

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.126, concerning Additional Standard Permit Conditions for Wastewater Discharge Permits.

#### EXPLANATION OF PROPOSED RULE

The purpose of the proposed rule is to give communities with permitted domestic wastewater treatment facilities more control over decisions concerning treatment capacity needs and reduce reporting requirements associated with administering the rule. The proposed revisions are being made in response to the regulated community's request for more local control over treatment capacity decisions. In the 1960s to early 1980s, expansion of wastewater treatment plants severely lagged behind population growth in Texas. The result was inadequate retention time for wastewater treatment during non-high flow periods, and plant flushing and/or plant overflows during rainfall events. The original rule was developed to assist community leaders by requiring them to plan ahead and position their community for expansion and/or upgrading of the existing wastewater treatment plant when effluent flows reached a specific level. The proposed amendments will allow this advance planning to continue while responding to the concerns of the regulated community.

Under the current rule, whenever a domestic wastewater treatment plant reaches 75 percent of the permitted daily average flow for three consecutive months, the permittee is required to initiate engineering and financial planning for expansion and/or upgrading of the treatment plant and/or collection facilities. Whenever flows at a domestic wastewater treatment plant reach 90 percent of the permitted daily average flow for three consecutive months, the permittee is required to obtain authorization from the commission to commence construction of the necessary additional treatment

and/or collection facilities. The permittee may obtain a waiver if the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility. In administering the current rule, the commission requires permittees to provide a written plan and an implementation schedule for action if a waiver is not applicable. In addition, at the 90 percent level the commission requires permittees to provide periodic reports in order to track their progress in making improvements.

The proposed rule amendments would accomplish the original objective of the rule by continuing to require permittees to evaluate their treatment capacity. At the same time the proposed rule injects needed flexibility into decisions over when action is required. The commission recognizes that many factors can influence when a facility should begin planning construction of additional treatment capacity, such as population growth rates or a need to sell bonds. For this reason, the commission is revising the rule to allow local communities to decide when to expand treatment capacity, rather than requiring them to begin expansion planning and obtain authorization to construct or obtain a waiver when they reach the 75 and 90 percent milestones.

The proposed rule amendments would no longer require permittees to commence development of engineering and financial planning when their domestic wastewater treatment plant reaches 75 percent of flow capacity. Instead, upon notification from the commission that flows have reached 75 percent for three consecutive months, the permittee must respond in writing within 30 days acknowledging receipt of the notification. Under the revised rule, the 75 percent notification will simply advise

permittees that they may need to begin evaluating future capacity needs. They will no longer be required to take specific actions.

In addition, the proposed rule amendments will no longer require permittees to obtain authorization for construction when their domestic wastewater treatment plant reaches 90 percent of flow capacity for three consecutive months. Upon notification from the commission that the 90 percent threshold has been reached, permittees that self-report flow will be required to respond to the commission within 90 days indicating their intention to either expand or upgrade the treatment and/or collection facilities or not to expand or upgrade. Permittees that do not self-report flow (land disposal facilities) will be required to notify the commission when flow measurements at their domestic wastewater treatment plant reach 90 percent of flow capacity for three consecutive months, and inform the commission of their plans to either expand or upgrade or not expand or upgrade. Permittees may choose not to expand or upgrade in cases where low or no growth is expected, because the quantity of waste produced is not expected to exceed the design limitations of the treatment facilities, or because they intend to combine operations and/or physical facilities with another system or systems that have the capacity to handle the waste.

The commission is also responding to concerns by permittees that they are expending limited resources to provide the reports that are currently required by the commission. In those cases where expansion and/or collection system upgrades are pursued, the commission will no longer track implementation schedules nor require the permittee to submit periodic progress reports. Additionally, the rule modifications will eliminate the need for waivers.

Finally, the proposed rule amendments are necessary to implement the commission's new permitting policy which specifies that any domestic wastewater discharge facility with one million gallons per day or greater permitted flow will receive an annual average flow limitation. Any domestic wastewater discharge facility with less than one million gallons per day of permitted flow will continue to receive a daily average flow limitation. The rule has been revised so that it applies to facilities with either daily average flow limitations or annual average flow limitations.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years in which this section as proposed is in effect, the enforcement and administration of the section will have fiscal implications. The effect of the proposed amendments to the rule and implementation procedures will be to change the reporting and action requirements for domestic wastewater treatment plants when they reach 75 percent and 90 percent of flow capacity. The effect on state government will be a reduction in costs typically incurred by the commission that are associated with the review and tracking of the improvement schedules, progress reports and requests for waivers that result from current rule requirements and rule implementation procedures.

There will be some cost savings to local governments as a result of the proposed rule. Management in these communities will experience savings in employee time costs due to the reduced reporting requirements proposed by this rule.

#### PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be more local control over decisions concerning treatment capacity, reduced regulatory requirements for permittees and continued protection of the environment by promoting advanced planning by permittees for future treatment capacity requirements.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rule is to give communities with permitted domestic wastewater treatment facilities more control over decisions concerning treatment capacity needs, and reduce reporting requirements associated with administering the rule. The rule will substantially advance this specific purpose by revising the requirements for domestic wastewater permittees when the flows reach 75 percent and 90 percent of flow capacity. Promulgation and enforcement of this rule will not affect private real property that is the subject of this rule because the change does not restrict or limit the owner’s right to

the property that would otherwise exist in the absence of the rulemaking. There is no burden over and above that burden already present under the rule in effect currently.

#### COASTAL MANAGEMENT PROGRAM (CMP)

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking subject to the Coastal Management Program and must be consistent with all applicable goals and policies of the Coastal Management Program (CMP).

The commission has prepared a consistency determination for the proposed rule pursuant to 31 TAC §505.22 and has found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rule include the administrative policies and the policies for specific activities related to the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the proposed rule amendments will continue to require permittees to evaluate their treatment capacity needs. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies.

The commission invites public comment on the consistency of the proposed rule.

#### SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97138-305-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may also be faxed to (512) 239-5687. Written comments must be received by 5:00 p.m. on \_\_\_\_\_ . For further information concerning this proposal, please contact Jan Sills, at (512) 239-4569.

#### STATUTORY AUTHORITY

These amendments are proposed under the Texas Water Code §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, and §5.103 and §5.105 which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission. Additionally, the amendments are proposed under Texas Water Code §26.042, which authorizes the commission to prescribe reasonable requirements for monitoring and reporting of waste collection, treatment and disposal activities.

There are no other codes or statutes that will be affected by this proposal.

**SUBCHAPTER F : PERMIT CHARACTERISTICS AND CONDITIONS**

**§305.126**

**§305.126. Additional Standard Permit Conditions for Waste Discharge Permits.**

(a) Upon notification from the commission that flow measurements at a domestic wastewater treatment plant have reached 75 percent of the daily average or annual average flow limit, as specified in the permit, for three consecutive months, a permittee shall respond to the commission, in writing, within 30 days of the notification indicating that the permittee has received the 75 percent flow notification.

[Whenever flow measurements for any sewage treatment plant facility in the state reaches 75% of the permitted average daily flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily flow reaches 90 percent of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75 percent of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the water quality division of the commission, and

such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.]

(b) Upon notification from the commission that flow measurements at a domestic wastewater treatment plant have reached 90 percent of the daily average or annual average flow limit, as specified in the permit, for three consecutive months, a permittee that is required to self-report flow shall respond to the commission, in writing, within 90 days of the notification. The response shall indicate:

(1) any plans the permittee has to expand and/or upgrade the wastewater treatment plant and/or collection facilities, or

(2) that expansion and/or upgrading is not necessary. Permittees may choose not to expand and/or upgrade for the following reasons:

(A) low growth or no growth is anticipated in the planned population to be served,  
or

(B) the quantity of waste produced is not expected to exceed the design limitations of the wastewater treatment plant, or

(C) the waste will be handled by combining operations and/or physical facilities with another system or systems that have the capacity to handle the waste.

(c) A permittee that is not required to self-report flow shall notify the commission, in writing, within 90 days of the third consecutive month that flow measurements at its domestic wastewater treatment plant reach 90 percent of the daily average or annual average flow limit, as specified in the permit. The notification shall indicate:

(1) any plans the permittee has to expand and/or upgrade the wastewater treatment plant and/or collection facilities, or

(2) that expansion and/or upgrading is not necessary. Permittees may choose not to expand and/or upgrade for the following reasons:

(A) low growth or no growth is anticipated in the planned population to be served,  
or

(B) the quantity of waste produced is not expected to exceed the design limitations of the wastewater treatment plant and/or collection facilities, or

(C) the waste will be handled by combining operations and/or physical facilities with another system or systems that have the capacity to handle the waste.

(d) [(b)] The permittee shall give notice to the executive director as soon as possible of any planned physical alterations or additions to the permitted facility. In addition to the requirements of §305.125(7) of this title (relating to Standard Permit Conditions), notice shall also be required under this subsection when:

(1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §305.534 of this title (relating to New Sources and New Dischargers); or

(2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 Code of Federal Regulations (CFR) 122.42(a)(1) as adopted by §305.531 of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(3) the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(e) [(c)] If the permittee is a new discharger, it must provide quantitative data described in 40 CFR §§122.21(h)(4)(I) and (ii) no later than two years after commencement of discharge; however, the permittee need not conduct tests which the permittee has already performed and reported under the discharge monitoring requirements of its TPDES permit.