

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

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

Background and Summary of the Factual Basis for the Adopted Rules

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

Section by Section Discussion

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

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

Final Regulatory Impact Determination

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

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

Section 2001.0225 applies to a “Major Environmental Rule” adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A “Major Environmental Rule” is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The rulemaking adoption will amend the requirements in 30 TAC §210.5 for obtaining an authorization for the use of reclaimed water. This change will clarify under §210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. Certain aspects of the TCEQ’s rules for use of Reclaimed Water are intended to protect the environment or reduce risks to human health from environmental exposure. However, the rulemaking adoption will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor will the rulemaking adoption adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the commission finds that this rulemaking adoption does not fit the TGC,

§2001.0225 definition of "Major Environmental Rule."

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

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

Takings Impact Assessment

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

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

Consistency with the Coastal Management Program

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

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

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

Public Comment

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

SUBCHAPTER A: GENERAL PROVISIONS

§210.5

Statutory Authority

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

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

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

§210.5. Authorization for the Use of Reclaimed Water.

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

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

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

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

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

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

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