

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Proposed Rulemaking

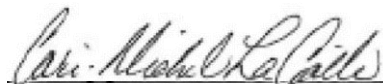
**AGENDA REQUESTED:** September 25, 2024

**DATE OF REQUEST:** September 6, 2024

**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 for publication of, and hearing on, proposed amendments 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 proposed rulemaking would 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. This rulemaking would 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'. (Erika Crespo, Michael Parr; Rule Project No. 2023-137-321-OW)



Director

Robert Sadlier

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Copy to CCC Secretary? **NO**  YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** September 6, 2024

**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 Proposed Rulemaking  
Chapter 321, Control of Certain Activities by Rule and 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, water 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 of the wastewater collection system that will receive the treated wastewater, and the treatment facility that will further treat the water.

The bill requires 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 would 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 would do:

This rulemaking would 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 would:

- 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 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 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 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 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 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 would 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 would:

- 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 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.

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- 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 proposed 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:

- 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.
- 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 a provision (under new subsection §210.2(e)) to clarify that a producer must obtain an approved Texas Pollutant Discharge Elimination System 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.

**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;
- TWC, §5.120, which 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; 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 proposed 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 Texas Pollutant Discharge Elimination System (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:**

None.

**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 not identified any existing or planned RWPFs that be seek coverage under the amended rules; however, 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, and April 16, 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**

There are alternative language requirements for this rulemaking (Spanish).

**Potential controversial concerns and legislative interest:**

There is 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.

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

This proposed 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 proposal rulemaking schedule:**

**Anticipated proposal date:** September 25, 2024

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**Anticipated *Texas Register* publication date:** October 11, 2024  
**Anticipated public hearing date:** November 12, 2024  
**Anticipated public comment period:** October 11, 2024 – November 12, 2024  
**Anticipated adoption date:** March 19, 2025 (estimated)

**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  
Jim Rizk  
Jessie Powell  
Krista Kyle  
Office of General Counsel  
Rule Project Manager  
Staff Attorney  
Texas Register Rule/Agenda Coordinator

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) proposes to amend §§210.1, 210.2, 210.3, and 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 owner 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 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**

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 Disposal of Sewage Effluent). The proposed amended section would clarify reference to Chapter 297, Subchapter A of this title (relating to Definitions and Applicability of Substantive Water Rights). 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 Girten, 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. 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 to disposal of reclaimed water through the collection system of an associated domestic wastewater treatment facility is expected to increase the number 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 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 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 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 9:30am 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](mailto: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/l/meetup-join/19%3ameeting\\_NDcwNDBiYzctYjZhNy00YzE2LTk5ZGYtMTY5MjM0MmQ0Nzk5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22fc1511b1-ff7b-4c6e-a02a-4b64efd64545%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDcwNDBiYzctYjZhNy00YzE2LTk5ZGYtMTY5MjM0MmQ0Nzk5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22fc1511b1-ff7b-4c6e-a02a-4b64efd64545%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](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Erika Crespo, Water Quality Division, (512) 239-1827.

## SUBCHAPTER A: GENERAL PROVISIONS

### §§210.1 – 210.9

#### **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[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] BOD<sub>5</sub>--Five-day biochemical oxygen demand.

(4) [3] CBOD<sub>5</sub>--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-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), 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 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 owner 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 (30 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 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 section §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 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 section §321.303, *Definitions*, would add a new definition for Collection System. The subsequent definition would be renumbered.

Proposed amended section §321.305, *General Requirements*, would expand existing requirements to allow for a reclaimed water production facility with consent from the owner 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 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 section §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 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 section §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 of the associated domestic wastewater treatment facility and collection system, if applicable. Subsequent requirements were renumbered for clarity.

Proposed amended section §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 section §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 section §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 section §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 *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 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 9:30am 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](mailto: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/l/meetup-join/19%3ameeting\\_NDcwNDBiYzctYjZhNy00YzE2LTk5ZGYtMTY5MjM0MmO0Nzk5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22fc1511b1-ff7b-4c6e-a02a-4b64efd64545%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDcwNDBiYzctYjZhNy00YzE2LTk5ZGYtMTY5MjM0MmO0Nzk5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22fc1511b1-ff7b-4c6e-a02a-4b64efd64545%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](mailto: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](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Erika Crespo, Water Quality Division, (512) 239-1827.

**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 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, from the owner 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 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)(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. The owner 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 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.