

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:

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Attachments:

SB 1289

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