

Texas Commission on Environmental Quality

Interoffice Memorandum

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

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

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

Docket No.: 2022-0725-RUL

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

Background and reason(s) for the rulemaking:

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

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

Scope of the rulemaking:

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

Statutory authority:

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

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

Effect on the:

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

Stakeholder meetings:

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

Public Involvement Plan

Is a Public Involvement Plan Required? No.

Alternative Language Requirements

No.

Public comment:

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

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

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

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

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

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

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

Key points in the adoption rulemaking schedule:

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

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

Anticipated effective date: March 2, 2023

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

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Attachments:

None.

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