

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §210.54.

### **Background and Summary of the Factual Basis for the Proposed Rules**

TCEQ is proposing to amend 30 Texas Administrative Code (TAC) Chapter 210 (Use of Reclaimed Water), Subchapter E (Special Requirements for Use of Industrial Reclaimed Water) to implement Senate Bill (SB) 1145, 89th Regular Texas Legislative Session, which amended Texas Water Code (TWC), §26.131 (Duties of the Railroad Commission), to transfer permitting authority for the land application of produced water that is treated for beneficial use from the Railroad Commission of Texas (RRC) to TCEQ for permit applications filed on or after September 1, 2025.

The rulemaking proposes to amend §210.54 to add produced water regulated under 40 Code of Federal Regulations (CFR) Parts 435 and 437 to the list of process wastewater exceptions that may be authorized for reuse under the subchapter.

As part of this rulemaking, the commission is also proposing amendments to 30 TAC Chapter 309 (Domestic Wastewater Effluent Limitations and Plant Siting) concurrently in this issue of the *Texas Register*.

### **Section by Section Discussion**

Proposed amended §210.54, *Wastes Not Eligible for Coverage*, would revise paragraph (a)(5), regarding exceptions to the wastes ineligible for coverage under Subchapter E that are process wastewater regulated under 40 CFR Parts 400 – 471, would add produced water regulated under 40 CFR Part 435 as new subparagraphs (J) within §210.54(a)(5). The proposed amended

paragraph would also add produced water regulated under 40 CFR Part 437 in accordance with requirements, conditions, and prohibitions in Part 437, as new subparagraph (L) within §210.54(a)(5). Existing subsequent subparagraphs would be renumbered.

TCEQ's jurisdiction at facilities seeking authorization to reuse produced water that has been treated for beneficial use under this subchapter is outlined under §7.117 of this title, *Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)*.

#### **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 rule is 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**

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with state law, specifically SB 1145 from the 89th Regular Legislative Session (2025). The proposed rulemaking will not result in fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

#### **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 should not impact positively or negatively the state's economy.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble

#### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking action in consideration of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is defined as 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 proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Rather, it intends to implement SB 1145, which amended TWC, §26.131 and transferred permitting authority from the RRC to the TCEQ of applications filed on or after September 1, 2025, for the land application of produced water that is treated for beneficial use, and to expand the existing requirements under 30 TAC Chapter 210, Subchapter E, to add produced water regulated under 40 CFR Parts 435 and 437 to the list of process wastewater exceptions that may be authorized for reuse under the subchapter.

Even if the proposed rulemaking was a “Major environmental rule,” TGC, §2001.0225 still would not apply to this rulemaking because §2001.0225 only applies to a “Major environmental rule,” the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed a standard set by federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather specifically under 40 CFR Parts 435 and 437, which provide effluent limitations and guidelines pursuant to 33 U.S.C. §§ 1251, 1311, 1316, and 1326 (Federal Water Pollution Control Act); TWC, §26.131, which authorizes the commission to issue permits for the land application of produced water; §26.027, which authorizes the commission to issue permits; and §26.121, which authorizes the commission to prohibit unauthorized discharges. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in TGC, §2001.0225.

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 this proposed rule and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The proposed rulemaking intends to implement SB 1145, which amended TWC, §26.131 and transferred permitting authority from RRC to TCEQ of applications filed on or after September 1, 2025, for the land application of produced water that is treated for beneficial use, and to add produced water regulated under 40 CFR Parts 435 and 437 to the list of process wastewater exceptions that may be authorized for reuse under the subchapter.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under TGC, §2007.002(5).

### **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 §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(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 June 15, 2026, at 10:00am 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 thirty minutes prior to the hearing at 9:30am.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by June 11, 2026. 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 June 12, 2026, 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://events.teams.microsoft.com/event/bc7d1a3d-ecdc-4185-b13e-6a7e4dc60392@871a83a4-a1ce-4b7a-8156-3bcd93a08fba>

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 2026-006-309-OW. The comment period closes at 11:59 pm on June 16, 2026. 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 Shannon Gibson, Water Quality Division, (512) 239-4284.

**SUBCHAPTER E: SPECIAL REQUIREMENTS FOR USE OF INDUSTRIAL RECLAIMED WATER**

**§210.54**

**Statutory Authority**

These amendments to 30 Texas Administrative Code Chapter 210 are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which 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, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. These amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges into or adjacent to water in the state; and TWC, §26.131, which provides the commission's authority to issue permits for the discharge of produced water into water in the state and for the land application of produced water.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.027, 26.121, and 26.131.

**§210.54. Wastes Not Eligible for Coverage.**

(a) The following wastes are not eligible for authorization under this subchapter regardless of effluent quality or end use:

(1) wastewater containing radioactive material regulated under Texas Health and Safety Code, Chapter 401;

(2) wastewater containing dioxin and furans;

(3) wastewater containing pesticides;

(4) wastewater classified as or which is characteristically hazardous as defined by 40 Code of Federal Regulations (CFR) Part 261;

(5) process wastewater regulated under 40 CFR Parts 400 - 471 with the following exceptions:

(A) Part 405 - dairy products processing;

(B) Part 406 - grain mills;

(C) Part 407 - canned and preserved fruits and vegetables;

(D) Part 408 - canned and preserved seafood processing;

(E) Part 409 - sugar processing;

(F) Part 411 - cement manufacturing;

(G) Part 417 - soap and detergent manufacturing;

(H) Part 423 - steam electric power generating;

(I) Part 434 - coal mining;

(J) Part 435 - oil and gas extraction;

(K) Part 436 - mineral mining and processing;

(L) Part 437 - centralized waste treatment, in accordance with requirements, conditions, and prohibitions in Part 437;

(M) [(K)] Part 454 - gum and wood chemicals manufacturing; and

(N) [(L)] Part 460 - hospital;

(6) septic tank waste, chemical toilet waste, grit trap waste, or grease trap waste;

(7) barge cleaning washwater;

(8) air scrubber wastewater;

(9) any wastewater where a permit by rule authorized under Chapter 321 of this title (relating to Control of Certain Activities by Rule) or commission-issued general permit for land application is available; or

(10) remediated/contaminated groundwater generated from facilities where process wastewater is prohibited for use as listed in paragraph (5) of this subsection.

(b) Producers who could otherwise be eligible to obtain authorization under this chapter, but who do not implement all required applicable conditions of this authorization must apply for and obtain permit coverage.

(c) Discharges into or adjacent to water in the state shall not be authorized under this chapter where prohibited by applicable rules including, but not limited to, Chapter 213 of this title (relating to Edwards Aquifer); Chapter 311 of this title (relating to Watershed Protection); and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(d) Any user proposing to irrigate or store wastewater within the boundaries of a playa lake may not obtain authorization under this subchapter and must obtain a Texas Pollutant Discharge Elimination System discharge permit for authorization to discharge into a playa lake.