to the executive director for review and approval prior to construction of the facility in accordance with Chapter 313 of this title (relating to Edwards Aquifer).

(e) Major changes from a prior notification for use of reclaimed water must be approved by the executive director. A major change includes:

(1) a change in the boundary of the approved service area not including the conversion of individual lots within a subdivision to reclaimed water use;

(2) the addition of a new producer;

(3) major changes in the intended use, such as conversion from irrigation of a golf course to residential irrigation; or

(4) changes from either Type I or Type II uses to the other.

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 27, 2024.

TRD-202404662

Todd Galiga

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 10, 2024

For further information, please call: (512) 239-3578



CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

SUBCHAPTER P. RECLAIMED WATER PRODUCTION FACILITIES

30 TAC §§321.301, 321.303, 321.305, 321.307, 321.309, 321.313, 321.315, 321.319, 321.321

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§321.301, 321.303, 321.305, 321.307, 321.309, 321.313, 321.315, 321.319, and 321.321.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking will implement Senate Bill (SB) 1289, 88th Texas Regular Legislative Session (2023), which amended the Texas Water Code (TWC), Chapter 26, by adding §26.02715. The bill allows a wastewater treatment facility that treats domestic wastewater for reuse to dispose of the treated wastewater without a permit for an alternative means of disposal, if the facility disposes of the treated wastewater through a wastewater collection system and has consent of the operator of the wastewater collection system that will receive the treated wastewater, and any treatment facility that will further treat the wastewater.

The bill requires TCEQ to expand the existing requirements established under Title 30 of the Texas Administrative Code (TAC) Chapter 321 (Control of Certain Activities by Rule), Subchapter P (Reclaimed Water Production Facilities) to allow a reclaimed water production facility to dispose of reclaimed water through a collection system to an associated domestic wastewater treatment facility by obtaining consent from the owner and operator of the collection system and the associated domestic wastewater treatment facility that will receive the reclaimed water for final treatment and disposal.

Section by Section Discussion

Proposed amended §321.301, *Purpose and Applicability*, would clarify that an additional disposal or discharge permit from the commission is not required for reclaimed water production facilities that meet certain requirements. The proposed amended section would also clarify that a reclaimed water production facility may be authorized to dispose of treated wastewater under this subchapter if the owner of the reclaimed water production facility has documented consent from the owner and operator of an associated domestic wastewater treatment facility, and the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected, if applicable.

Proposed amended §321.303, *Definitions*, would add a new definition for Collection System. The subsequent definition would be renumbered.

Proposed amended §321.305, *General Requirements*, would expand existing requirements to allow for a reclaimed water production facility with consent from the owner and operator of the associated domestic wastewater treatment facility and collection system to dispose of the treated wastewater through a wastewater collection system; and removes the requirement for a discharge or disposal permit for those facilities. The proposed amended section would clarify that the authorization for a reclaimed water production facility does not alter the permitted flow or effluent limits of the associated domestic wastewater treatment facility. The proposed amended section would add requirements for the owner or operator of the reclaimed water production facility to provide TCEQ with written notice of the termination of consent and confirmation that reclaimed water

production facility operations have ceased within five working days of being notified that the consent has been withdrawn.

Proposed amended §321.307, *Restrictions*, would clarify that the discharge of pollutants from a reclaimed water production facility to water in the state requires a Texas Pollutant Discharge Elimination System permit. The proposed amended section would also establish that sludge from a reclaimed water production facility that has obtained consent from the owner and operator of an associated domestic wastewater treatment facility, and the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected, must be conveyed to an associated domestic wastewater treatment facility through the collection system.

Proposed amended §321.309, *Application Requirements*, would clarify that applications submitted under this subchapter must comply with §305.42(a) relating to *Application Required*. The proposed amended section would revise the requirement to provide a wastewater permit number for the permit number information required in a reclaimed water production facility authorization application. The proposed amended section would add a requirement for reclaimed water production facilities seeking coverage for disposal through an associated domestic wastewater treatment facility to submit documentation of consent from the owner and operator of the associated domestic wastewater treatment facility and collection system, if applicable. Subsequent requirements were renumbered for clarity.

Proposed amended §321.313, *Authorization*, would clarify that the executive director shall not authorize a reclaimed water production facility that disposes of treated reclaimed water through the collection system of an associated domestic wastewater treatment facility with an unsatisfactory compliance history rating. The proposed amended section would also update the compliance history rating term "poor" to "unsatisfactory" for consistency with current agency terminology.

Proposed amended §321.315, *Design Requirements*, would clarify that reclaimed water production facilities must be designed such that all wastewater is conveyed to the associated domestic wastewater treatment facility any time that the facility is not in operation. The proposed amended section would also clarify that reclaimed water production facilities must be designed to convey all sludge to the associated domestic wastewater treatment facility.

Proposed amended §321.319, *Public Notice Requirements*, would clarify that the applicant will describe the proposed reclaimed water production facility at a public meeting. In addition, a subsection was renumbered for consistency.

Proposed amended §321.321, *Additional Reclaimed Water Production Facility Requirements*, would clarify the requirement for the operator of a reclaimed water production facility to have the same level of license or higher as the operator of the domestic or associated domestic wastewater treatment facility.

Fiscal Note: Costs to State and Local Government

Kyle Girtten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal impacts may result for municipal wastewater treatment facilities as a result of implementation of the proposed rule. The rulemaking does not include any additional mandatory requirements for these entities. The rulemaking would not result in fiscal implications for TCEQ, state government, or other units of local government.

This rulemaking, in addition to concurrent rulemaking in Chapter 210, would allow for an alternative means for disposal of treated wastewater by allowing for reclaimed water production facilities (RWPFs) to dispose of the water without an additional permit. Any of the 7,913 public domestic wastewater treatment facilities that agree to receive and treat the reclaimed water from the RWPF may incur additional costs for construction and operation. This potentially includes costs related to adding additional capacity, connection to collection systems, installation or modification of an influent monitoring system, and additional treatment or maintenance.

This rulemaking would also allow municipal entities to establish RWPFs without needing an additional permit for an alternative means of disposal, and without needing to construct, own, and operate an associated domestic wastewater treatment facility. Therefore, the establishment and operation of such facilities could be done at a significantly lower cost than would otherwise have been possible.

In total, the costs or cost savings for municipal entities will depend on the amount of reclaimed water generated, used, and disposed of through the collection system of an associated domestic wastewater treatment facility.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistent with state law, specifically SB 1289 from the 88th Texas Regular Legislative Session (2023). The rulemaking would also benefit the public by providing an alternate mechanism for establishing RWPFs through eliminating the requirement to obtain a permit for an alternative method of disposal for reclaimed water. Allowing RWPFs to obtain consent for disposal of reclaimed water through the collection system of an associated domestic wastewater treatment facility is expected to increase the number of entities authorized to construct RWPFs within the State. An increase in reclaimed water production would increase the availability of water resources for a variety of uses, particularly during times of high demand such as during droughts, by offsetting the use of potable water with reclaimed water.

This rulemaking, in addition to concurrent rulemaking in Chapter 210, would allow for an alternative means for disposal of treated wastewater by allowing for RWPFs to dispose of the reclaimed water without a permit. Any of the 3,063 private domestic wastewater treatment facilities that agree to receive and treat the reclaimed water from the RWPF may incur additional costs for construction and operation. This potentially includes costs related to adding additional capacity, connection to collection systems, installation or modification of an influent monitoring system, and additional treatment or maintenance.

This rulemaking would also allow private entities to establish RWPFs to do so without needing a permit, and without needing to construct, own, and operate an associated domestic wastewater treatment facility for an alternative means of disposal. Therefore, the establishment and operation of such facilities could be done at a significantly lower cost than would otherwise have been possible.

In total, the costs or cost savings for industries or businesses will depend on the amount of reclaimed water generated, used, and disposed of through the collection system of an associated domestic wastewater treatment facility.

The proposed rulemaking could result in an increase or decrease in costs for individuals. The construction and operation of additional reclaimed water production infrastructure could result in higher water bills or additional fees that could be passed along to water users and consumers. However, cost savings could occur from additional reclaimed water production infrastructure because the increased availability of reclaimed water could alleviate demand on existing potable water resources during times of high demand or drought. This reduction in demand could lead to lower water bills for users and consumers.

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 will 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 amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule could positively affect the state's economy by increasing opportunities for manufacturers, suppliers, and operators of reclaimed water infrastructure. Additionally, streamlining existing regulations for obtaining an alternative method of disposal for reclaimed water could increase reclaimed water production infrastructure and could increase overall potable water resources. Increased availability of potable water resources could positively affect the state's economy.

Draft Regulatory Impact Analysis Determination

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 Texas Legislature enacted SB 1289, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), by adding §26.02715 to the TWC. The intent is to increase the efficiency of water treatment and production facilities by providing more flexibility in TCEQ's rules for Wastewater Treatment and Reclaimed Water Production Facilities, related to 30 TAC Chapters 321 *Control of Certain Activities by Rule*, Subchapter P, *Reclaimed Water Production Facilities* and 30 TAC Chapter 210, *Use of Reclaimed Water*.

SB 1289 directs TCEQ to provide flexibility, through rulemaking, for facilities that use domestic wastewater treated for reuse (reclaimed water), to dispose of any reclaimed water without an additional permit under certain conditions.

Reclaimed water producers are currently authorized to use its treated reclaimed water only if it obtains a permit for an alternative means of disposal during times when there is no demand for its reclaimed water. TCEQ rules also require that the owner of any RWPF authorized by TCEQ, be the owner of a wastewater treatment facility permitted by TCEQ.

SB 1289 instructs TCEQ to promulgate rules that authorize facilities to convey reclaimed water to a willing "associated domestic wastewater treatment facility" and its wastewater collection system, as an "alternative means of disposal," as required under 30 TAC Chapter 210.

SB 1289 also prohibits TCEQ from requiring an owner of a reclaimed water production facility to be the owner of the associated domestic wastewater treatment facility that is permitted by TCEQ.

SB 1289 directs TCEQ to amend TCEQ rules in 30 TAC Chapter 321, *Control of Certain Activities by Rule*, Subchapter P *Reclaimed Water Production Facilities*, which relate to facilities treating domestic wastewater for reuse purposes ("Reclaimed Water").

Specifically, SB 1289 instructs TCEQ to adopt rules that authorize RWPFs to dispose of treated reclaimed water without an additional permit, if the RWPF disposes of the treated reclaimed water through an "associated domestic wastewater treatment facility" and its wastewater collection system, after receiving consent from the owner and operator of the associated domestic wastewater treatment facility that will receive the reclaimed water for further or final treatment and disposal.

Therefore, the specific intent of the proposed rulemaking is related to providing flexibility, in the form of additional options for facilities that produce reclaimed water, as identified in SB 1289.

Certain aspects of TCEQ's Reclaimed Water Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking will 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 TGC, §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 amends authorizations in state law and TCEQ rules. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being proposed under TCEQ's general rulemaking authority. This rulemaking is being proposed under a specific state statute enacted in SB 1289 in the 88th Texas Regular Legislative Session (2023) and implements existing state law. 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 public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

TCEQ evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under 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 implement the legislative amendments to the TWC in SB 1289 by amending TCEQ's Reclaimed Water Rules to expand the regulatory options for disposal of reclaimed water, as identified in SB 1289. The proposed rulemaking will substantially advance the stated purpose of SB 1289 by adopting new rule language that provides

for disposal of reclaimed water without an additional permit under the conditions identified in SB 1289.

Promulgation and enforcement of the proposed rules would 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. The primary purpose of the proposed rules is to implement SB 1289 by providing for the authorization, under conditions identified in SB 1289, for disposal of reclaimed water without an additional permit when conveyed to an associated domestic wastewater treatment facility. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will 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 November 12, 2024 at 10:00 a.m. in Building D, Room 191 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 November 7, 2024. 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 November 8, 2024, 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/join/19%3ameeting_Mzd-kZDBiNGItNzhhOS00ZDNkLTgzNTEtNGlwZTgwNjRjMWEx-%40thread.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%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://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-137-321-OW. The comment period closes on November 12, 2024. 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 Erika Crespo, Water Quality Division, (512) 239-1827.

Statutory Authority

The commission proposes these amendments to the Texas Commission on Environmental Quality (TCEQ) rules under the Texas Water Code (TWC). 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, §26.02715. authorizes disposal of Reclaimed Water without an additional permit under certain conditions.

The amendments implement Senate Bill 1289, 88th Texas Regular Legislative Session (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.02715.

§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 or associated domestic wastewater treatment facility.

(c) A reclaimed water production facility authorized according to this subchapter is not required to hold a wastewater discharge or disposal 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 under this subchapter ~~[only]~~ if:

(1) the owner of the reclaimed water production facility is also the ~~[an]~~ owner of the associated domestic wastewater treatment facility that is permitted by the commission; or ~~[.]~~

(2) the owner of the reclaimed water production facility has documented consent, as required in §321.309(d)(11) of this title (relating to Public Notice Requirements), from the owner and operator of an associated domestic wastewater treatment facility and, if applicable, the owner of the wastewater collection system to which the reclaimed water production facility is or will be connected.

(e) If the wastewater discharge or disposal 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) Collection System--pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility, as defined in Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems).

(3) [(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 domestic or associated ~~[permitted]~~ domestic wastewater treatment facility.

(4) [(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; or ~~[and]~~

(2) documented consent from the owner and operator of the wastewater collection system and associated domestic wastewater treatment facility to which the reclaimed water production facility is or will be connected; and

(3) [(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 for ~~[of]~~ a reclaimed water production facility does not alter the permitted flow or effluent limits of the associated domestic wastewater treatment facility.

(d) If the consent under subsection (a)(2) of this section is withdrawn by the collection system or associated domestic wastewater treatment facility owner(s), the authorization to operate the reclaimed water production facility without an alternate disposal permit is terminated. The owner or operator of the reclaimed water production facility must provide the executive director with written notice of the

withdrawn consent, and confirmation that the reclaimed water production facility has ceased operation within five (5) business days after the owner or operator is notified that the consent has been withdrawn.

§321.307. Restrictions.

(a) A reclaimed water production facility may not discharge ~~[wastewater or]~~ pollutants into water in the state without a Texas Pollutant Discharge Elimination System permit.

(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 associated domestic wastewater treatment facility or a violation of the associated 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 associated ~~[permitted]~~ domestic wastewater treatment facility, treated, and disposed of in accordance with the associated 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 §§305.42(a), 305.43, 305.44, and 305.47 of this title (relating to Application Required; 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 proposed treatment units, a flow diagram, and the proposed [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) For reclaimed water production facilities seeking coverage for disposal through an associated domestic wastewater treatment facility, copies of the following documented consent must be submitted with the application:

(A) the documented consent from the owner and operator of the associated domestic wastewater treatment facility demonstrating that the facility has capacity to receive discharges of reclaimed water, untreated wastewater, and sludge from the reclaimed water production facility without exceeding or violating any permit requirements in the event that reclaimed water cannot be beneficially reused or the reclaimed water production facility is out of service.

(B) the documented consent from the owner of the collection system to which the reclaimed water production facility is or will be connected, if applicable.

(12) ~~[(H)]~~ any other information requested by the executive director.

§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 unsatisfactory [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 or associated domestic wastewater treatment facility that has a compliance history site rating of unsatisfactory [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 execu-

tive 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 or associated 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 or associated 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.

§321.319. 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 proposed ~~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.

(C) ~~[(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 or associated 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.

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 27, 2024.

TRD-202404661

Todd Galiga

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 10, 2024

For further information, please call: (512) 239-3578

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES

Docket No. 2024-0897-RUL

Rule Project No. 2023-137-321-OW

On February 13, 2025, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter 321, concerning Reclaimed Water Production Facilities. The proposed rules were published for comment in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8326).

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

Brooke Paup, Chairwoman

Date Signed