

The Texas Commission on Environmental Quality (commission) proposes new §§321.301, 321.303, 321.305, 321.307, 321.309, 321.311, 321.313, 321.315, 321.317, 321.319, 321.321, 321.323, and 321.325.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission received a petition with a request to initiate rulemaking and proposed rule language to authorize the construction and operation of reclaimed water production facilities. On July 25, 2007, the commission granted the petition and directed the executive director to prepare a proposed rule. This proposed rule would provide a streamlined process to authorize the construction and operation of reclaimed water production facilities at a location other than a permitted domestic wastewater treatment facility. These reclaimed water production facilities must currently be authorized through the same permitting process as wastewater treatment facilities that are authorized to discharge or land apply treated effluent.

This rule would apply to permitted wastewater treatment facility owners who wish to produce reclaimed water at a site other than the permitted domestic wastewater treatment facility. The rule would give them a streamlined process to obtain authorization to construct and operate reclaimed water production facilities. These facilities would be located near reclaimed water users and would save the cost of transporting or piping reclaimed water from the permitted wastewater treatment facility to these users.

SECTION BY SECTION DISCUSSION

Proposed new §321.301, Purpose and Applicability, explains that the purpose of the proposed rule is to provide a mechanism for owners of domestic wastewater treatment facilities to treat wastewater closer to reclaimed water users. The applicability portion provides that the owner of the reclaimed water production facility is required to be the same person as the owner of the permitted domestic wastewater treatment facility. This requirement ensures that there is no opportunity for the operation of the reclaimed water production facility to interfere with the operation of the permitted wastewater treatment facility. The applicability also provides that the authorization is automatically cancelled if the wastewater discharge permit is not in effect. The domestic wastewater treatment facility must be authorized for the treatment and disposal of domestic wastewater since reclaimed water will be sent through the collection system to the domestic wastewater treatment facility during times when there is no demand from the reclaimed water user.

Proposed new §321.303, Definitions, incorporates, by reference, the definitions in 30 TAC Chapter 210, Use of Reclaimed Water, 30 TAC Chapter 305, Consolidated Permits, and includes definitions for specific terms that apply to this subchapter. The definitions section ensures that the regulated community and the public are aware of the specific terminology used in this subchapter.

Proposed new §321.305, General Requirements, provides that the applicant must have a domestic wastewater permit and the reclaimed water production facility authorization does not alter the permitted flow or effluent limits of the permitted domestic wastewater treatment facility. The flow or effluent limits of a permitted wastewater facility may be changed only by amending the permit. In addition, the applicant is required to have an authorization to reuse reclaimed water or apply for authorization

concurrently under Chapter 210. The applicant must have authorization for the use of the reclaimed water for the reclaimed water production facility authorization to be useful.

Proposed new §321.307, Restrictions, prohibits the owner of a reclaimed water production facility from accepting any trucked or hauled wastes and from discharging wastewater or pollutants into water in the state. These provisions will prevent operational problems at the facility and will protect the quality of the reclaimed water, human health, and the environment. The proposed rule also prohibits the reclaimed water production facility from exceeding the hydraulic capacity or being authorized at a flow rate that could cause interference with the domestic wastewater treatment facility. This requirement ensures that the permitted wastewater treatment facility is able to continue to operate in a manner that protects human health and the environment.

Proposed new §321.309, Application Requirements, includes requirements for the application for reclaimed water production facilities so that the executive director has all the information necessary to evaluate the application and requires the application complies with other commission rules.

Proposed new §321.311, Application Review, describes the process the executive director will use to: review the application; notify the applicant to publish notice (if required); and return the application if insufficient information is submitted by the applicant.

Proposed new §321.313, Authorization, includes specific requirements, including, design criteria, a prohibition of issuing an authorization to applicants with a poor compliance history rating, and provisions for filing a motion to overturn the executive director's final action on an authorization. The design criteria

ensure that the facility is designed and constructed to protect human health and the environment over the life span of the facility. Applicants with poor compliance histories may not be authorized under this streamlined process; however, they may apply for an individual domestic wastewater permit to authorize the reclaimed water production facility. The motion to overturn provides a mechanism for the applicant, public interest counsel or other person to request the commission to review a reclaimed water production facility authorization.

Proposed new §321.315, Design Requirements, requires reclaimed water production facilities to meet the design criteria according to the requirements of 30 TAC Chapter 317, Design Criteria for Sewage Systems, with minor exceptions, and to convey all wastewater to the domestic wastewater treatment facility when not in operation. The rule requires reclaimed water production facilities to be designed and operated to minimize odor.

Proposed new §321.317, Buffer Zone Requirements, includes general site selection requirements to protect groundwater and surface water and specific requirements relating to unsuitable site characteristics. The proposed rule includes two options for meeting buffer zone requirements: enhanced buffer zone and standard buffer zone requirements. If the owner requests authorization using the enhanced buffer zone, the reclaimed water production facility must meet one of three buffer zone options: placing the treatment units within a building with a 150-foot buffer zone; placing the treatment units within a building with air exhaust systems and odor control technology with a 50-foot buffer zone; or an extended 300-foot buffer zone. The enhanced buffer zone ensures that under normal operating conditions, odor from the facility should not reach adjoining property. If the owner requests authorization without an enhanced buffer zone designation, the reclaimed water production facility must have a buffer zone of 150 feet from the nearest

property line. The applicant may meet these requirements by ownership or by legal restriction of the buffer zone area.

Proposed new §321.319, Public Notice Requirements, includes notice requirements for reclaimed water production facilities that do not meet the enhanced buffer zone designation. These facilities must meet the standard 150-foot buffer zone requirement. The owner of a reclaimed water production facility that meets the enhanced buffer zone designation is not required to publish notice.

Proposed new §321.321, Additional Reclaimed Water Production Facility Requirements, includes operator requirements for the reclaimed water production facility and notification requirements for the applicant. This requirement ensures that the operator of the reclaimed water production facility has the training and knowledge necessary to properly operate the facility. This section also requires the applicant to notify the executive director at least 45 days prior to completion and at least 45 days prior to operation of a reclaimed water production facility. This requirement ensures that the executive director has opportunities to inspect the reclaimed water production facility during construction and prior to operation.

Proposed new §321.323, Enforcement, includes enforcement criteria for reclaimed water production facilities. The rule is consistent with other commission enforcement procedures.

Proposed new §321.325, Fees, includes application fees for reclaimed water production facilities. The proposed rule includes an application fee of \$300 and an annual water quality fee of \$800 for a constructed facility or \$400 for a facility that has not been constructed.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will utilize currently available resources to implement a streamlined authorization process for the construction and operation of reclaimed water production facilities at a site other than a permitted domestic wastewater treatment facility. Other state agencies or local governments that reclaim water for reuse and elect to apply for the proposed authorization are expected to save time in obtaining such authorizations and experience cost savings if they determine a remote reclaimed water production facility is economically advantageous.

The agency has been petitioned to develop a streamlined authorization method to allow regulated entities to construct facilities to reclaim water at sites other than their permitted domestic wastewater treatment facilities. Under current rules, treatment of reclaimed water is only authorized at permitted domestic wastewater treatment facilities. Applying for an authorization of separate reclaimed water treatment facilities under the proposed rules would afford owners of wastewater treatment facilities another wastewater treatment option that could be less expensive and more efficient in reclaiming and using wastewater. However, the proposed authorization would restrict the types of treatment units that can be constructed. In addition, the proposed authorization would impose more stringent buffer zone requirements or enclosing the facility in a structure for odor reduction. For facilities that do not meet these enhanced buffer zone requirements, the proposed rule includes notice requirements to publish notice and provide an opportunity for public comments and a public meeting.

Authorization and construction of these smaller, separate treatment facilities would allow owners of wastewater treatment facilities to produce reclaimed water closer to sites where the water is needed if stringent criteria are met concerning odor control, and groundwater and surface water protection. The time required to obtain a current wastewater treatment facility permit is approximately 330 days. If an owner can meet the stringent operating criteria of the proposed authorization for a remote treatment facility, an authorization is expected to take 60 to 90 days. Since a remote wastewater treatment facility would allow for closer proximity to users of reclaimed water, owners of these facilities would save the costs of constructing more pipelines and transporting the water to a site where reclaimed water would be used.

State agencies and local governments that reclaim water at permitted wastewater treatment facilities are expected to choose this proposed optional authorization process only if it will reduce their infrastructure, operating, and treatment costs. At least 12 local governments have expressed interest in applying for this type of authorization. The agency would charge a flat application fee of \$300 per application and an annual water quality fee. The annual water quality fee would be \$400 before construction occurs and \$800 after the facility is constructed. Revenue would be deposited to Account 153 - Water Resource Management Account and could be as much as \$8,400 in the first year before facilities are constructed if all 12 authorizations are granted. Revenue could range from \$4,800 to \$9,600 in subsequent years depending on whether all 12 facilities are constructed.

One potential applicant has estimated that construction of a six-mile pipeline through a densely populated area to carry treated domestic wastewater to a site of reuse could cost as much as \$10,500,000. In addition, pumping costs have been estimated to be as much as \$190,000 per year. If the applicant is

authorized to construct a reclaimed water production facility near the site of reuse, it could save money by constructing a facility estimated to cost \$2,000,000. Construction savings are estimated to be \$8,500,000, and annual operating costs are expected to be less than pumping costs of \$190,000. Cost savings will vary greatly among applicants depending on the amount of demand for reclaimed water, characteristics of each project, and each applicant's operating practices.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the facilitation of reclaimed water usage which may lead to greater use of reclaimed water and less strain on the available groundwater and surface water resources of the state.

The proposed rules offer a streamlined authorization process for reclaimed water production facilities if they meet strict criteria. Applicants are expected to utilize this authorization method only if it becomes economically advantageous to construct and operate these smaller, separate facilities. Businesses that own or operate wastewater treatment facilities at large investor owned utilities and that choose to apply for this authorization of separate, smaller facilities are expected to experience the same savings in construction and operating costs as those experienced by local governments. The amount of savings would vary greatly depending on the amount of demand for reclaimed water and the operating costs of each project.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small or micro-businesses typically do not own or operate wastewater treatment facilities where there will be a sufficient supply of reclaimed water to make the addition of a separate, smaller treatment facility economically advantageous. If a small or micro-business decides a separate facility would be beneficial, they are expected to experience the same type of cost savings as a large investor owned utility.

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 rules are not expected to adversely affect a small or micro-business in a material way for the first five years that the proposed rules are 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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means 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. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking would provide owners of domestic wastewater treatment facilities with the ability to construct reclaimed water production facilities to produce reclaimed water at a site other than a permitted domestic wastewater treatment facility as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES and SECTION BY SECTION DISCUSSION sections of this preamble. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to provide an alternative to the current wastewater permitting process, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. Because these rules provide an alternative, more cost efficient process for treating wastewater for reuse, they do not result in any new requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to this proposed rule because this action provides owners of domestic wastewater treatment facilities with the ability to construct a wastewater treatment facility at a remote location, provided the owner either owns or has a lease on the land to be used, as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES and SECTION BY SECTION DISCUSSION sections of this preamble. Promulgation and enforcement of these proposed rules would be neither a statutory or constitutional taking of private real property. Specifically, the proposed amendments do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25 percent or more beyond which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. 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 public hearing on this proposal in Austin on July 15, 2008 at 10:00 a.m. in Room 201S, Building E, 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.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. The commission specifically requests comments relating to incorporating the appropriate provisions requiring the posting of notice signs for reclaimed water production facilities that are required to provide public notice. Electronic comments may be submitted at:

<http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2008-002-321-PR. The comment period closes July 21, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further

information, please contact Mary Ann Dimakos Airey, P.E., Wastewater Permitting Section at 512-239-4521.

SUBCHAPTER P: RECLAIMED WATER PRODUCTION FACILITIES

§§321.301, 321.303, 321.305, 321.307, 321.309, 321.311, 321.313, 321.315, 321.317, 321.319, 321.321, 321.323, and 321.325

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (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; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §5.701 which authorizes the commission to charge fees; §7.002, which authorizes the commission to enforce the TWC; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The proposed new sections would implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 5.701, 7.002, 26.011, and 26.027.

§321.301. Purpose and Applicability.

(a) The purpose of this subchapter is to establish authorization procedures, general design criteria, and operational requirements for reclaimed water production facilities and thereby promote the beneficial use of reclaimed water that may be substituted for potable water or raw water.

(b) This subchapter authorizes a reclaimed water production facility to produce reclaimed domestic wastewater at a site other than a permitted domestic wastewater treatment facility.

(c) A reclaimed water production facility authorized according to this subchapter is not required to hold a wastewater discharge permit from the commission, except as provided in §210.5 of this title (relating to Authorization for the Use of Reclaimed Water).

(d) A reclaimed water production facility may be authorized only if the owner of the reclaimed water production facility is also an owner of the associated domestic wastewater treatment facility that is permitted by the commission.

(e) If the wastewater discharge permit for the domestic wastewater treatment facility associated with a reclaimed water production facility expires, lapses, is surrendered, suspended, or revoked, the authorization to operate the reclaimed water production facility is automatically cancelled.

§321.303. Definitions.

All definitions in Texas Water Code, §26.001 and 30 TAC Chapters 210 and 305 of this title (relating to Use of Reclaimed Water, and Consolidated Permits) shall apply to this subchapter and are incorporated by reference. Specific definitions of words or phrases used in this subchapter are as follows:

(1) **Authorization**--a written document issued by the commission allowing an owner to construct and operate a reclaimed water production facility in accordance with the provisions of this subchapter.

(2) **Reclaimed Water Production Facility**--a domestic wastewater treatment facility authorized in accordance with this subchapter that treats municipal wastewater for reuse on an as-needed basis and is located at a different location from the permitted domestic wastewater treatment facility.

(3) **Treatment unit**--Any apparatus necessary for treating wastewater (e.g., aeration basins, splitter boxes, bar screens, clarifiers, on-site lift stations) located at the reclaimed water production facility.

§321.305. General Requirements.

(a) An applicant for authorization to produce reclaimed water at a reclaimed water production facility must have:

(1) a domestic wastewater permit for a domestic wastewater treatment facility that is located at the terminus of the collection system to which the reclaimed water production facility is or will be connected; and

(2) an authorization to use reclaimed water under Chapter 210 of this title (relating to the Use of Reclaimed Water).

(b) Applications for reclaimed water production facilities and for authorization to beneficially reuse reclaimed water under Chapter 210 of this title may be submitted concurrently.

(c) The authorization of a reclaimed water production facility does not alter the permitted flow or effluent limits of the associated domestic wastewater treatment facility.

§321.307. Restrictions.

(a) A reclaimed water production facility may not discharge wastewater or pollutants into water in the state.

(b) The hydraulic capacity of the reclaimed water production facilities may not individually nor collectively exceed the permitted hydraulic capacity of the associated domestic wastewater treatment facility.

(c) A reclaimed water production facility may not be authorized at a flow rate that could cause interference with the operation of the domestic wastewater treatment facility or a violation of the domestic wastewater treatment facility's permit.

(d) A reclaimed water production facility may not treat or dispose of sludge. All sludge must be conveyed through the collection system to the permitted domestic wastewater treatment facility, treated, and disposed of in accordance with the facility's permit and all applicable rules.

(e) The owner may not accept trucked or hauled wastes at a reclaimed water production facility.

(f) Authorization under this chapter does not convey or alter any property right and does not grant any exclusive privilege.

§321.309. Application Requirements.

(a) An applicant shall comply with the provisions of §§305.43, 305.44, and 305.47 of this title (relating to Who Applies; Signatories to Applications; and Retention of Application Data).

(b) An application for an authorization of a reclaimed water production facility under this subchapter must be made on forms prescribed by the executive director.

(c) An applicant shall submit one original application with attachments to the executive director and one additional copy of the application with attachments to the appropriate regional office. Additional copies may be required as noted in the application.

(d) The application must contain, at a minimum, the following information:

(1) the applicant's name, mailing address, and telephone number;

(2) the wastewater permit number of the associated domestic wastewater treatment facility;

(3) a brief description of the nature of the reclaimed water use;

(4) the signature of the applicant, in accordance with §305.44 of this title;

(5) a copy of a recorded deed or tax records showing ownership, or a copy of a contract or lease agreement between the applicant and the owner of any lands to be used for the reclaimed water production facility;

(6) a copy of the applicant's reuse authorization issued under Chapter 210 of this title (relating to Use of Reclaimed Water), or a copy of a concurrent application;

(7) a preliminary design report for the reclaimed water production facility that includes the design flow, design calculations, the size of the proposed treatment units, a flow diagram, and the proposed effluent quality;

(8) a buffer zone map and report indicating how the reclaimed water production facility will meet buffer zone requirements;

(9) a County General Highway Map (with scale clearly shown) to identify the relative location of the domestic wastewater treatment facility, the main lines of the collection system, and the reclaimed water production facility and at least a one-mile area surrounding the reclaimed water production facility;

(10) one original (remainder in color copies, if required) United States Geological Survey 7.5-minute quadrangle topographic map or an equivalent high quality color copy showing the boundaries of land owned, operated or controlled by the applicant and to be used as a part of the reclaimed water production facility. The map shall extend at least a one-mile beyond the facility boundaries and shall be sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the one-mile area; and

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, and undeveloped.

(11) any other information requested by the executive director.

§321.311. Application Review.

(a) The executive director will review all applications for reclaimed water production facility authorizations for administrative and technical completeness.

(b) If an application has either an administrative or technical deficiency, the applicant will be asked to submit additional information no later than 30 days following the date of the request.

(c) If additional information is not timely submitted or is insufficient to complete the application, the executive director may return the application without refunding the application fee.

(d) If the application is both administratively and technically complete, the executive director will:

(1) proceed with processing the application; and

(2) if applicable, notify the applicant to publish notice according to §321.319 of this title (relating to Public Notice Requirements).

§321.313. Authorization.

(a) The executive director shall not authorize a reclaimed water production facility unless the following conditions are met:

(1) the applicant has obtained plans and specifications approval for the reclaimed water production facility according to the design criteria according to §321.315 of this title (relating to Design Requirements); and

(2) the applicant has an authorization according to Chapter 210 of this title (relating to Use of Reclaimed Water).

(b) The executive director shall not authorize a reclaimed water production facility owned or operated by an applicant that has a compliance history rating of poor, as defined by Chapter 60 of this title (relating to Compliance History).

(c) The executive director shall not authorize a reclaimed water production facility that discharges to a domestic wastewater treatment facility that has a compliance history site rating of poor, as defined by Chapter 60 of this title.

(d) The applicant, public interest counsel or other persons may file with the Office of the Chief Clerk a motion to overturn the executive director's final action on an authorization for a reclaimed water

production facility under §50.139(a), (b), and (d) - (g) of this title (relating to Motion to Overturn Executive Director's Decision).

§321.315. Design Requirements.

(a) Plans and specifications for a reclaimed water production facility must meet the design criteria and the operation, maintenance, and safety requirements in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems) except for redundant treatment units or processes, including power supplies, if the design incorporates sufficient provisions to ensure the effluent quality meets the required limits in the event of a failure of a power supply or a treatment unit or process.

(b) The reclaimed water production facility must be designed to convey all wastewater to the domestic wastewater treatment facility any time the facility is not in operation.

(c) The reclaimed water production facility must be designed to convey all sludge received or produced by the facility to the domestic wastewater treatment facility. Sludge may be held in an aerated storage vessel for discharge to the collection system if the entire sludge contents are completely discharged at least once within every 24-hour period.

(d) The reclaimed water production facility must be designed and operated to minimize odor and other nuisance conditions.

(e) The following treatment processes and units are prohibited:

(1) unaerated primary treatment units (including Imhoff tanks and primary clarifiers);

(2) trickling filters;

(3) pond or lagoon treatment systems;

(4) flow equalization basins; and

(5) unenclosed screenings storage containers.

§321.317. Buffer Zone Requirements.

(a) A reclaimed water production facility must comply with §309.12 of this title (relating to Site Selection to Protect Groundwater or Surface Water).

(b) A reclaimed water production facility must comply with §309.13 (a) - (d) of this title (relating to Unsuitable Site Characteristics).

(c) A reclaimed water production facility that does not qualify for an enhanced buffer zone designation must locate each treatment unit at least 150 feet from the nearest property line.

(d) To qualify for an enhanced buffer zone designation, a reclaimed water production facility must comply with one of the following buffer zone requirements:

(1) A treatment unit not located in a building may not be located closer than 300 feet to the nearest property line;

(2) A treatment unit located within an enclosed building that is not equipped with exhaust air systems and odor control technology may not be located closer than 150 feet of the nearest property line; or

(3) A treatment unit located within an enclosed building equipped with exhaust air systems and odor control technology may not be located closer than 50 feet of the nearest property line.

(e) An applicant must own or have sufficient property interest to the land necessary to meet the buffer zone requirements so that residential structures are prohibited within the buffer zone. An applicant must submit sufficient evidence of its property interest to demonstrate the reclaimed water production facility meets the applicable buffer zone.

§321.319. Public Notice Requirements.

(a) Public notice is not required if an applicant for a reclaimed water production facility qualifies for an enhanced buffer zone designation in accordance with §321.317(d) of this title (relating to Buffer Zone Requirements).

(b) An applicant for a reclaimed water production facility that does not qualify for an enhanced buffer zone designation shall publish notice of the executive director's preliminary determination on the application at least once in a newspaper of general circulation in the county where the reclaimed water production facility is located or proposed to be located. The notice shall be published at the applicant's expense.

(1) The applicant must publish notice no later than 30 days after receiving instructions to publish notice from the Texas Commission on Environmental Quality's (TCEQ's) Office of the Chief Clerk. The notice must include:

(A) the legal name of the applicant and the address of the applicant;

(B) a brief summary of the information included in the application;

(C) the location of the reclaimed water production facility;

(D) the location and mailing address where the public may provide comments to the TCEQ;

(E) the public location or the publicly accessible internet Web site where copies of the application, executive director's technical summary, and authorization may be reviewed;

(F) an opportunity for the public to submit comments on the application and executive director's technical summary; and

(G) instructions to the public on how to request a public meeting for a new reclaimed water production facility.

(2) The applicant must file with the Office of the Chief Clerk no later than 30 days after receiving the instruction to publish the notice of the executive director's preliminary determination on the application, and if applicable the notice of public meeting;

(A) a signed affidavit from the publisher acknowledging that the notice was published and the date of publication; and

(B) a copy of the newspaper clipping.

(3) The public comment period begins on the first date the notice is published and ends 30 days later unless a public meeting is held. If a public meeting is held, the public comment period ends either 30 days after the initial notice is published or at the conclusion of the public meeting, whichever is later.

(4) The public may submit written comments to the Office of the Chief Clerk during the comment period detailing how the application for the reclaimed water production facility fails to meet the

technical requirements or conditions of this rule. The executive director will consider all comments received during the comment period.

(5) The public may submit a written request for a public meeting to the Office of the Chief Clerk during the comment period.

(A) The executive director will determine if there is significant interest to hold a public meeting.

(B) If the executive director determines that there is significant interest to hold a public meeting:

(i) TCEQ staff will facilitate the meeting; and

(ii) the applicant will:

(I) arrange accommodations for the public meeting to be held in the county where the reclaimed water production facility will be located; and

(II) publish notice of the public meeting in the same newspaper as the initial notice was published at least 30 days prior to the meeting.

(iii) At the public meeting the applicant will:

(I) describe the proposed reclaimed water production facility and provide maps and other facility data; and

(II) provide a sign-in sheet for attendees to register their names and addresses and furnish the sheet to the executive director.

(B) A public meeting held under this rule is not an evidentiary proceeding.

(6) The TCEQ Office of the Chief Clerk will mail the executive director's decision and final technical summary on which the decision was based to the applicant, persons whose names and addresses appear legibly on the sign-in sheet from the public meeting, and persons who submitted written comments.

§321.321. Additional Reclaimed Water Production Facility Requirements.

(a) The owner shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater facility operations companies holding a valid license or registration according to the requirements of Chapter 30, Subchapter J of this title (relating to Wastewater Operators And Operations Companies).

(b) The operator or wastewater facility operations company shall have the same level of license or higher as the operator license of the permitted domestic wastewater treatment facility associated with the reclaimed water production facility.

(c) The owner shall notify the executive director at least 45 days prior to completion and at least 45 days prior to operation of a reclaimed water production facility.

§321.323. Enforcement.

(a) If an owner of a reclaimed water production facility fails to comply with the terms of its authorization, this subchapter, or other regulations and statutes within the jurisdiction of the commission, the executive director may take enforcement action as provided by the Texas Water Code and in accordance with Chapter 70 of this title (relating to Enforcement).

(b) The executive director may revoke any reclaimed water production facility authorization due to noncompliance with the authorization, this subchapter, the requirements of Chapter 210 of this title (relating to Use of Reclaimed Water), or other regulations and statutes within the jurisdiction of the commission, but only after notice and the opportunity for hearing.

§321.325. Fees.

(a) An applicant shall include an application fee of \$300.

(b) An owner of a reclaimed water production facility authorized under this subchapter shall pay an annual water quality fee in the following amount:

(1) \$800 for a constructed facility; or

(2) \$400 for a facility that has not been constructed.