

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

Background and Summary of the Factual Basis for the Proposed Rules

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

Section by Section Discussion

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

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

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

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

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

Local Employment Impact Statement

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

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

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

Section 2001.0225 applies to a “Major Environmental Rule” adopted by a state agency, the

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

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

The proposed rulemaking would amend the requirements in 30 TAC §210.5 for obtaining an authorization for the use of reclaimed water. This change would clarify under §210.5(a) that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to treat and dispose of wastewater. Certain aspects of the TCEQ's rules for use of Reclaimed Water are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the TGC, §2001.0225 definition of "Major Environmental Rule."

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

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

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

Takings Impact Assessment

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

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

The specific purpose of the proposed rulemaking is to amend 30 TAC Chapter 210 (Use of Reclaimed Water) to clarify that an application to obtain an authorization under Chapter 210 may be submitted concurrently or any time after submittal of an application for a permit to

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

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

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

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, November 3, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, November 4, 2022, to those who register for the hearing.

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

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MTRmOWRhOTItMzViMS00YmOzLWFhODctNzNhM2Y4ZjRkMjg1%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%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://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2022-018-210-OW. The comment period closes on November 8, 2022. Please choose one of the methods provided to submit your written comments.

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

SUBCHAPTER A: GENERAL PROVISIONS

§210.5

Statutory Authority

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

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

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

§210.5. Authorization for the Use of Reclaimed Water.

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

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

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

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

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

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

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