

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 54. SPECIAL PROGRAMS SUBCHAPTER B. PEACE OFFICER- INVOLVED SHOOTING REPORTS

1 TAC §54.70

The Office of the Attorney General, Criminal Justice Division, (OAG) adopts new §54.70 in accordance with Texas Code of Criminal Procedure, Articles 2.139 and 2.1395, which concern forms to report peace officer-involved shootings. The new section is adopted without changes to the proposed text published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8709).

The section adopts by reference the forms required by House Bill 1036, 84th Legislature, Regular Session (2015).

Comments pertaining to the new section were received from the office of Representative Eric Johnson, Texas House of Representatives, the Institute for Urban Policy Research & Analysis, and the Austin Justice Coalition. The OAG has considered all comments, which have been or may be implemented in the forms adopted by reference herein. None of the parties was against the adoption of the new section.

The new rule is adopted under Texas Code of Criminal Procedure, Articles 2.139 and 2.1395, which require the OAG to create written and electronic forms for the reporting by law enforcement agencies of officer-involved shootings. The forms adopted by reference herein meet the content requirements found in Texas Code of Criminal Procedure, Articles 2.139 and 2.1395.

No other code, article or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2016.

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Amanda Crawford

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Office of the Attorney General

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Proposal publication date: December 4, 2015

For further information, please call: (512) 936-7940



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 27. COMMUNITY FIRST CHOICE

1 TAC §§354.1361, 354.1363 - 354.1368

The Texas Health and Human Service Commission (HHSC) adopts amendments to §354.1361, concerning Definitions; §354.1363, concerning Assessment; §354.1364, concerning Services and Limitations; §354.1365, concerning Provider Qualifications; and §354.1366, concerning Consumer Directed Services and Service Responsibility Option. HHSC adopts new §354.1367, concerning Person-Centered Service Plan; and §354.1368, concerning Fair Hearing. The amendments and new rules are adopted without changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2263) and will not be republished.

BACKGROUND AND JUSTIFICATION

Community First Choice (CFC) is a state plan option to provide certain home and community based services and supports to qualified individuals. The CFC option was implemented in Texas in June 2015.

The new and amended rules add information about person-centered service planning and fair hearing rights related to CFC; make a change related to Senate Bill 202, 84th Legislature, Regular Session, 2015, regarding emergency response services; and clarify various aspects of the CFC option. HHSC operates CFC in compliance with a state plan amendment and a 1915(b)(4) waiver agreed upon with the Centers for Medicare & Medicaid Services.

COMMENTS

The 30-day comment period ended April 25, 2016. During this period, HHSC did not receive any comments regarding the new and amended rules.

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides

HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 13, 2016.

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Karen Ray

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Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER SUBCHAPTER E. FEES FOR PUBLIC WATER SYSTEMS

30 TAC §290.51

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §290.51.

The amendment is adopted *with change* to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8731) and will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Water Resource Management Account 153 (Account 153) is the primary source of state funding for essentially all water program-related activities of the commission. In 2001, the 77th Texas Legislature passed House Bill (HB) 2912 which provided that revenues deposited to Account 153 would be available to support activities associated with ensuring the protection of the state's water resources. Account 153 supports a wide range of activities including water rights, storm water, public drinking water, total maximum daily load development, water utilities, wastewater, river compacts, water availability modeling, water assessment, concentrated animal feeding operations, sludge, Clean Rivers Program, and groundwater protection. Historically, the agency has used Account 153 as well as the majority of its general revenue appropriations to support its water programs.

General revenue appropriations to TCEQ have declined over the past few years. In addition, many of the water-related fees that the agency assesses have not increased in at least six years. While revenue from existing fees deposited to Account 153 has remained stable, the overall financial obligations of the account have increased. Current revenue estimates for Account 153 reveal insufficient funds for TCEQ to cover the costs of its water programs in fiscal year (FY) 2016. The agency is facing an approximate \$2.5 million dollar shortfall in Account 153 for FY 2016. The shortage is due to additional appropriations, an increase in cost of fringe benefits, and the Statewide Cost Allocation Plan.

The revenue estimates for Account 153 revealed that without an increase in fees there will be insufficient funds for the agency to cover the costs of its water programs in FYs 2016 - 2017. HB 1, General Appropriations Act, Article IX, Section 18.01, Contingency Appropriation: Water Resource Management Account, (84th Texas Legislature, 2015) authorized the agency to increase the public health service (PHS) fee and the consolidated water quality (CWQ) fee.

Given the declining availability of funds in Account 153, the commission reviewed the water-related fees it has the authority to change. HB 1, General Appropriations Act, Article IX, Section 18.01, Contingency Appropriation: Water Resource Management Account, (84th Texas Legislature, 2015) authorized the agency to increase the PHS fee and the CWQ fee. After a review of the commission's existing water-related fees, the commission proposed revisions to the PHS fee to generate sufficient revenue to cover the costs of its water programs beginning in FY 2017. This fee was identified for a fee increase because, in terms of numbers and categories of fee payers, this fee represents the most broad-based water-related fee the agency assesses, revision of this fee does not require statutory changes, and the revenue stream is relatively stable and represents significant water fee collections.

The adopted rulemaking amends Chapter 290, to ensure that there are sufficient funds in FY 2017 to carry out the tasks required to protect the water resources of the state.

Section Discussion

§290.51, *Fees for Services to Drinking Water System*

The commission adopts the amendment to §290.51(a)(3) by increasing the maximum fee amounts in subparagraph (A) from \$100 to \$200 and in subparagraph (B) from \$175 to \$300. These increases were determined to be minimal for small systems with 160 connections or less. For systems with 161 connections or more, the commission adopts an increase to the maximum fee amount in subparagraph (C) from \$2.15 per connection to \$4.00 per connection to generate the necessary revenue to cover the cost of TCEQ's water programs. The assessment determined §290.51(a)(3)(C) will be applied uniformly to all fee payers with 161 connections or more and will be determined by the annual appropriations and other associated costs from Account 153. The commission adopts these changes to allow the ability to assess fees as needed to cover the costs of its water programs.

The agency's purpose in adopting the maximum fee rates is to ensure adequate water program funding for multiple biennia. The anticipated increase in 2017 will be less than 15% from the current rate. The plan is to adjust this fee based on funding needs on an annual basis in order to limit the financial impact to water systems required to pay this fee.

The commission received comments requesting that notice be provided to water systems to allow budget planning for increases and the commission to justify the needed increases in future rules. In response to these comments, the commission added subsection (c) which requires the agency to provide notification through an appropriate notification process, such as, but not limited to, *Texas Register* publication.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225, because it

does not meet the definition of a "major environmental rule" as defined in that statute. "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.

The adopted rulemaking to increase fees in order to provide funding for the commission's water programs does not meet the definition of a "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to provide the commission with the additional revenue necessary to operate its water programs in a manner that is consistent with the statutory requirements set forth in the Texas Water Code (TWC) and Texas Health and Safety Code (THSC). Therefore, the commission finds that this rulemaking is not a "major environmental rule."

Furthermore, even if the adopted rulemaking did meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because the rulemaking does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a state agency's adoption of 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.

In this case, the adopted rulemaking does not meet any of these requirements. First, there are no applicable federal standards that this rulemaking would address. Second, the adopted rulemaking does not exceed an express requirement of state law, but rather seeks to provide the commission with the additional revenue necessary to operate its water programs in a manner that is consistent with state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or a contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by a specific house bill and state statutes which are cited in the Statutory Authority section of this preamble.

Based upon the foregoing, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The commission determined that the adopted rulemaking does not constitute a taking. The specific

purpose of the adopted rulemaking is to provide the commission with the additional revenue necessary to operate its water programs in a manner that is consistent with the statutory requirements set forth in the TWC and THSC.

This rulemaking substantially advances this stated purpose by adjusting the fees to provide funding at a level that is sufficient to support a portion of the commission's water programs.

Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation does not affect a landowner's rights in private real property because the rulemaking does not burden, restrict, or limit the owner's right to real property and does not reduce the market value of real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rulemaking will not burden private real property because it amends fee rules which relate to funding for the commission's water programs.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the consistency of this rulemaking with the coastal management program.

Public Comment

The commission held a public hearing on January 5, 2016. The comment period closed on January 11, 2016. The agency did not receive any comments at the public hearing.

The commission received written comments from: the Honorable State Representative Abel Herrero (Representative Herrero), the City of Austin, the City of Houston, the City of Fort Worth, the City of Plano, the Texas Municipal League (TML), the Texas Rural Water Association (TRWA), Martin Luther Lutheran Church, and one individual.

A late comment was received with similar concerns to other commenters.

Response to Comments

Comment

The City of Fort Worth commented that the maximum fee per connection will almost double from \$2.15 to \$4.00 and will result in an 86% increase to their current payment to TCEQ of \$691,308.85. The City of Plano stated that the 86% increase would negatively impact the city by \$153,000. The City of Houston stated that the increase to \$4.00 will result in a total increase of more than \$1.7 million, and the plan for future years appears to be adjusted based on "funding needs" implying that the fees may be significantly higher in 2017 and in future years. TRWA commented that doubling the PHS fee would create a burden on small rural water systems and their customers, and the current proposal would raise the Tier 1 rate up to \$200 from the current \$100 and the Tier II rate up to \$300 from \$175. TRWA supports TCEQ's efforts to implement this increase in stages with only \$25

increases to both tiers in FY 2017; however, this leaves open the possibility of much steeper increases in subsequent years, which TRWA would oppose. Martin Luther Lutheran Church commented that doubling of fees is excessive in today's economy. TML commented that the maximum fee for Tier I systems will increase by \$100, Tier II will increase by \$125, and Tier III will almost double, increasing from \$2.15 to \$4.00 per connection. TML commented that this means a city with 300,000 connections will be confronted with a potential budget increase of \$555,000 each year.

Response

The commission acknowledges the comment in support of the agency's attempt to implement the fee in stages.

During the last rulemaking to increase this fee in 2009, the agency received a number of comments about gradually increasing the fee to meet the agency funding needs. The agency agreed with stakeholders from the previous rule that gradual increases would place less of a burden on water systems of various sizes. This rule gives the agency the ability to adjust rates to guarantee sufficient funding is available for the commission's water programs. Without additional revenue from this fee increase, the agency would not be able to continue the same level of water programs.

The agency set the maximum amounts to gradually increase the fee as water funding needs increase, rather than drastically raise the rates on water systems to support the agency water programs. In order to accomplish this, the agency set maximum fee rates in rule. The maximum rates were calculated to address the agency water funding needs for multiple years.

The FY 17 increase will not exceed those identified in the Proposal Fiscal Notice: Costs to State and Local Government section of the proposed preamble. The agency has utilized this process of gradually increasing fees based on water needs for the CWQ fee since 2012. The increases have never been excessive and only generated enough revenue to cover the agency's water program funding shortages. The agency anticipates applying this same approach to the PHS fee. The agency anticipates that the \$2.8 million increase between FY 16 and FY 17 to be one of the larger increases.

The agency is phasing in the increase over multiple years based on the water funding needs of the agency and will not double the fee immediately.

The commission made no change in response to these comments.

Comment

TML commented that Texas cities would prefer that, rather than forcing cities to impose a state tax increase, the legislature should provide adequate funding to TCEQ. The City of Austin commented that a more balanced approach for underwriting the cost of the commission to carry out its regulatory programs should come from the Texas general revenue funds and supplemental federal funds, such as the Safe Drinking Water Act grants rather than specific use fees. The City of Plano commented that the legislature did not provide TCEQ's request for additional funding to support the agency's water programs in the 84th Texas Legislative Session. Alternatively, the legislature recognized a budget shortfall for TCEQ and authorized the agency to raise fee rates by rule. The City of Fort Worth commented that the purpose of this fee increase is to make up for the appropriation shortfall.

Response

The amount of general revenue and Account 153 appropriated to the commission is determined through the legislative budget process based on various agency and committee recommendations. The legislature has to make difficult funding choices each session, and some funding requests cannot be funded with general revenue.

The agency is supplementing the water programs with federal funds, and these funds were taken into consideration by the commission when developing the fee increase needs. The agency is also anticipating a reduction in federal funds which need to be supplemented with fee funds to support water programs.

The commission made no change in response to these comments.

Comment

The City of Plano commented that this is an unfunded mandate that will adversely result in higher utility rates for the citizens of Plano. The City of Fort Worth commented that while TCEQ was instructed to raise fee rates by rule to ensure adequate revenue is available to support the agency's water programs, it is not the responsibility of Texas water utilities and their customers to make up that difference, especially when the increase is not related to new programming or additional services, and this means the increase must be passed along to its ratepayers, who are already overburdened with government-imposed taxes and fees. The City of Fort Worth commented that this fee increase is nothing more than a "state tax increase" on municipal water customers. TML asks in its comments, "where does TCEQ anticipate this money will come from?...It is expected that governmental entities will pass the fee increase on to their customers in their water utility bill." In other words, the proposed fee increase is nothing more than a "state tax increase" on municipal water customers. TRWA commented that it urges TCEQ to continue to take into account the burden to small systems and their customers when implementing future increases to the PHS fee.

Response

The commission acknowledges that there is never an ideal time for fee payers to face a fee increase. However, federal and state laws, to which the commission is subject, require that the commission carry out specific tasks to protect the state's water resources. These water-related activities benefit people across the state. All Texans benefit from clean and adequate water supplies. To undertake those tasks, the commission needs to ensure that funds exist to pay for what the agency is required to do.

Over time, the commission has generated savings through streamlined processes, enhanced use of technology that provides efficiencies, and program reviews to ensure that funds are used as efficiently as possible. For example, the commission has continually moved toward electronic processes including electronic permitting, electronic discharge monitoring reports, and automated internal processes.

TCEQ is assessing the fee against the approximately 6,900 entities classified as a water system in the state. This includes, but is not limited to, municipalities, private companies, water supply corporations, water districts, school districts, river authorities, federal facilities, and state facilities.

The commission made no change in response to these comments.

Comment

The City of Houston commented that the evolving connection-based fee structure places a disproportional burden on large utilities. The City of Houston further commented that TCEQ's workload and dedicated resources are not defined or assigned by the number of connections and asserts that the larger entities actually require less oversight due to their bigger, more experienced staff. The City of Fort Worth commented that all public water systems are impacted by this rule proposal, but large systems continue to bear the lion's share of the burden of fee increases and generally require less regulatory oversight from TCEQ.

Response

In adopting increases to the PHS fee, the agency has tried to spread the impact of the fee increase across a broad segment of fee payers so as not to unduly impact any one group of fee payers. The fee increases in this rule will be used to protect the water resources of the state and were developed as the most effective way for the agency to adjust revenue levels while spreading the financial burden as equitably as possible among those who benefit from clean and reliable water resources.

The commission made no change in response to these comments.

Comment

An individual requested no more increases, as the public already pays enough. The commenter suggests that TCEQ cut back on this agency, which is too bloated as it is. Further, the individual stated that nobody wants more water fees as the public already pays nitrate testing fees, monthly readings, lab fees, yearly inspection fees, etc.

Response

The commission acknowledges that there is never an ideal time for fee payers to face a fee increase. However, federal and state laws, to which the commission is subject, require that the commission carry out specific tasks to protect the state's water resources. These water-related activities benefit people across the state. All Texans benefit from clean and adequate water supplies. To undertake those tasks, the commission needs to ensure that funds exist to pay for what it is required to do.

Over time, the commission has generated savings through streamlined processes, enhanced use of technology that provides efficiencies, and program reviews to ensure that funds are used as efficiently as possible. For example, the commission has continually moved toward electronic processes including electronic permitting, electronic discharge monitoring reports, and automated internal processes.

The commission made no change in response to this comment.

Comment

The City of Austin commented that the rule does not stipulate how water systems such as Austin Water Utility will be informed of future increases, since rules will not be needed for raising the fees from the intended amount to the maximum of \$4.00. The City of Austin suggested that the proposed rule only increase the fee to \$2.45 per connection now, and future rulemaking increases the fees, as needed, above the initial recommended amount of \$2.45 by the commenter. The commenter stated that this would give notice to water systems to allow budget planning for increases, and the commission should justify the needed increases in future rules.

Response

Significant portions of the budget planning process are out of the agency's direct control. The agency's budget is determined biennially by the legislature including how much the agency is authorized to spend and how much general revenue or fee revenue the agency will receive. The fee rates will be set at a rate that will generate sufficient revenue to meet the agency's operating needs. The commission recognizes the need for advance notice in the budgeting process and will work to let fee payers know what their rates will be as early as possible each year.

The commission added §290.51(c) in response to comments. Subsection (c) requires the agency to provide notification through an appropriate notification process, such as, but not limited to, *Texas Register* publication.

Comment

Representative Herrero commented regarding his concern over the proposed fee increase by TCEQ in §290.51. Representative Herrero understood that §290.51 would raise fees for large water systems to fund TCEQ inspection, analysis, and review of public water systems. Representative Herrero commented that the City of Corpus Christi is implementing a long-term strategy to protect and invest in water resources and the proposed fee increases could jeopardize the city's plan.

Response

TCEQ is facing a \$2.5 million shortage in FY 16 and \$5.1 million shortage in FY 17 without implementing a fee increase in the Account 153. TCEQ is adopting the revisions to the fee now to cover costs of its water programs beginning in FY 2017. The fee increase will be assessed against approximately 6,900 entities classified as public water systems in the state. Every public water system will experience an increase from \$25 - \$300,000 depending on the size. Any changes to the rule need to be in effect by late summer of 2016.

The commission made no change in response to this comment.

Comment

The City of Austin commented that the water study was not referenced or mentioned in the rule proposal, and if the water study has been done then it should be included in the justification for the fee increases and provided to the regulated water utility industry. The City of Fort Worth commented that the water study should include the benefit each payer receives and the methodology used for assessing fees based on agency workload and fee payer benefits. Also, the City of Fort Worth commented that this information should be included in the justification alongside any proposal supporting a PHS fee for the regulated water utility industry.

Response

The commission is currently conducting a study on the agency's water program funding, as required by HB 1. The study will not be completed prior to the adoption of the rule package, and the agency water funding shortage had to be addressed prior to the 85th Texas Legislative Session.

The commission determined that the rule package has been developed in a manner intended by the study. HB 1 stated, "The TCEQ shall base any future fee rate modifications made to ensure sufficient revenues to the Water Resource Management Account on the findings of that study, provided such fee rate changes do not conflict with any statutory provisions relating to

water-related fees or water-related programs, and provided such fee rates do not exceed any maximum levels set in statute."

The commission made no change in response to these comments.

Comment

TRWA commented that the regulated community may be confused about the statement in the preamble in the "Background and Summary of the Factual Basis for the Proposed Rule" section, stating the executive director of TCEQ has the authority to authorize a tariff change based on this fee increase when presumably this authority has transferred to the Public Utility Commission of Texas.

Response

The commission agrees with the commenter and removed the text from the adoption preamble.

Comment

Martin Luther Lutheran Church commented that the proposed rule is specifically discriminating against small country churches.

Response

The fee increase will be assessed against approximately 6,900 entities classified as public water systems in the state. This includes, but is not limited to municipalities, private companies, water supply corporations, water districts, school districts, river authorities, federal facilities, and state facilities. Each entity will experience an increase from \$25 - \$300,000 depending on the size.

The commission made no change in response to this comment.

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over various statutory programs, including water programs; TWC, §5.102, concerning general powers of the commission; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §5.701, which provides statutory direction regarding the uses of fees collected for deposit to the water resource management account; Texas Health and Safety Code (THSC), §341.0315, which establishes the commission's authority over public drinking water supply systems; and THSC, §341.041, which authorizes the commission to assess fees for public drinking water supply systems.

The adopted amendment implements House Bill 1, General Appropriations Act, Article IX, Section 18.01 (84th Texas Legislature, 2015); and THSC, §341.0315 and §341.041.

§290.51. *Fees for Services to Drinking Water System.*

(a) Purpose and scope.

(1) The purpose of this section is to establish fees for services provided by the commission to public water systems.

(2) The commission will provide services to public water systems, as follows:

(A) scheduling of analysis of drinking water for chemical content;

(B) collection of samples of drinking water for chemical analyses;

(C) review system data for evaluation of sampling waivers;

(D) inspect public water systems;

(E) review plans for new systems and major improvements to existing systems; and

(F) provide technical assistance as needed.

(3) The fees which the commission will charge for services provided to community and nontransient noncommunity water systems under this subsection will be according to the following schedule.

(A) For a system with fewer than 25 connections, the fee will be an amount up to a maximum of \$200.

(B) For systems with 25 - 160 connections, the fee will be an amount up to a maximum of \$300.

(C) For a system with greater than or equal to 161 connections, the fee will be an amount up to a maximum of \$4.00 per connection.

(i) The number of connections will be determined from data collected from the latest agency inspection report.

(ii) All nontransient noncommunity systems, state, federal, and other community water system installations determined by the commission to serve large populations through a few connections will have the number of connections for fee purposes determined by dividing the population served by a value of ten.

(iii) Examples of such installations include, but are not limited to, universities, children's homes, correctional facilities, and military facilities which generally do not bill customers for water service.

(4) New public water systems will not be assessed a fee for services until water is supplied to the first connection.

(5) The commission will charge a fee of \$100 for services provided to noncommunity water systems which are not addressed in paragraph (3) of this subsection.

(6) All fees are due by January 1 of each year, shall be paid by check, money order, electronic funds transfer, or through the agency's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. Penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees).

(b) Failure to make payments as required under this section will subject the violator to the penalty provisions of the Texas Health and Safety Code, Chapter 341, Subchapter C.

(c) The commission may adjust the fee rates in subsection (a) of this section through an appropriate notification process, such as, but not limited to, *Texas Register* publication, based on the agency's cost of administering the water programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 13, 2016.

TRD-201602342

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**CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER F. PERMIT CHARACTERIS-
TICS AND CONDITIONS**

30 TAC §305.132

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §305.132.

Section 305.132 is adopted *with change* to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 930) and, therefore, the text will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

Senate Bill (SB) 912, passed by the 84th Texas Legislature, 2015, amends Texas Water Code (TWC), §26.039 to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. SB 912 also requires the commission to establish standard methods for calculating the volume of accidental discharges or spills of treated or untreated wastewater related to this section; to consider compliance history of the individual; and to establish procedures for formatting and submitting a monthly summary. Additionally, SB 912 requires TCEQ to adopt rules necessary to implement TWC, §26.039 no later than June 1, 2016. This rulemaking adopts new §305.132 in order to implement the requirements of SB 912 for permitted wastewater treatment facilities.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts to amend 30 TAC Chapter 327, Spill Prevention and Control.

Section by Section Discussion

§305.132, *Special Conditions for Certain Wastewater Discharges*

The commission adopts new §305.132(a) to define terms used in the section.

The commission adopts new §305.132(a)(1) to provide a definition of a collection system to mean pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility. This definition is consistent with the definition in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

The commission adopts new §305.132(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting or reoccurrences of accidental discharges or spills of treated or untreated wastewater. Section 305.132(a)(2) was changed in response to comment about broadening the definition of history of noncompliance to account for a high number of accidental discharges or spills.

The commission adopts new §305.132(a)(3) to provide a definition of local government to mean an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution. This definition is consistent with the definition in TWC, Chapter 26.

The commission adopts new §305.132(a)(4) to provide a definition of wastewater treatment facility to mean all contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area around a wastewater treatment facility. This definition is consistent with the definition in Chapter 217. The phrase "around a wastewater treatment facility" was added in response to comments to remain consistent with Chapter 217.

The commission adopts new §305.132(b) to allow for an accidental discharge or spill that occurs at wastewater treatment facilities or collection systems owned or operated by a local government, and that does not endanger human health or safety or the environment, to be reported to the executive director as a monthly summary.

The commission adopts new §305.132(b)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission adopts new §305.132(b)(2) which specifies that the accidental discharge or spill must not be associated with another simultaneous accidental discharge or spill of treated or untreated wastewater.

The commission adopts new §305.132(b)(3) which specifies that the accidental discharge or spill must be controlled or removed before it enters water in the state or adversely affects a public or private source of drinking water.

The commission adopts new §305.132(b)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission adopts new §305.132(c) which specifies that the summary must be reported to the executive director by the 20th day of the month for accidental discharges or spills of treated or untreated wastewater that occurred during the previous month. This date is consistent with other reporting requirements in the permit. This subsection also specifies that the summary must include the location; volume; content; description of the accidental discharge or spill and its cause, including dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill. The term "exact" was removed in subsection (c)(4) in response to comments.

The commission adopts new §305.132(d) to provide four standard methods for determining spill volumes.

The commission adopts new §305.132(d)(1) to describe visual estimates as the first of four standard methods. If the accidental discharge or spill is less than 55 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill and then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 55 gallons, using a standard 55-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill and then multiply by 55 to obtain the number of gallons discharged or spilled. The number 50 was changed to 55 in response to comments to remain consistent with industry standards.

The commission adopts new §305.132(d)(2) to describe measured volume as the second of four standard methods. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

The commission adopts new §305.132(d)(3) to describe duration and flow rate as the third standard method. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

The commission adopts new §305.132(d)(4) to include an alternative method in which the responsible person may use other volumetric calculation methodologies rather than those listed in subsection (d)(1) - (3), so long as such methodologies include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodology must be identified in the responsible person's monthly report. New §305.132(d)(4) was added in response to comment to allow flexibility and in recognition of other existing standardized methods.

The commission adopts new §305.132(e) which specifies that the owner or operator must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §305.132. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period for recordkeeping is consistent with other records required to be maintained onsite by the permit.

The commission adopts new §305.132(f) which specifies that the executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

Final Regulatory Impact Analysis

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is 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 adopted rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it revises procedural rules regarding when and how specific accidental discharges or spills of treated or untreated wastewater are to be reported. The primary purpose of the adopted rulemaking is to implement changes made to the TWC in SB 912.

The adopted rulemaking is procedural in nature and does not 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.

This rulemaking does not meet any of the four applicability requirements listed in Texas Government Code §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major

environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the adopted rule revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater and is procedural in nature. The primary purpose of the adopted rulemaking is to implement changes made to the TWC in SB 912. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the statutory authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted 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 Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Plan (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is 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. Therefore, the adopted rule is not subject to the CMP.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on March 1, 2016. The comment period closed on March 7, 2016. The commission received comments from Harris County Pollution Control Services Department (HPCPSD), Lloyd Gosselink Attorneys at Law (Lloyd Gosselink), San Jacinto River Authority - Woodlands Division (SJRA), Texas Association of Clean Water Agencies (TACWA) and Water Environment Association of Texas (WEAT) and one individual. The comments received were neither in support of nor against the rulemaking, but each commenter suggested changes to the proposed rule language.

Response to Comments

Comment

HCPCSD commented that it has a concern with using the term "collection system" as it is defined in 30 TAC Chapter 217 in this rule, rather than using the term "collection facility" used in SB 912. HCPCSD would like the definition to exclude lift stations, mains, and manholes from the definition because of their proximity to ditches and storm drains in Harris County. HCPCSD is also concerned that discharges to waters of the state will not be reported timely under the new rule. HCPCSD suggested narrowing the definition by adding language to §305.132(b)(3) to state that an accidental discharge or spill "is controlled or removed before it enters water in the state, specifically including, but not limited to ditches and storm drains."

Response

The commission respectfully disagrees with the comment. The commission understands the term "facility" used in SB 912 is synonymous with the term "collection system" that is defined in Chapter 217. The rule requires 24-hour reporting for discharges or spills which reach waters of the state. No change was made in response to this comment.

Comment

HCPCSD commented that the definition of history of noncompliance in §305.132(a)(2) should be broadened to include the number of accidental discharges or spills not just the reporting of them.

Response

The commission agrees with the comment and has made a change in the proposed rule language to broaden the definition by accounting for reoccurrences.

Comment

HCPCSD commented that the definition of wastewater treatment facility in §305.132(a)(4) should include "around a wastewater treatment facility" to be consistent with Chapter 217.

Response

The commission agrees with the comment and has made the change to be consistent with Chapter 217.

Comment

HCPCSD recommended that language is added to §305.132(f) to allow for local pollution control authorities to require more frequent reporting of accidental discharges or spills based on the history of noncompliance.

Response

The commission respectfully disagrees with this comment. The noncompliance forms are reported to the TCEQ regional office and Enforcement Division. It is the responsibility of TCEQ to determine the history of noncompliance. No change was made in response to this comment.

Comment

Lloyd Gosselink, SJRA, WEAT and TACWA recommended removing the word "exact" in §305.132(c)(4). They commented that this revision would maintain the requirement for reporting date and time without placing an undue burden on the permittees to identify the exact time.

Response

The commission agrees with the comment and has removed the term "exact" from the rule language.

Comment

Lloyd Gosselink, SJRA, WEAT and TACWA commented that §305.132(c)(5) should be removed. They noted that it is unnecessary to identify steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill for small volume accidental discharge or spills. They also commented that the proposed language requires diagnosis and planning that is suitable for larger spills but places an undue burden on the permittees to submit with a monthly summary.

Response

The commission respectfully disagrees with the comment. This information is already captured under the 24-hour reporting requirements and ensures that the responsible person has attempted to prevent future accidental discharges or spills. No change was made in response to this comment.

Comment

Lloyd Gosselink, SJRA, WEAT and TACWA commented that while the three methods for calculating spill volume in §305.132(d)(1) - (3) capture the most commonly used calculations, they believe there are other methods that are appropriate in certain circumstances. They commented that an "other methods" option is necessary so that permittees are not forced to report small accidental discharges or spills on the same basis as accidental discharges or spills greater than 1,000 gallons only because the volumetric calculation method differs from the three methods TCEQ currently proposes. They propose adding §305.132(d)(4), "Other Methods. The responsible person may use other volumetric calculation methodologies rather than those listed above, so long as such methodologies, include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodologies must be identified in the responsible person's monthly report."

Response

The commission agrees with the suggested change. The language submitted allows for an additional documented methodology that includes elements of the other three standards already in the proposed rule language. Adding the additional language allows application of other acceptable industry standards for calculating spills while not diminishing the documentation of important parameters that characterize each spill. Section 305.132(d)(4) was added.

Comment

An individual commented that the industry standard for metal and plastic barrels and drums is 55 gallons. Therefore, he commented that the references to a 50-gallon drum be revised to 55-gallon in §305.132(d)(1).

Response

The commission agrees with the comment and has changed "50" in §305.132(d)(1) to "55" to be consistent with the industry standard.

Statutory Authority

The new section is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §26.039, concerning Accidental Discharges and Spills and TWC, §26.121, concerning Unauthorized Discharges Prohibited, which prohibit unauthorized discharges into or adjacent to water in the state.

The adopted new section implements TWC, §26.039 and Senate Bill 912 (84th Texas Legislature, 2015).

§305.132. *Special Conditions for Certain Wastewater Discharges.*

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Collection system--Pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility.

(2) History of noncompliance--History of non-reporting or reoccurrences of accidental discharges or spills of treated or untreated wastewater.

(3) Local government--An incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(4) Wastewater treatment facility--All contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area around a wastewater treatment facility.

(b) The owner or operator of a wastewater treatment facility or collection system that is owned or operated by a local government, may report accidental discharges or spills of treated or untreated wastewater that do not endanger human health or safety or the environment to the executive director as a monthly summary if each individual accidental discharge or spill:

- (1) has a volume of 1,000 gallons or less;
- (2) is not associated with another simultaneous accidental discharge or spill of treated or untreated wastewater;
- (3) is controlled or removed before the accidental discharge or spill enters water in the state or adversely affects a public or private source of drinking water; and
- (4) is not otherwise subject to local regulatory control and reporting requirements.

(c) The owner or operator shall submit a monthly summary to the executive director by the 20th day of the month for each accidental discharge or spill of treated or untreated wastewater that occurred during the previous month. The summary must include, at a minimum, the:

- (1) location, volume and content of the accidental discharge or spill;
- (2) description of the accidental discharge or spill;
- (3) cause of the accidental discharge or spill;

(4) dates and times of the accidental discharge or spill; and

(5) steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

(d) The owner or operator must use one of the following methods for determining the volume of the discharge or spill.

(1) Visual estimate. If the accidental discharge or spill is less than 55 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill and then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 55 gallons, using a standard 55 gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 55 to obtain the number of gallons discharged or spilled.

(2) Measured volume. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

(3) Duration and flow rate. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

(4) Other methods. The responsible person may use other volumetric calculation methodologies rather than those listed in paragraphs (1) - (3) of this subsection, so long as such methodologies include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodologies must be identified in the responsible person's monthly report.

(e) The owner or operator must keep records of all accidental discharges or spills of treated or untreated wastewater reported under this section. The records must remain on-site for three years and be made immediately available to commission staff upon request.

(f) The executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 13, 2016.

TRD-201602352

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: June 2, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 239-2613

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CHAPTER 327. SPILL PREVENTION AND CONTROL

30 TAC §327.1, §327.32

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §327.1 and new §327.32.

Section 327.1 is adopted *without change* to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 933) and, therefore, will not be republished. Section 327.32 is adopted *with change* to the proposed text and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 912, passed by the 84th Texas Legislature, 2015, amends Texas Water Code (TWC), §26.039 to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. SB 912 also requires the commission to establish standard methods for calculating the volume of accidental discharges or spills of treated or untreated wastewater related to this section; to consider compliance history of the individual; and to establish procedures for formatting and submitting a monthly summary. Additionally, SB 912 requires TCEQ to adopt rules necessary to implement TWC, §26.039 no later than June 1, 2016. This rulemaking adopts amended §327.1 and new §327.32 in order to implement the requirements of SB 912 for unpermitted wastewater treatment facilities and collection systems.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts amended 30 TAC Chapter 305, Consolidated Permits.

Section by Section Discussion

§327.1, *Applicability*

The commission adopts amended §327.1(b)(7) to replace the phrase, "discharges not so authorized" with "unauthorized discharges" in order to improve readability and clarity.

The commission also adopts §327.1(a)(10), which states that Chapter 327 is not applicable to accidental discharges or spills of treated or untreated wastewater that are reported in accordance with §305.132.

§327.32, *Reporting Requirements for Certain Accidental Discharges or Spills of Treated or Untreated Wastewater at Wastewater Treatment Facilities or Collection Systems*

The commission adopts new §327.32(a) to define terms used in the section.

The commission adopts new §327.32(a)(1) to provide a definition of a collection system to mean pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility. This definition is consistent with the definition in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

The commission adopts new §327.32(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting or reoccurrences of accidental discharges or spills of treated or untreated wastewater. Section 327.32(a)(2) was changed in response to comment about broadening the definition of history of noncompliance to account for a high number of accidental discharges or spills.

The commission adopts new §327.32(a)(3) to provide a definition of local government to mean an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Con-

stitution. This definition is consistent with the definition in TWC, Chapter 26.

The commission adopts new §327.32(a)(4) to provide a definition of wastewater treatment facility to mean all contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area around a wastewater treatment facility. This definition is consistent with the definition in Chapter 217. The phrase "around a wastewater treatment facility" was added in response to comments to remain consistent with Chapter 217.

The commission adopts new §327.32(b) that states that unless the conditions in §327.32(c) exists, all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours from the time of occurrence. A written submission shall be provided to the executive director within five days of occurrence. The written submission shall contain a description of the accidental discharge or spill and its cause; the potential danger to human health or safety, or the environment; the duration of the accidental discharge or spill, including exact dates and times; the length of time that the accidental discharge or spill is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent recurrence of the accidental discharge or spill, as well as efforts made to mitigate its adverse effects.

The commission adopts new §327.32(c) to allow an accidental discharge or spill of treated or untreated wastewater that occurs at wastewater treatment facilities or collection systems owned or operated by a local government, and that does not endanger human health or safety or the environment, to be reported to the executive director as a monthly summary.

The commission adopts new §327.32(c)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission adopts new §327.32(c)(2) which specifies that the accidental discharge or spill must not be associated with another simultaneous accidental discharge or spill of treated or untreated wastewater.

The commission adopts new §327.32(c)(3) which specifies that the accidental discharge or spill must be controlled or removed before it enters water in the state or adversely affects a public or private source of drinking water.

The commission adopts new §327.32(c)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission adopts new §327.32(d) which specifies that the summary must be reported to the executive director by the 20th day of the month for spills of treated or untreated wastewater that have occurred during the previous month. This date is consistent with the reporting requirements for permitted facilities. This clause also specifies that the summary must include the location; volume; content; description of the accidental discharge or spill and its cause, including dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill. The term "exact" was removed in subsection (d)(4) in response to comments.

The commission adopts new §327.32(e) to provide four standard methods for determining spill volumes.

The commission adopts new §327.32(e)(1). This paragraph describes visual estimates as the first of four standard methods. If

the accidental discharge or spill is less than 55 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 55 gallons, using a standard 55-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 55 to obtain the number of gallons discharged or spilled. The number 50 was changed to 55 in response to comments to remain consistent with industry standards.

The commission adopts new §327.32(e)(2). This paragraph describes volume as the second of four standard methods. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

The commission adopts new §327.32(e)(3). This paragraph describes duration and flow rate as the third standard method. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

The commission adopts new §327.32(e)(4) to include an alternative method in which the responsible person may use other volumetric calculation methodologies rather than those listed in subsection (e)(1) - (3), so long as such methodologies include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodology must be identified in the responsible person's monthly report. New §305.132(d)(4) was added in response to comment to allow flexibility and in recognition of other existing standardized methods.

The commission adopts new §327.32(f) which specifies that the responsible person must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §327.32. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period is consistent with recordkeeping requirements for permitted facilities.

The commission adopts new §327.32(g) which specifies that the executive director may require more frequent reporting based on the responsible person's history of noncompliance.

Final Regulatory Impact Analysis

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is 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 adopted rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it revises procedural rules regarding when and how specific accidental discharges or spills of treated or untreated waste-

water are to be reported. The primary purpose of the adopted rulemaking is to implement changes made to the TWC in SB 912.

The adopted rulemaking is procedural in nature and does not 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.

This rulemaking does not meet any of the four requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the adopted rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater and is procedural in nature. The primary purpose of the adopted rulemaking is to implement changes made to the TWC in SB 912. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the statutory authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated and untreated wastewater. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted rulemaking 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 Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is 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. Therefore, the adopted rules are not subject to the CMP.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on March 1, 2016. The comment period closed on March 7, 2016. The commission

received comments from Harris County Pollution Control Services Department (HCPCSD), Lloyd Gosselink Attorneys at Law (Lloyd Gosselink), San Jacinto River Authority - Woodlands Division (SJRA), Texas Association of Clean Water Agencies (TACWA) and Water Environment Association of Texas (WEAT), and an individual. The comments received were neither in support of nor against the rulemaking, but each commenter suggested changes to the proposed rule language.

Response to Comments

Comment

HCPCSD commented that it has a concern with using the term "collection system" as it is defined in 30 TAC Chapter 217 in this rule rather than using the term "collection facility" used in SB 912. HCPCSD would like the definition to exclude lift stations, mains and manholes from the definition because of their proximity to ditches and storm drains in Harris County. HCPCSD is concerned that discharges to waters of the state will not be reported timely under the new rule. HCPCSD suggested narrowing the definition by adding language to §327.32(c)(3) to state that an accidental discharge or spill "is controlled or removed before it enters water in the state, specifically including, but not limited to ditches and storm drains."

Response

The commission respectfully disagrees with the comment. The commission understands the term "facility" used in SB 912 is synonymous with the term "collection system" that is defined in Chapter 217. The rule requires 24-hour reporting for discharges or spills which reach waters of the state. No change was made in response to the comment.

Comment

HCPCSD commented that the definition of history of noncompliance in §327.32(a)(2) should be broadened to include the number of accidental discharges or spills not just the reporting of them.

Response

The commission agrees with the comment and has made a change in the proposed rule language to broaden the definition by accounting for reoccurrences.

Comment

HCPCSD commented that the definition of wastewater treatment facility in §327.32(a)(4) should include "around a wastewater treatment facility" to be consistent with Chapter 217.

Response

The commission agrees with the comment and has made the change to be consistent with Chapter 217.

Comment

HCPCSD recommended that language is added to §327.32(g) to allow for local pollution control authorities to require more frequent reporting of accidental discharges or spills.

Response

The commission respectfully disagrees with this comment. The noncompliance forms are reported to the TCEQ regional office and Enforcement Division. It is the responsibility of TCEQ to determine the history of noncompliance. No change was made in response to this comment.

Comment

Lloyd Gosselink, SJRA, WEAT and TACWA recommended removing the word "exact" in §327.32(d)(4). They commented that this revision would maintain the requirement for reporting date and time without placing an undue burden on the permittees to identify the exact time.

Response

The commission agrees with the comment and has removed the term "exact" from the rule language.

Comment

Lloyd Gosselink, SJRA, WEAT and TACWA commented that §327.32(d)(5) should be removed. They noted that it is unnecessary to identify steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill for small volume accidental discharge or spills. They also commented that the proposed language requires diagnosis and planning that is suitable for larger spills but places an undue burden on the permittees to submit with a monthly summary.

Response

The commission respectfully disagrees with the comment. This information is already captured under the 24-hour reporting requirements and ensures that the responsible person has attempted to prevent future accidental discharges or spills. No change was made in response to this comment.

Comment

Lloyd Gosselink, SJRA, WEAT and TACWA commented that while the three methods for calculating spill volume in §327.32(e)(1) - (3) capture the most commonly used calculations, they believe there are other methods that are appropriate in certain circumstances. They commented that an "other methods" option is necessary so that permittees are not forced to report small accidental discharges or spills on the same basis as accidental discharges or spills greater than 1,000 gallons only because the volumetric calculation method differs from the three methods TCEQ currently proposes. They propose adding §327.32(e)(4) "Other Methods. The responsible person may use other volumetric calculation methodologies rather than those listed above, so long as such methodologies, include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodologies must be identified in the responsible person's monthly report."

Response

The commission agrees with the suggested change. The language submitted allows for an additional documented methodology that includes elements of the other three standards already in the proposed rule language. Adding the additional language allows application of other acceptable industry standards for calculating spills while not diminishing the documentation of important parameters that characterize each spill. Section 305.132(d)(4) was added in response to comment.

Comment

An individual commented that the industry standard for metal and plastic barrels and drums is 55 gallons. Therefore, he commented that the references to a 50-gallon drum be revised to 55-gallon in §327.32(e)(1).

Response

The commission agrees with the comment and has changed "50" in §327.32(e)(1) to "55" to remain consistent with the industry standard.

Statutory Authority

The amendment and new section are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §26.039, concerning Accidental Discharges and Spills and TWC, §26.121, concerning Unauthorized Discharges Prohibited, which prohibit unauthorized discharges into or adjacent to water in the state.

The adopted amendment and new section implement TWC, §26.039, and Senate Bill 912 (84th Texas Legislature, 2015).

§327.32. Reporting Requirements for Certain Accidental Discharges or Spills of Treated or Untreated Wastewater at Wastewater Treatment Facilities or Collection Systems.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Collection system--Pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility.

(2) History of noncompliance--History of non-reporting or reoccurrences of accidental discharges or spills of treated or untreated wastewater.

(3) Local government--An incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(4) Wastewater treatment facility--All contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area around a wastewater treatment facility.

(b) Except as provided by subsection (c) of this section, all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours of the occurrence. A written submission shall be provided to the executive director within five days of the occurrence. The written submission shall contain a description of the accidental discharge or spill and its cause; the potential danger to human health or safety, or the environment; the duration of the accidental discharge or spill, including exact dates and times; if the cause of the accidental discharge or spill has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence, and to mitigate its adverse effects.

(c) The responsible person of a wastewater treatment facility or collection system that is owned or operated by a local government may report accidental discharges or spills of treated or untreated wastewater that do not endanger human health or safety or the environment to the executive director as a monthly summary if each individual accidental discharge or spill:

(1) has a volume of 1,000 gallons or less;

(2) is not associated with another simultaneous accidental discharge or spill of treated or untreated wastewater;

(3) is controlled or removed before the accidental discharge or spill enters water in the state or adversely affects a public or private source of drinking water; and

(4) is not otherwise subject to local regulatory control and reporting requirements.

(d) The responsible person shall submit a monthly summary by the 20th day of the month for each accidental discharge or spill that occurred during the previous month. The summary must include, at a minimum, the:

(1) location, volume and content of the accidental discharge or spill;

(2) description of the accidental discharge or spill;

(3) cause of the accidental discharge or spill;

(4) dates and times of the accidental discharge or spill; and

(5) steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

(e) The responsible person must use one of the following methods for determining the volume of the discharge or spill.

(1) Visual estimate. If the accidental discharge or spill is less than 55 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 55 gallons, using a standard 55 gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill and then multiply by 55 to obtain the number of gallons discharged or spilled.

(2) Measured volume. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

(3) Duration and flow rate. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

(4) Other methods. The responsible person may use other volumetric calculation methodologies rather than those listed in paragraphs (1) - (3) of this subsection, so long as such methodologies include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodologies must be identified in the responsible person's monthly report.

(f) The responsible person must keep records of all accidental discharges or spills of treated or untreated wastewater reported under this section. The records must remain on-site for three years and be made immediately available to commission staff upon request.

(g) The executive director may require more frequent reporting based on the responsible person's history of noncompliance.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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