

June 16, 2026

Texas Commission on Environmental Quality
Attn: Gwen Ricco, MC 205
Office of Legal Services
P.O. Box 13087
Austin, Texas 78711-3087

Paulina Williams
TEL: 512.322.2543
FAX: 512.322.3643
paulina.williams@bakerbotts.com

Via Electronic Submittal: <https://www6.tceq.texas.gov/rules/ecomments/>

Re: Texas Industry Project Comments on Rule Project Number 2026-006-309-OW

Dear Ms. Ricco:

The Texas Industry Project (“TIP”) appreciates the opportunity to submit comments on the Texas Commission on Environmental Quality’s (“TCEQ’s”) rule proposal amending 30 Texas Administrative Code (“TAC”) Chapter 309, *Wastewater Effluent Limitations and Plant Siting*, and Chapter 210, *Use of Reclaimed Water*, to implement the transfer of permitting authority for the land application of treated produced water from the Railroad Commission of Texas (“RRC”) to TCEQ.

TIP is a trade association whose members include companies in the oil and gas, chemical, refining, electronics, forest products, terminal, electric utility, transportation, and national defense industries with operations in Texas. TIP supports the beneficial reuse of produced water, and its members are active in generating, managing, and recycling produced water, as well as advancing the technologies that expand the use of this water resource. When the 89th Texas Legislature passed Senate Bill 1145 (“SB 1145”) and granted TCEQ the authority to issue permits for the land application of produced water that has been treated for beneficial use, it acknowledged that technological advances allow for effective treatment. TIP appreciated the 89th Texas Legislature’s corresponding intention through SB 1145 to provide regulatory clarity, promote responsible water reuse, and safeguard water resources.

TIP supports TCEQ’s efforts to implement SB 1145 and provide regulatory pathways for the land application of treated produced water. TIP appreciates TCEQ’s efforts to draft rules efficiently and the progress this makes in working toward clearer and more certain paths to beneficial reuse. TIP supports the proposed changes to Chapter 210. To promote clarity and functionality, TIP offers the following comments:

1. Unintended consequences of Chapter 309’s application to industrial wastewater

TCEQ proposes to revise Chapter 309 to “clarify that this chapter applies to both domestic wastewater and industrial wastewater.” Chapter 309 has previously applied only to domestic

wastewater, and many of its rules are specific to municipal sewage management. If the rule is finalized, it appears it would create unintended consequences or confusion for industrial wastewater treatment plant units and wastewater.

SB 1145 granted TCEQ jurisdiction over the limited scope of *permitting* the *land application* of the effluent that is the end product of treating oil and gas wastewaters to TCEQ-regulated water quality limits. The role of the RRC over the management of produced water and recycling and reuse of treated fluids was otherwise preserved. Further, TCEQ has never applied Chapter 309 to industrial wastewater treatment, and the proposed rules do not yet adequately differentiate the limited scope of land application from the broader requirements of Chapter 309 for domestic wastewater. TIP encourages TCEQ to further engage with stakeholders and perform a comprehensive review of Chapter 309 as applied to the industrial sector before potentially extending domestically-focused rules to industrial discharges.

Below, we have identified preliminary concerns with the proposed changes to Chapter 309 that would benefit from additional stakeholder review.

2. Tailoring Chapter 309’s proposed definition of “produced water” to land application

As currently written, Section 309.11 incorporates by reference the definition of “produced water” contained in 30 TAC Section 305.541(b). This definition reads as follows:

(b) For the purposes of the commission’s implementation of Texas Water Code, § 26.131, “produced water” is defined as all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent, *that is discharged into water in the state, including waste streams regulated by 40 CFR Part 435 (emphasis added).*

The double underlined portion of the definition does not align with the context of land application because it deals with discharges into “water in the state.”

But more importantly, this definition misses the opportunity to expressly acknowledge the distinction that comes from treatment. In the context of Chapter 309, treatment allows effluent of a regulated quality to be used for irrigation, though in a disposal context. In the context of Chapter 210, treatment generates reclaimed water; that treated water is no longer “produced water.” “Treated fluid” as defined by 16 TAC § 4.110(92) and regulated by the RRC is likewise distinct. In the Chapter 309 land-application context, these treated water resource streams should be understood and acknowledged to have a regulatory distinction from *untreated* “produced water.” If TCEQ is proceeding to use Chapter 309, it would be statutorily appropriate and clearer to define and use a new term—potentially “treated produced water fluids”—to authorize land application pursuant to SB 1145. Consider replacing proposed Section 309.11(9) and adding new 309.11(11) as follows:

309.11(9) Produced water – for purposes of this Chapter 309, all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent.

309.11(11) Treated produced water fluids – for purposes of this Chapter 309, produced water that has been treated for beneficial use and is land applied. For purposes of this Chapter 309, the definition does not include those treated wastewaters that are industrial reclaimed water as defined by 30 TAC 210.52 and regulated under Chapter 210 or that are treated fluid as defined by 16 TAC 4.110 and regulated by the Railroad Commission of Texas.

These definitions avoid phrasing that does not apply to land application (*e.g.*, “discharged into water in the state”) and avoid implying an overly generic regulatory characterization for produced water (including the implications of Part 435), which changes by virtue of treatment in accordance with regulatory standards. “Treated produced water fluids” could either (a) replace TCEQ’s proposed phrase “industrial wastewater, including produced water under Tex. Water Code §26.131” throughout the rule (if narrowing the scope to SB 1145-related changes) or (b) revise this clause throughout the rule: “including treated produced water fluids ~~under Tex. Water Code §26.131.~~” We believe these revisions could help minimize regulatory confusion and support the rules’ intended effect. However, this suggestion would benefit from further vetting by TCEQ and stakeholders.

3. Distance Limitations and Scope of Operations Affected

If proceeding with a Chapter 309 revision, TIP asks TCEQ to remove proposed 30 TAC § 309.13(c)(6), which imposes a new 100-foot horizontal distance limit from any water in the state for any “wastewater treatment plant unit” or “land where irrigation using wastewater effluent occurs”:

(6) A wastewater treatment plant unit, or land where irrigation using wastewater effluent occurs, must be located a minimum horizontal distance of 100 feet from a water in the state.

Removal of this provision is appropriate because it may render a broad suite of wastewater treatment facilities out of compliance with TCEQ’s rules,¹ and it addresses conditions beyond those required to be addressed under SB 1145.

First, because the Texas Water Code defines “water in the state” expansively, the proposed 100-foot limit may cause many wastewater facilities to fall out of compliance with TCEQ’s rules.² Under the proposed limit, any “wastewater treatment plant unit”—domestic or industrial—must

¹ See Tex. Admin. Code § 309.14(a) (“The commission may not issue, amend, or renew a permit for a wastewater treatment plant if the facility does not meet the requirements of § 309.13 of this title (relating to Unsuitable Site Characteristics).”).

² Tex. Water Code § 26.001(5) (“‘Water’ or ‘water in the state’ means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.”).

be at least 100 feet from any inlet, canal, bay, stream, river, *or any other natural or manmade body of water*. This limit could pose problems for treatment units in many locations, and it is unclear if the impacts have been fully assessed. For example, in coastal communities, both industrial and domestic treatment often occurs near bays, inlets, and other water in the state. The City of Galveston's Main Wastewater Treatment Plant has clarifiers situated less than 50 feet from the bay. Similarly, many industrial facilities safely treat wastewater in close proximity to inlets, ship channels, and other waters in the state. Further, there are a number of less obvious water features that TCEQ treats as water in the state. TCEQ should more fully describe and seek additional comments to assess the implications of this proposed change, given the scope of water in the state, before adopting a restrictive condition for siting wastewater treatment plant units.

Second, SB 1145 does not require TCEQ to adopt this new siting restriction, nor has TCEQ identified any other issue with the agency's current or historical practices for siting wastewater treatment facilities. Because wastewater treatment facilities typically discharge effluent into state waterbodies, treatment units are frequently located proximate to water in the state. Despite this close proximity, operators ensure safe and environmentally protective wastewater treatment. Because the proposed 100-foot limit will adversely impact a broad array of domestic and industrial wastewater treatment activities, and because many facilities safely operate near water in the state, we recommend that TCEQ remove 30 TAC § 309.13(c)(6). Alternatively, this distance limit should (1) expressly apply only to new units, not units that were authorized or constructed prior to the effective date of the final rule and (2) expressly allow case-by-case exceptions as approved by the Executive Director. TCEQ should also consider gathering additional stakeholder input to define features that would not be considered "water in the state" for purposes of this rule (*e.g.*, exempt ditches, etc.).

Further, 30 TAC § 309.13(c) addresses storage and processing, not solely land application, which would stretch beyond the limits of SB 1145 if applied to produced water or treated produced water fluids. There is also a lack of clarity on how these limits would impact existing and new industrial operations. This example highlights why it would be appropriate to keep industrial in separate provisions from domestic wastewater regulations, or to conduct further review of the full implications.

4. Adding a nondisturbance provision in Chapter 309 to address ongoing RRC jurisdiction over storage and recycling of produced water

TCEQ has indicated that it intends to revise its Memorandum of Understanding with the RRC to address recent transfers of authority related to produced water. To ensure clarity for the regulated community in the meantime, TIP recommends that TCEQ include a nondisturbance provision in 30 TAC § 309.10, or another appropriate placement within Chapter 309, that makes clear that the RRC maintains jurisdiction over the storage and recycling of produced water and treated produced water, consistent with 16 TAC Chapter 4. This clarification is necessary because TCEQ also issues individual TLAP permits for certain evaporation and holding ponds, which would not be necessary for or applicable to the storage of produced water or treated produced water fluids. TIP proposes the following addition:

§ 309.10. Purpose, Scope, and Applicability

...

(c) This chapter does not apply to the management, transport, storage, recycling, or impoundment of produced water or treated produced water fluids prior to being applied to land for irrigation or other beneficial use.

In addition to this provision, TIP proposes that TCEQ state in its preamble to the final rule that, at the time of rule adoption, the RRC retains authority over all aspects of produced water and treated produced water fluids other than (1) issuing and enforcing permits for the land application of produced water treated for beneficial use and (2) issuing and enforcing permits for the discharge of produced water into water in the state.

Finally, we request acknowledgement that this proposed rulemaking does not alter spill reporting obligations, which have, and will continue to be, directed to the RRC. Where a TPDES or TLAP permit has been issued, an unauthorized discharge of wastewater into or adjacent to water in the state would be reported to TCEQ as an element of the TPDES or TLAP permit requirements; but in the absence of such a permit condition, or for releases other than wastewater, the RRC continues to provide the agency oversight.

5. Further clarifying applicability clauses

Finally, TIP asks TCEQ to consider clarifying clauses for 30 TAC § 309.10(a)(1):

(a) (1) This subchapter establishes minimum standards for the location of domestic wastewater treatment facilities and for the location of land application of industrial wastewater, including treated produced water fluids. These standards are to be applied in the evaluation of an application for a permit to:

- (A) treat and dispose of domestic wastewater;
- (B) treat and ~~dispose of~~ land apply industrial wastewater, including treated produced water fluids ~~under Tex. Water Code §26.131~~; and
- (C) for domestic wastewater treatment facilities, obtaining approval of construction plans and specifications.

The first proposed revisions clarify that the rule applies to *land application* of industrial wastewater and treated produced water fluids. The second proposed revision makes clear that this rule cannot be interpreted to impose requirements for construction plans and specifications—which are tailored to domestic wastewater treatment consistent with Chapter 217 and TCEQ’s processes for domestic and industrial wastewater applications—onto industrial wastewater treatment.

Conclusion

TIP supports TCEQ's efforts to implement authorization pathways for treated produced water and advance the Legislature's directive to increase clarity and certainty for produced water management. Produced water is a useful and important water resource, and TCEQ's Chapter 210 rulemaking makes progress toward beneficial reuse while safeguarding existing water resources. Reconsidering the approach proposed for Chapter 309 will allow that pathway to be better defined without broader unintended consequences. If you have any questions about these comments or would like to discuss them further, please do not hesitate to contact me at paulina.williams@bakerbotts.com or 512.322.5243.

Respectfully,

A handwritten signature in black ink that reads "Paulina Williams". The signature is written in a cursive, flowing style.

Paulina Williams