

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE C. WATER DEVELOPMENT

CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS

Sec. 18.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Marine seawater" means water that is derived from the Gulf of Mexico.

(3) "Project" means:

(A) a marine seawater desalination project; or

(B) a facility for the storage, conveyance, and delivery of desalinated marine seawater.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

Sec. 18.002. RELATIONSHIP TO OTHER LAWS. (a) Except as provided by Subsection (b) or as otherwise provided by law:

(1) Chapter 11 applies to a permit or authorization under Section 18.003 or 18.004 in the same manner as that chapter applies to a permit or authorization under that chapter; and

(2) Chapter 26 applies to a permit under Section 18.005 in the same manner as that chapter applies to a permit under that chapter.

(b) In the event of a conflict between this chapter and Chapter 11 or 26, this chapter controls.

(c) This chapter is intended to provide an alternative procedure for obtaining an authorization to divert and use state water that consists of marine seawater or to discharge treated marine seawater or waste resulting from the desalination of treated marine seawater under the circumstances provided by this chapter. This chapter does not affect the authority of a person to:

(1) divert and use state water that consists of marine seawater in accordance with the procedures provided by Chapter 11, including the authority to divert marine seawater from a point of

diversion located in a bay or estuary; or

(2) discharge treated marine seawater or waste resulting from the desalination of treated marine seawater in accordance with the procedures provided by Chapter 26, including the authority to discharge waste resulting from the desalination of marine seawater into a bay or estuary.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

Sec. 18.003. DIVERSIONS OF MARINE SEAWATER. (a) A person must obtain a permit to divert and use state water that consists of marine seawater if:

(1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or

(2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

(b) A person may divert and use state water that consists of marine seawater without obtaining a permit if Subsection (a) does not apply.

(c) A person who diverts and uses state water that consists of marine seawater under a permit required by Subsection (a) or as authorized by Subsection (b) must determine the total dissolved solids concentration of the seawater at the water source by monthly sampling and analysis and provide the data collected to the commission. A person may not begin construction of a facility for the diversion of marine seawater without obtaining a permit until the person has provided data to the commission based on the analysis of samples taken at the water source over a period of at least one year demonstrating that Subsection (a)(2) does not apply. A person who has begun construction of a facility for the diversion of marine seawater without obtaining a permit because the person has demonstrated that Subsection (a)(2) does not apply is not required to obtain a permit for the facility if the total dissolved solids concentration of the seawater at the water source subsequently changes so that Subsection (a)(2) applies.

(d) A person may use marine seawater diverted under a permit

required by Subsection (a) or as authorized by Subsection (b) for any beneficial purpose, but only if the seawater is treated in accordance with rules adopted by the commission before it is used. Rules adopted under this subsection may impose different treatment requirements based on the purpose for which the seawater is to be used.

(e) The commission shall adopt rules providing an expedited procedure for acting on an application for a permit required by Subsection (a). The rules must provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit.

(f) A person may not divert marine seawater under a permit required by Subsection (a) or as authorized by Subsection (b) from a point of diversion located in a bay or estuary.

(g) An application for a permit required by Subsection (a) must address the points from which, and the rate at which, the facility the applicant proposes to construct will divert marine seawater.

(h) The commission by rule shall prescribe reasonable measures to minimize impingement and entrainment.

(i) The Parks and Wildlife Department and the General Land Office jointly shall conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater, taking into account the need to protect marine organisms. Not later than September 1, 2018, the Parks and Wildlife Department and the General Land Office shall submit a report on the results of the study to the commission. The report must include recommended diversion zones for designation by the commission and recommendations for the number of points from which, and the rate at which, a facility may divert marine seawater. Not later than September 1, 2020, the commission by rule shall designate appropriate diversion zones. A diversion zone may be contiguous to, be the same as, or overlap a discharge zone. The point or points from which a facility may divert marine seawater must be located in a diversion zone designated by the commission under rules adopted under this subsection if:

(1) the facility is authorized by a permit as required by Subsection (a) issued after the rules are adopted; or

(2) the facility is exempt under Subsection (b) from the requirement of a permit and construction of the facility begins after the rules are adopted.

(j) Until the commission adopts rules under Subsection (i), a person must consult the Parks and Wildlife Department and the General Land Office regarding the point or points from which a facility the person proposes to construct may divert marine seawater before submitting an application for a permit for the facility if Subsection (a) applies or before beginning construction of the facility if Subsection (b) applies.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

Sec. 18.004. BED AND BANKS AUTHORIZATION. (a) With prior authorization granted under rules prescribed by the commission, a person may use the bed and banks of any flowing natural stream in this state or a lake, reservoir, or other impoundment in this state to convey marine seawater that has been treated so as to meet standards that are at least as stringent as the water quality standards applicable to the receiving stream or impoundment adopted by the commission.

(b) The commission shall provide for notice and an opportunity for the submission of written comment but may not provide an opportunity for a contested case hearing regarding commission actions relating to an application for an authorization under this section to use the bed and banks of a flowing natural stream to convey treated marine seawater. The commission shall provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for an authorization under this section to use a lake, reservoir, or other impoundment to convey treated marine seawater.

(c) A person may not discharge treated marine seawater into a flowing natural stream in this state or a lake, reservoir, or other impoundment in this state for the purpose of conveyance of the

water under an authorization granted under this section unless the person holds a permit issued under Section 18.005 authorizing the discharge.

(d) Treated marine seawater that is conveyed under an authorization granted under this section may be used only by the person to whom the authorization is granted.

(e) Section 11.042(c) applies to an authorization granted under this section in the same manner as that subsection applies to an authorization granted under Section 11.042.

(f) This section does not prohibit a person from conveying treated marine seawater in any other manner authorized by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 10, eff. June 17, 2015.

Sec. 18.005. DISCHARGE OF TREATED MARINE SEAWATER OR WASTE RESULTING FROM DESALINATION OF MARINE SEAWATER. (a) In this section, "permit," "person," "to discharge," "waste," and "water" have the meanings assigned by Section 26.001.

(b) Section 26.011 applies to discharges governed by this section in the same manner as that section applies to discharges governed by Chapter 26.

(c) A person must obtain a permit to discharge:

(1) treated marine seawater into a natural stream in this state or a lake, reservoir, or other impoundment in this state; or

(2) waste resulting from the desalination of treated marine seawater into the Gulf of Mexico.

(d) A person shall:

(1) treat marine seawater so as to meet standards that are at least as stringent as the water quality standards adopted by the commission applicable to the receiving stream or impoundment before discharging the seawater under this section; and

(2) comply with all applicable state and federal requirements when discharging waste resulting from the desalination of marine seawater into the Gulf of Mexico.

(e) The commission by rule shall provide an expedited procedure for acting on an application for a permit under this

section. The rules must provide for:

(1) notice, an opportunity for the submission of written comment, and an opportunity to request a public meeting and may authorize a contested case hearing regarding commission actions relating to an application for a permit described by Subsection (c)(1);

(2) notice, an opportunity for the submission of written comment, an opportunity to request a public meeting, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit described by Subsection (c)(2) if the point of discharge is located within three miles of any point located on the coast of this state; and

(3) notice and an opportunity for the submission of written comment regarding commission actions relating to an application for a permit described by Subsection (c)(2) if Subdivision (2) of this subsection does not apply.

(f) A person may not discharge waste resulting from the desalination of marine seawater into a bay or estuary under a permit issued under Subsection (c)(2).

(g) The Parks and Wildlife Department and the General Land Office jointly shall conduct a study to identify zones in the Gulf of Mexico that are appropriate for the discharge of waste resulting from the desalination of marine seawater, taking into account the need to protect marine organisms. Not later than September 1, 2018, the Parks and Wildlife Department and the General Land Office shall submit a report on the results of the study to the commission. The report must include recommended discharge zones for designation by the commission. Not later than September 1, 2020, the commission by rule shall designate appropriate discharge zones. The point at which a facility may discharge waste resulting from the desalination of marine seawater must be located in a discharge zone designated by the commission under rules adopted under this subsection if the facility is authorized by a permit issued under Subsection (c)(2) after the rules are adopted.

(h) Until the commission adopts rules under Subsection (g), a person must consult the Parks and Wildlife Department and the General Land Office regarding the point at which the facility the

person proposes to construct may discharge waste resulting from the desalination of marine seawater before submitting an application for a permit under Subsection (c)(2) for the facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. [2031](#)), Sec. 10, eff. June 17, 2015.