

The Texas Natural Resource Conservation Commission (commission) proposes new Subchapter O, §§321.271-321.280, relating to the authorization by rule of discharges to waters in the state from certain aquaculture production facilities.

BRIEF EXPLANATION OF THE RULE

The purpose of the proposed new Subchapter O is to streamline the current permitting process by authorizing by rule certain activities, thereby eliminating the need for individually issued commission permits for a subset of specific wastewater discharge and waste handling facilities. The proposed sections cover activities that are now subject to individual permits. In developing these regulations, the commission is specifying which particular aquaculture production facilities may be authorized by individual permit, those which may be authorized by rule, and those which may be subject to a case-by-case review with an ultimate decision by the commission on whether to authorize a discharge by permit, by rule with a registration, or by rule being exempt. The commission has chosen to retain the policy of individually reviewing permit applications for proposed aquaculture discharges located in the coastal zone. This increased scrutiny will help address the unique issues associated with the typically larger operations located in coastal waters. It will also help monitor the type of species being produced and help assess the impacts on native species and coastal water quality caused by coastal aquaculture facilities. Those facilities authorized by rule would be categorized as posing a low risk of harm to human health and the environment, and would represent a significant demand on agency resources if permitted individually. Such activities may be authorized by rule as provided by §26.040 of the Texas Water Code.

Wastewater effluent quality will be controlled under the proposed rule by requiring specific design and operational best management practices and specific discharge requirements at aquaculture facilities.

The proposed rule also requires that an individual commission permit must be obtained if a facility cannot adequately control waste by utilizing the best management practices provided by this subchapter.

Also, facilities are required to be operated in a manner that will prevent the creation of a nuisance or condition of air pollution, as provided by Chapters 341 and 382 of the Texas Health and Safety Code.

Proposed new §321.271, relating to Definitions, defines terms that are used throughout 30 TAC Chapter 321, Subchapter O. The definition for the coastal zone is consistent with the Texas Coastal Management Program.

Proposed new §321.272, relating to Purpose and Applicability, identifies the manner by which facilities may be authorized to discharge their wastewater: permit issuance, registration issuance, and exemption from permit or registration. Some facilities will be subject to a case-by-case review by the commission to determine which process they must follow.

Proposed new §321.273, relating to Certificate of Registration and Public Notice, delineates the application and review process for a certificate of registration, specifies when a registrant must notify the executive director of changes proposed at a facility, and includes a public notice provision.

Proposed new §321.274, relating to Ground-Water Protection, specifies liner requirements applicable to production and wastewater management ponds at facilities regulated under this subchapter.

Proposed new §321.275, relating to Waste Utilization or Disposal by Land Application of Wastewater and Pond Bottom Sludges, provides requirements for on-site and off-site management of solid waste, specifies irrigation and land application requirements for solid waste and wastewater, and describes nuisance control provisions when solid waste or wastewater is handled.

Proposed new §321.276, relating to the Edwards Aquifer, specifies that regulations in 30 TAC Chapter 313 (relating to the Edwards Aquifer) apply to certain facilities registered under this subchapter.

Proposed new §321.277, relating to Required Best Management Practices and Specific Requirements for Discharge, delineates operational measures, analytical sampling, and reporting requirements which facilities registered under this subchapter must follow.

Proposed new §321.278, relating to General Requirements, provides certain effluent monitoring, effluent quality criteria, disease abatement requirements, operational requirements, recordkeeping, and notification requirements. This section also provides odor and nuisance control requirements that are intended to ensure compliance with Chapters 341 and 382 of the Texas Health and Safety Code.

Proposed new §321.279, relating to Enforcement and Revocation, provides for enforcement and revocation actions by the commission.

Proposed new §321.280, relating to Annual Waste Treatment Fee, provides for the assessment of a fee to be collected by the TNRCC from each registrant, in accordance with the Texas Water Code,

§26.0291, and the general wastewater facility fee provisions found in §§305.501-305.507 of this title (relating to Waste Treatment Fee Program).

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years in which these sections as proposed are in effect, the enforcement and administration of the sections will have fiscal implications. The effect of the proposed sections will be to regulate by rule rather than permit certain wastewater treatment facilities. The effect on state government will be a reduction in those costs typically incurred by the commission that are associated with the review and approval of permit applications. Under the proposed regulations, less staff resources will be required to process requests for registration than would be necessary for the processing of permit applications. Costs associated with monitoring and compliance activities, however, will stay the same. While a net cost saving is anticipated, the actual number of facilities that will be subject to the proposed sections and thus the actual cost savings, cannot be determined.

There are no additional costs anticipated for local governments. Consistent with the proposed rules, local governments may operate some aquaculture facilities for which permits will not be required. The cost savings to these political subdivisions will be equivalent to those savings realized by any applicant qualifying for a certificate of registration rather than being subject to individual permit requirements. Moreover, owners or operators of facilities qualifying for authorization by rule will potentially realize savings related to the costs of preparing permit applications and participating in the approval process. These savings may also result from a decreased need for legal services related to

public hearings and may also include a time savings from the accelerated and streamlined approval process. These savings will vary on a case-by-case basis depending on the particular facility, its size and complexity, and the extent to which it qualifies under the proposed rule. These savings cannot be determined accurately at this time. However, it is anticipated that savings of \$2,000 to \$5,000 will be typical of most facilities, while savings of up to \$25,000 could potentially be available in some circumstances. The minimum savings realized by affected parties is anticipated to be approximately \$1,000. The savings to businesses will apply equally to small businesses as well as to larger operations based on these factors.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will consist of improvements in the processes and procedures related to authorization of wastewater discharges, more efficient use of the public resources available for regulation of wastewater facilities, and improved protection of the quality of the surface water resources of the state. There are no known costs to individuals required to comply with these sections as proposed.

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 ease the burden on the commission and those regulated by the rule in authorizing certain aquaculture discharges. The rules will substantially advance this specific purpose by

streamlining the current permitting process by authorizing by rule certain activities. Promulgation and enforcement of these rules will not affect private real property that is the subject of these rules 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.

PUBLIC HEARING

A public hearing on the proposal will be held January 28, 1997 at 2:00 p.m. in Room 2210 of commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 96171-321-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. 30 days from the date of publication of this proposal in the *Texas Register*. For further information concerning this proposal, please contact Stephen Ligon, Wastewater Permits Section, Agriculture and Watershed Management Division, at (512) 239-4527.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

These sections 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, 5.105 and 5.120 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, these sections are proposed pursuant to the Texas Water Code, §26.040 which provides the commission with the authority to regulate certain waste discharges by rule and set the requirements and conditions of the discharges of waste.

SUBCHAPTER O : DISCHARGES FROM AQUACULTURE PRODUCTION FACILITIES

These sections 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, 5.105 and 5.120 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, these sections are proposed pursuant to the Texas Water Code, §26.040 which provides the commission with the authority to regulate certain waste discharges by rule and set the requirements and conditions of the discharges of waste.

§321.271. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Aquaculture facility or aquaculture production facility - An establishment engaged in the propagation and/or rearing of aquatic species which utilizes ponds, lakes, fabricated tanks and raceways, or other similar structures. Individually owned, managed, or leased ponds may be considered as a single aquaculture facility if they are located within a contiguous tract of land, utilize a common water source, or utilize a common discharge canal/route. For the purposes of this subchapter, an aquaculture facility does not include cages or other enclosures placed within public waters for the propagation or rearing of aquatic species, or public and private reservoirs constructed and utilized

primarily for water supply, flood control, domestic purposes, livestock watering, recreation, or similar uses.

Aquatic species - Fish, crustaceans, mollusks, or any other organisms occurring within either fresh or salt waters.

Best Management Practices (BMP) - Schedule of activities, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state. BMPs also include treatment requirements operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, drainage from raw material storage, or the abatement of nuisance odors and conditions. BMPs are those measures that are reasonable and necessary to achieve a performance standard that protects and maintains air and water quality standards as well as existing and potential uses of ground-water.

Closed ponds - Ponds (or lakes) without a mechanism to manipulate water levels (except for emergency spillways and other similar non-mechanical structures) or those ponds that are operated such that drawdowns are not allowed. If the use of ground-water wells or the diversion of surface water results in dry-weather discharges, such ponds are not defined as closed ponds.

Coastal zone - That area along the Texas coast of the Gulf of Mexico as depicted in **Figure 1: 30 TAC §321.271**. The boundary is consistent with the definition found in the Texas Coastal Management Plan, and includes areas within the following Texas counties: Cameron, Willacy,

Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Liberty, Jefferson, and Orange.

(A) The inland boundary is delineated as: The boundary begins at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (FM Road 1847) in Brownsville, thence northward along FM Road 1847 to the junction of FM Road 106 east of Rio Hondo, thence westward along FM Road 106 to the junction of FM Road 508 in Rio Hondo, thence northward along FM Road 508 to the junction of FM Road 1420, thence northward along FM Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of FM Road 774 in Refugio, thence eastward along FM Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of FM Road 616 in Bloomington, thence northeastward along FM Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of FM Road 521 north of Palacios, thence northeastward along FM Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction FM Road 2004 in Lake Jackson, thence northeastward along FM Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the Louisiana State line.

(B) The tidal boundary is delineated as: The boundary runs a distance of 100 yards inland from the mean high tide lines along each of the following tidal river and stream segments from the points where they intersect the roadway boundary described in paragraph (A):

(i) on the Arroyo Colorado, to a point 100 meters (110 yards) downstream of Cemetery Road south of Port Harlingen in Cameron County;

(ii) on the Nueces River, to Calallen Dam 1.7 kilometers (1.1 miles) upstream of U.S. Highway 77 in Nueces/San Patricio County;

(iii) on the Guadalupe River, to the Guadalupe-Blanco River Authority Salt Water Barrier 0.7 kilometers (0.4 mile) downstream of the confluence of the San Antonio River in Calhoun and Refugio Counties;

(iv) on the Lavaca River, to a point 8.6 kilometers (5.3 miles) downstream of U.S. Highway 59 in Jackson County;

(v) on the Navidad River, to Palmetto Bend Dam in Jackson County;

(vi) on Tres Palacios Creek, to a point 0.6 kilometer (1.0 mile) upstream of the confluence of Wilson Creek in Matagorda County;

(vii) on the Colorado River, to a point 2.1 kilometers (1.3 miles) downstream of the Missouri-Pacific Railroad in Matagorda County;

(viii) on the San Bernard River, to a point 3.2 kilometers (2.0 miles) upstream of State Highway 35 in Brazoria County;

(ix) on Chocolate Bayou, to a point 4.2 kilometers (2.6 miles) downstream of State Highway 35 in Brazoria County;

(x) on Clear Creek, to a point 100 meters (110 yards) upstream of FM Road 528 in Galveston/Harris County;

(xi) on Buffalo Bayou, to a point 400 meters (440 yards) upstream of Shepherd Drive in Harris County;

(xii) on the San Jacinto River, to Lake Houston Dam in Harris County;

(xiii) on Cedar Bayou, to a point 2.2 kilometers (1.4 miles) upstream of Interstate Highway 10 in Chambers/Harris County;

(xiv) on the Trinity River, to a point 3.1 kilometers (1.9 miles) downstream of U.S. Highway 90 in Liberty County;

(xv) on the Neches River, to a point 11.3 kilometers (7.0 miles) upstream of Interstate Highway 10 in Orange County;

(xvi) on the Sabine River, to Morgan Bluff in Orange County.

(C) The wetlands portion of the boundary is delineated as: Except for the part of the boundary adjacent to the Trinity and Neches Rivers, the boundary includes wetland lying one mile inland of the mean high tide lines of the tidal river and stream segments identified in the description of the tidal boundary, paragraph (B) of this section.

(i) Adjacent to the Trinity River, the boundary includes wetlands within the area located between the mean high tide line on the western shoreline of the river and FM Road 565 and FM Road 1409, and wetlands within the area located between the mean high tide line on the eastern shoreline of that portion of the river and FM Road 563.

(ii) Adjacent to the Neches River, the boundary includes wetlands within one mile of the mean high tide line on the western shoreline of the river, and wetlands within the area

located between the mean high tide line on the eastern shoreline of that portion of the river and FM Road 105.

(D) The boundary with the State of Louisiana is delineated as: The boundary begins in Orange County at Morgans Bluff, the northernmost extent of tidal influence, along the adjudicated boundary between the State of Texas and the State of Louisiana; thence it continues in a southerly direction along the adjudicated boundary out into the Gulf of Mexico until it intersects the seaward boundary.

(E) The seaward boundary is delineated as: That line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 United States Code (U.S.C.) §1301 et seq).

(F) The boundary with the Republic of Mexico is delineated as: The boundary begins at a point three marine leagues into the Gulf of Mexico where the line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 U.S.C. §§1301 et seq) intersects the international boundary between the United States and the Republic of Mexico; thence it continues in a westerly direction along the international border with the Republic of Mexico until it meets the International Toll Bridge in Brownsville.

Cold water aquatic species - Fish in the family *Salmonidae* (trout and salmon).

Daily average flow - The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily

discharge, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

Daily maximum concentration - The maximum concentration measured on a single day within a period of one calendar month.

Domestic sewage - Waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation.

Edwards Aquifer - That portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

Edwards Aquifer Recharge Zone - Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable

features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the Texas Natural Resource Conservation Commission and the appropriate underground water conservation district.

Existing facilities - Aquaculture production facilities in active operation and in the process of discharging wastewater, prior to the effective date of these rules.

Grab sample - An individual sample collected in less than 15 minutes.

mg/l - Abbreviation for milligrams per liter.

New facilities - Aquaculture production facilities not in active operation prior to the effective date of these rules.

Nuisance - Any emission of air contaminant(s), including but not limited to odors, that is of sufficient concentration and duration so as to be injurious or potentially injurious to human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

Operator - Any person or entity in control of or having responsibility for the daily operation of an aquaculture production facility.

Pond bottom sludges - Accumulations of silt, soils, and other matter in the bottom of ponds.

Process controls - Structures, technologies, and practices utilized to control the rate, volume, or quality of a discharge.

Production pond - Earthen ponds, raceways, fabricated tanks, or similar structures utilized in conjunction with the propagation or rearing of aquatic species.

Production - Weight of aquatic species as measured following harvest and prior to processing.

Publicly owned treatment works or "POTW" - A treatment works owned and operated by a state or municipality which includes any device or systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality that has jurisdiction over indirect discharges to and discharges from such a treatment works.

Registrant - An individual or entity authorized by the executive director to discharge wastewater from aquaculture facilities under the terms and requirements of a registration issued pursuant to this subchapter.

Tailwater control - Diked or bermed area, pond or other similar structure placed down-gradient of an irrigation site and designed to prevent off-site runoff or runoff to waters in the state.

Total residual chlorine - Chlorine concentration of the wastewater when discharged.

Warm water aquatic species - All aquatic species except those in the family *Salmonidae* (trout and salmon).

Wastewater management pond - Any structure used for containment, detainment, or treatment of wastewater, including settling ponds and canals utilized to transport wastewater from the production pond to a settling pond or discharge point.

Waste management unit - Any structure used for containment, detainment, storage, processing, or treatment of solid wastes.

Wastewater - Water that is a result of the following operations:

- (A) propagation, rearing, or transportation of aquatic species;
- (B) washdown, cleaning, and flushing of fabricated tanks, raceways, ponds, and other containment structures;
- (C) washdown and cleaning of equipment; or
- (D) washing, treating, or any other direct contact with aquatic species.

25-Year, 24-Hour rainfall event - The maximum rainfall event with a probable recurrence interval of once in 25 years (four percent probability of occurrence in a given year), with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent information developed therefrom.

§321.272. Purpose and Applicability.

(a) The purpose of this subchapter is to specify which aquaculture facilities may be authorized by rule and which are required to obtain a permit to discharge wastewater into or adjacent to waters in the state. Additionally, it is the purpose of this subchapter to regulate by registration, or to exempt from permitting or registration, certain aquaculture facilities for which it is not practical to issue individual permits because of the general nature of waste discharge from such facilities, and because it would be unnecessarily burdensome to both the waste discharger and the commission to require individual permits.

(b) An aquaculture facility that discharges within the coastal zone, as defined in §321.271 of this title (relating to Definitions), and that discharges to waters in the state, may not receive authorization for discharge under this rule and must obtain an individual permit in accordance with Chapter 305 of this title (relating to Consolidated Permits) if the facility contains, grows, or holds aquatic species as described in any of the following three categories:

(1) Cold water aquatic species in ponds, raceways, or other similar structures that discharge at least 30 days per year but do not include:

(A) facilities that produce less than 20,000 pounds harvest weight of aquatic species per year; and

(B) facilities that feed less than 5,000 pounds of food during the calendar month of maximum feeding.

(2) Warm water aquatic species in ponds, raceways, or other similar structures that discharge at least 30 days per year but does not include:

(A) closed ponds that discharge only during periods of excess storm water runoff; or

(B) facilities that produce less than 100,000 pounds harvest weight of aquatic species per year.

(3) Shrimp species in ponds, raceways, or other similar structures that discharge less than 30 days per year but at a flow rate that exceeds five million gallons on any single day of discharge.

(c) An aquaculture facility that discharges to waters in the state located outside of the coastal zone, as defined in §321.271 of this title, and that is described in either paragraphs (1), (2) or (3) of

subsection (b) of this section must obtain a certificate of registration issued by the executive director unless the executive director determines that a permit is required pursuant to subsection (d) of this section.

(d) The executive director may designate any aquaculture facility that discharges into or adjacent to waters in the state as required to obtain either an individual permit or a certificate of registration, regardless of the criteria in subsection (b) of this section. In making this designation, the executive director shall consider, at a minimum, the following factors:

- (1) the facility's ability to protect water quality while operating within the terms of its registration or exemption;
- (2) the location of the facility and quality of the receiving waters in the state;
- (3) the holding, feeding, and production capacities of the facility and the proximity of other aquaculture facilities conducting similar operations;
- (4) the quantity and nature of the pollutants reaching waters in the state;
- (5) the quantity and frequency of the discharge;
- (6) the results of any on-site inspection of such an aquaculture facility;

(7) the operation's impact upon existing and potential uses of ground-water resources;

(8) the operation's ability to comply with the standards and requirements of this subchapter applicable to registrants; and

(9) whether, because of the nature of the discharge and the quality of the receiving waters in the state, the discharge should be regulated by individual permit or by registration.

(e) An aquaculture facility that is not required to obtain a permit under subsection (b) of this section and that is not required to obtain a registration under subsection (c) of this section shall be considered initially as conditionally exempt. Operators of such facilities shall meet the following requirements in order that the executive director may assess whether the facility shall be either considered as exempt, required to obtain an individual permit, or required to obtain a certificate of registration in accordance with subsection (d) of this section.

(1) The operator shall provide written notification to the executive director prior to generating wastewater from a new facility that meets the description of conditionally exempt. The operator of an existing facility which meets the description of conditionally exempt must mail written notification within 180 days of the effective date of this subchapter. Notification shall include, at a minimum, the following information and be provided to the executive director on approved forms:

(A) name and address of the facility operator;

(B) physical location of the facility as described by latitude and longitude;

(C) description of the discharge route of effluent from the facility for a minimum distance of three miles;

(D) description of the number and sizes of production ponds;

(E) description of the quantity and frequency of the discharge;

(F) description of the quantity and nature of the pollutants reaching waters in the state;

(G) description of process controls or wastewater management ponds utilized;

(H) list of aquatic species produced and estimated annual production in pounds;
and

(I) proximity to other aquaculture facilities.

(2) Following receipt of notification from a conditionally exempt facility, the operator will be notified:

(A) the facility is considered as exempt; or

(B) the operator must submit additional information for evaluation; or

(C) an individual permit is required in accordance with subsection (d) of this section, or

(D) authorization by registration is required in accordance with subsection (d) of this section.

(f) Operators of any aquaculture facilities exempt from registration or permit under this section must construct and manage facilities to protect the water quality standards of surface water and the existing and potential uses of ground-water. Any exempt facility that does not discharge wastewater directly into surface waters, but instead disposes of wastewater adjacent to waters in the state (such as by land application, evaporation, or irrigation) must comply with any applicable provisions of §321.275 of this title (relating to Waste Utilization or Disposal by Land Application of Wastewater and Pond Bottom Sludges). Any exempt facility must additionally notify the executive director, in writing, within 30 days of any change in control or ownership of facilities, change or addition in the aquatic species produced, increase in the number of production ponds, or expansion of existing production ponds.

(g) Operators of aquaculture facilities who would be otherwise eligible to obtain registration under this section but who either are unable or choose not to implement all required best management practices (BMPs) set forth in §321.277 of this title (relating to Required Best Management Practices) are required to apply for an individual permit under Chapter 305 of this title (relating to Consolidated Permits), within 180 days of the date this rule takes effect.

(h) Operators of aquaculture facilities exempt from registration and permit under this section, who subsequently expand facilities, production, or discharge days resulting in exceedance of the criteria in subsections (b) and/or (c) of this section, must submit either an application for registration or an application for individual permit within 45 days following exceedance of the criteria.

(i) Any new or expanding facility, which is required to obtain either registration or an individual permit, may not commence operation of any waste management unit without first receiving either authorization in accordance with this subchapter, an individual permit, or authorization for the construction.

(j) Discharges associated with the processing of aquatic organisms by packing as fresh or frozen product, canning, smoking, salting, drying or otherwise curing, or rendering for use as human or animal food are not authorized by this subchapter.

(k) Discharges associated with the propagation or rearing of aquatic species utilizing cages or other enclosures which are placed within public waters are not authorized by this chapter. Operators

are required to apply for an individual permit under Chapter 305 of this title, within 180 days after the date this rule takes effect.

(l) Registration under this rule does not convey property or water rights of any sort and does not grant any exclusive privilege.

(m) An existing aquaculture facility subject to permitting or registration requirements under this section that does not hold a valid commission wastewater discharge permit must submit an application for registration or an application for an individual permit within 180 days after the date this rule takes effect.

§321.273. Certificate of Registration and Public Notice.

(a) An applicant must apply for registration on a form approved by the executive director. A completed application shall be submitted to the commission's Wastewater Permits Section, P.O. Box 13087 (MC-148), Austin, Texas 78711-3087. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.274 of this title (relating to Ground-Water Protection), §321.275 of this title (relating to Waste Utilization or Disposal By Land Application of Wastewater and Pond Bottom Sludge), §321.276 of this title (relating to Edwards Aquifer), and §321.277 of this title (relating to Required Best Management Practices).

(b) The registrant must notify the executive director, in writing, 30 days prior to any change in control or ownership of facilities, change or addition to the aquatic species produced, increase in the number of production ponds, or expansion of existing production ponds. The registrant must notify the executive director, in writing, at least 30 days following harvest if annual production exceeds criteria specified in §321.272 (b) of this title (relating to Purpose and Applicability).

(c) The executive director may take action on an application to issue a certificate of registration if the following actions regarding public notice are met.

(1) At least 30 days prior to executive director approval of an application and issuance of the certificate of registration, notice of the application shall be provided at the applicant's cost:

(A) in a newspaper regularly published and generally circulated within the county and area where the proposed facility and discharge are to be located;

(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also, when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and

(C) in a format approved by the executive director and setting forth the substance of the application and proposed action including, but not limited to, the general location of

any point of discharge, the method for obtaining additional information about the application, and the method for submitting comment on the application.

(2) With any application for registration submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information:

(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and

(B) a sworn statement from the applicant that written notice was mailed to the entities identified in this subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.

(3) The applicant shall mail the application, including the material required by paragraph (2) of this subsection, to the commission's Wastewater Permits Section, P.O. Box 13087 (MC 148), Austin, Texas 78711-3087. The application shall undergo review by the executive director following the determination that notice requirements of this section are met.

(4) Any comments received by the executive director prior to the end of the 30-day period, after all the of notices have been provided, will be considered as a part of any decision of

approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any person who submitted comments on the application. A person who wishes to appeal the executive director's decision on the application shall file a motion for reconsideration with the chief clerk of the commission within 30 days of the date on which the executive director's letter was mailed out. The motion shall request the commission to reconsider the executive director's decision. A decision by the executive director is not affected by the filing of a motion for reconsideration under this section unless expressly so ordered by the commissioners. If a motion for reconsideration is not acted upon by the commissioners within 45 days after the date on which the executive director mailed the decision, the motion shall be deemed overruled. When a motion for rehearing is overruled by commission action or pursuant to this subsection, the Texas Government Code, §2001.146, regarding motions for rehearing in contested cases is inapplicable and no motions for rehearing shall be filed. To the extent applicable, the commission decision may be subject to judicial review pursuant to the Texas Water Code, §5.351.

(5) The executive director may deny an application for registration based on the potential or actual adverse impact, or close proximity to a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility, or sewage treatment plant. A determination of potential adverse impact may arise from consideration of such factors as proposed flow rate, production rate, or nature of the receiving stream. In making such a determination, the executive director may also consider other factors, as necessary.

(d) Public notice provisions of this section do not apply to an existing facility that is not operating under a current commission wastewater discharge permit if an application for registration is received by the commission within 180 days after the date this rule takes effect.

§321.274. Ground-Water Protection.

(a) Wastewater management ponds and production ponds that contain water with a total dissolved solids content in excess of 2000 mg/l and all wastewater management ponds and production ponds which are located within the Edwards Aquifer Recharge Zone, regardless of total dissolved solids content, shall conform to the following requirements.

(1) All ponds whether constructed of earthen or other impervious material shall be designed and constructed so as to prevent ground-water contamination.

(A) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be comprised of compacted material, at least 24-inches thick, compacted in lifts not greater than six inches thick and compacted to 95% of Standard Proctor Density. Soil liners must meet the following particle size gradation and Atterberg limits: 30% or more passing a number 200 mesh sieve; a liquid limit of 30% or greater; and a plasticity index of 15 or greater and a permeability less than or equal to 1×10^{-7} cm/sec.

(B) Synthetic membrane linings shall have a minimum thickness of 40 mils with a leak detection system.

(C) In-situ liners at least 24-inches thick and meeting a permeability less than or equal to 1×10^{-7} cm/sec are acceptable alternatives to the requirements of subparagraphs (A) and (B) of this paragraph.

(D) In-situ or emplaced soil or compacted clay liners must be proven, by laboratory or field testing, to retain their permeability characteristics when exposed to the quality of water proposed to be contained in the pond, i.e. saline or other water shall not chemically alter the liner in such a manner that the permeability is increased over the above standard.

(E) Certification shall be furnished by a Texas Registered Professional Engineer that the pond lining meets the appropriate criteria prior to utilization of the facilities.

(2) Soils used in the construction of a pond's embankment walls shall be free of foreign material such as paper, brush, trees, and large rocks. Soil embankment walls shall have a top width of at least five feet. The interior and exterior slopes of soil embankment walls shall be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are utilized. Soil embankment walls must be constructed of material compacted in lifts no greater than six inches to 95% of Standard Proctor Density. All soil embankment walls shall be protected by a vegetative cover or

other stabilizing material to prevent erosion. Erosion stops and water seals shall be installed on all piping penetrating the embankments.

(b) Production ponds and wastewater management ponds utilizing water which will not exceed a total dissolved solids concentration of 2000 mg/l are not located within the Edwards Aquifer Recharge Zone, and those which are not constructed in accordance with subsection (a) of this section shall conform to the following requirements.

(1) All ponds whether constructed of earthen or other impervious materials shall be designed and constructed so as to prevent ground-water contamination.

(A) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be of compacted material, at least 24-inches thick, compacted in lifts no greater than six inches and with material that has a permeability less than or equal to 1×10^{-4} cm/sec.

(B) Synthetic membrane linings shall have a minimum thickness of 40 mils and a leak detection system.

(C) In-situ liners at least 24-inches thick meeting a permeability less than or equal to 1×10^{-4} cm/sec are acceptable alternatives to the requirements of subparagraphs (A) and (B) of this paragraph.

(D) Certification shall be furnished by a Texas Registered Professional Engineer that the pond lining meets the appropriate criteria prior to utilization of the facilities.

(2) Soils used in the construction of a pond's embankment walls shall be free of foreign material such as paper, brush, trees, and large rocks. Soil embankment walls shall have a top width of at least five feet. The interior and exterior slopes of soil embankment walls shall be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are utilized. Soil embankment walls must be constructed of material compacted in lifts not greater than six inches to 95% of Standard Proctor Density. All soil embankment walls shall be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion stops and water seals shall be installed on all piping penetrating the embankments.

(c) An alternative method of pond lining, which will meet the performance standards provided by this section, may be utilized with the prior written approval of the executive director. Suitable materials for alternate pond linings may include impervious materials such as flexible membrane linings, asphalt-sealed fabric liners, and bentonite sealants. Installation of bentonite sealants and flexible membrane linings shall be in accordance with a detailed plan which meets the conservation practice standard and specification code 521, "Pond Sealing or Lining," of the USDA Natural Resources Conservation Service.

(d) A specific exemption from the ground-water protection requirements of this section may be obtained from the executive director if, after the review of data submitted by the applicant, the

executive director determines containment of the water in a production pond or wastewater management pond is not necessary, considering:

(1) soil and geologic data, and ground-water data, including its quality, uses, quantity and yield, and

(2) adequate demonstration that impairment of ground-water for its actual or potential use will be prevented.

(e) Earthen ponds in existence on the date this subchapter becomes effective shall be exempt from the requirements of subsections (a), (b), or (c) of this section provided that:

(1) exemption does not conflict with permit terms and conditions of previously issued permits that specifically require the lining of ponds, and

(2) operation of such ponds does not cause an adverse impact upon ground-water.

(f) Whenever the discharge of waste or wastewater into ground-water occurs or is likely to occur which could cause degradation of ground-water quality, the executive director may require compliance with the provisions of subsections (a), (b) and (c) of this section.

§321.275. Waste Utilization or Disposal by Land Application of Wastewater and Pond Bottom

Sludges.

(a) If the registrant utilizes land application for disposal of wastewater or solid waste, the following requirements shall apply.

(1) Management of solid waste.

(A) All solid waste stockpiled or retained on-site shall be isolated from all runoff of stormwater by dikes, terraces, berms, ditches, or other similar structures and shall be maintained so as to retain the volume of rainfall generated by a 25-year, 24-hour storm event.

(B) Adequate solid waste storage capacity shall be provided and be based upon waste production.

(C) All management of solid waste shall be conducted so as not to create a nuisance condition.

(2) Practices to protect ground-water.

(A) Waste management units must be located a minimum horizontal distance from water wells, in accordance with Chapter 290 of this title (relating to Water Hygiene) and Chapter

338 of this title (relating to Water Well Drillers Rules), or where those regulations do not apply, the distance to a water well shall be a minimum of 500 feet.

(B) When applying waste or wastewater to land, a buffer area must be utilized around water wells to prevent the possibility of waste transport to ground-water via the well or well casing. Wastewater may not be applied closer than 500 feet from any drinking water well.

(3) Utilization and disposal methods.

(A) When applying liquid and solid waste on agricultural lands, distribution shall be such that neither the waste nor rainfall runoff will adversely affect the quality of waters in the state.

(B) When irrigation disposal of wastewater is used, tailwater controls shall be provided as necessary to prevent the release of applied wastewater to waters in the state. Irrigation practices shall be managed so as to reduce or minimize ponding or puddling of wastewater on the site and to prevent contamination of waters in the state and the occurrence of nuisance conditions.

(C) Disposal of waste and wastewater shall be done in such a manner as to prevent nuisance conditions.

(D) Irrigation shall not be conducted when the ground is frozen or saturated or during rainfall events.

(4) Application rates. Liquid and solid waste or wastewater shall be applied in such concentrations, and application shall be made at such intervals, as to not inhibit the growth of crops or forage or result in wastewater runoff.

(b) The registrant shall comply with the following conditions if other solid waste management occurs on-site, or if solid waste is disposed of off-site.

(1) The registrant shall keep management records for all sludge (or other waste) removed for disposal. Records must include the following, at a minimum:

(A) volume of waste disposed of off-site;

(B) origin and general composition of waste;

(C) date(s) of disposal;

(D) identity of hauler or transporter;

(E) location of disposal site; and

(F) method of final disposal.

(2) The records provided by paragraph (1) of this subsection shall be maintained on a monthly basis at the facility or shall be readily available for inspection by authorized representatives of the executive director for at least three years.

(c) Removal of pond bottom sludges (or other solids) from production ponds or wastewater management ponds shall be conducted during favorable wind conditions that carry odors away from nearby receptors such as residences, businesses, and public buildings. At no time shall emissions from any activity create a nuisance.

§321.276. Edwards Aquifer.

New aquaculture production facilities located within the Edwards Aquifer Recharge Zone or within ten miles upstream from that recharge zone must meet all applicable requirements of and operate in accordance with Chapter 213 of this title (relating to Edwards Aquifer).

§321.277. Required Best Management Practices and Specific Requirements for Discharge.

(a) The following Best Management Practices (BMPs) are required and shall be utilized to abate the discharge of suspended solids and other pollutants.

(1) Harvest operations which utilize seining techniques may dewater the pond without detention of the effluent to a maximum of three-fourths the total volume of the pond or until seining operations commence, whichever occurs first. The remaining volume of water shall be detained (either within the same pond or transferred to a separate detainment structure) a minimum of 48 hours prior to discharge to allow settling of solids and associated pollutants.

(2) Harvest operations which require complete dewatering shall transfer the final one-fourth volume of the pond to a separate detainment structure. This volume shall be detained a minimum of 48 hours prior to final discharge to allow settling of solids and associated pollutants.

(3) Exemption from the requirements of paragraphs (1) and (2) of this subsection is allowed if the volumes of water defined by paragraphs (1) and (2) of this subsection do not exceed a total suspended solids concentration of 30 mg/l. Compliance shall be demonstrated by analysis of a composite sample of the discharge. If harvest operations are conducted upon multiple ponds within a single day, a single sample may be obtained for laboratory analysis. Such a sample shall be obtained by combining (in flow-weighted proportions) composite samples of discharges described in paragraphs (1) and (2) of this subsection which originate from separate ponds.

(4) All discharges shall be controlled such that flow rates minimize any increase in turbidity of the receiving stream due to erosion or suspension of sediments. Discharges shall not cause substantial and persistent changes from ambient conditions of turbidity and color.

(5) Earthen levees and dikes shall be vegetated or stabilized in a manner to control erosion. Vegetation, when utilized, shall be maintained at all times through mowing, watering, or other suitable maintenance practices.

(b) The following BMPs are required and shall be utilized to abate the discharge of toxic substances from maintenance of equipment and treatment of aquatic species.

(1) When chlorine is used for disinfection of equipment, raceways, tanks, or other similar structures, the effluent shall not exceed 4 mg/l total residual chlorine as measured by grab sample. The discharge of these wastewaters shall be sampled and analyzed in accordance with requirements of subsection (c) of this section. Test procedures shall comply with those specified in §§319.11-319.12 of this title (relating to Sampling and Laboratory Testing Methods and Alternate Sampling and Laboratory Testing Methods). Large-scale disinfection (such as disinfection of production ponds, water distribution canals or lakes) which results in discharge is not authorized under provisions of this subchapter.

(2) When lime is used for disinfection of production pond bottoms, water distribution canals, and other similar facilities, there shall be no discharge allowed until pH levels of the wastewater are adjusted to within a range of 6.0 to 9.0 standard units.

(3) Only drugs, medications and chemicals approved by the United States Environmental Protection Agency (EPA) or the United States Food and Drug Administration (FDA) for aquaculture use may be used in water which will be discharged. Treatment shall be limited to those aquatic species and to those purposes for which approval was granted. Treatment shall be used only as necessary, and only as directed on the product label. The water shall be diluted, held for a specific time, or neutralized prior to discharge as directed on the product label or as necessary to comply with Chapter 307 of this title (relating to Texas Surface Water Quality Standards) or as needed to be below the concentration level used for a long-term static treatment, whichever is the lowest concentration.

(4) Exemption from the requirements of paragraph (3) of this subsection may be approved on a case-by-case basis by the executive director to allow for Investigational New Animal Drug permits from the FDA.

(c) Facilities regulated under this rule are authorized to discharge wastewater in accordance with the following limitations and monitoring requirements. (See **Figure 1: 30 TAC §321.277(c).**)

Figure 1: 30 TAC §321.277(c)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Flow (MGD)	N/A	Estimate	1/day*
Total Suspended Solids	N/A	Grab	1/month*
Volatile Suspended Solids	N/A	Grab	1/month*
Total Residual Chlorine	4 mg/l	Grab	1/day**
pH	6.0 - 9.0 S.U.	Grab	1/day***
Dissolved Oxygen	2 mg/l	Grab or in-situ	1/2weeks*

- * When discharge occurs. Daily average and daily maximum flow shall be reported. Total suspended solids and volatile suspended solids shall each be reported as a daily maximum concentration. Oxygen monitoring may be conducted on a grab sample or of the effluent directly (in-situ) and reported as the daily minimum.
- ** When discharge occurs. Monitoring for total residual chlorine is required only following the use of chlorine.
- *** When discharge occurs. Monitoring is required only following the use of lime. The effluent quality shall be adjusted prior to discharge to be within the allowable limitation. Units are standard units (S.U.).

(1) Unless otherwise specified in this rule, sampling and laboratory test methods shall comply with procedures specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods).

(2) Results of monitoring of each constituent specified in §321.277 of this title (relating to Required Best Management Practices and Specific Requirements for Discharge) shall be reported by the registrant to the commission's Agriculture and Watershed Management Division, on the

Aquaculture Production Facilities Report form approved by the executive director. Monitoring results shall be reported to the executive director in accordance with the following schedule. (See **Figure 2: 30 TAC §321.277(c)(2).**)

Figure 2: 30 TAC §321.277(c)(2)

<u>Monitoring Period</u>	<u>Report Due Date</u>
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

(3) Annual production for the period of January - December shall be reported by the registrant to the commission's Agriculture and Watershed Management Division, on the Aquaculture Production Facilities Report form which is due each January 31st, in accordance with paragraph (2) of this subsection.

(4) The registrant shall maintain results of monitoring of each constituent specified in §321.277 of this title or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request.

§321.278. General Requirements.

(a) There shall be no discharge of floating solids, no discharge of visible oil, nor shall the discharge cause any nuisance conditions affecting the public along the discharge route.

(b) The discharge shall not exhibit foaming of a persistent nature.

(c) Sweeping or intentional flushing of accumulated solids from raceways and fabricated tanks with discharge to waters in the state is prohibited unless this volume is routed to and contained within a separate detainment structure a minimum 48 hours prior to discharge to allow settling of solids and associated pollutants.

(d) Dewatering of ponds should be accomplished by discharge of the uppermost portion of the water column to avoid discharge of disturbed bottom sediments.

(e) Chlorine disinfection wastewater and other cleaning wastewaters should be discharged to a POTW when possible.

(f) Records of all drugs, medications, and chemicals utilized for treatment shall be maintained on a monthly basis at the facility or shall be readily available for inspection by authorized representatives of the executive director for at least three years. Records shall include treatment

concentrations, discharge concentrations, discharge volumes and dates, and a product label, or Material Safety Data Sheet (MSDS) for each drug, medication, or chemical utilized.

(g) Any registrant engaged in the propagation and/or rearing of shrimp which suffer mortalities due to apparent disease shall have the cause of mortality diagnosed by a pathologist as soon as is practicable. The TNRCC shall be immediately notified of the diagnosis. Any actions which are deemed as necessary by the registrant to prevent transmission of the disease to aquatic life endemic to waters in the state shall be implemented as soon as is possible. The executive director may additionally require cessation of the discharge of effluent from infected portions of the facility as is necessary to protect aquatic life in the receiving stream from potential adverse effects.

(h) The reuse of pond wastewater should occur to the maximum extent possible. Pond wastewater shall be recirculated or reused wherever appropriate and cost effective.

(i) The discharge of domestic sewage into or adjacent to waters in the state is not authorized by this subchapter. All domestic sewage shall be either discharged pursuant to an individual permit issued by the commission; routed to an authorized and adequately designed on-site sewage facility, POTW; or transported to an approved off-site disposal facility.

(j) Aquaculture production facilities shall be operated in such a manner as to prevent the creation of a nuisance or a condition of air pollution as mandated by Chapters 341 and 382 of the Texas Health and Safety Code.

(k) Dead aquatic species shall be routinely removed from ponds and properly disposed of as is required to prevent contamination of waters in the state and to prevent a nuisance or public health hazard.

(l) All discharges from aquaculture production facilities shall comply with §319.22 of this title (relating to Quality Levels-Inland Waters) or shall comply with §319.23 of this title (relating to Quality Levels-Tidal Waters).

(m) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. The registrant of any facility authorized under this subchapter shall report any noncompliance with the requirements of this subchapter (including any unauthorized discharges or overflows) which may endanger human health or safety or the environment. Report of such information shall be provided orally to the commission's regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the commission's regional office and to the commission's Austin office, Water Enforcement Section, P.O. Box 13087, (MC-149), Austin, Texas 78711-3087, within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

§321.279. Enforcement and Revocation, Suspension, Annulment or Withdrawal.

(a) If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by Texas Water Code, §26.136 and in accordance with commission rules relating to enforcement actions. Any person who is required to obtain a permit is subject to the standards and requirements for actions concerning denials, revocations, and suspensions of permits as set forth in §305.66 and §305.67 of this title. The executive director may revoke, suspend, annul, or withdraw any registration due to noncompliance with the requirements of this subchapter, including the submission of false information in connection with the application. The executive director shall give notice by personal service or by registered or certified mail to the registration holder of facts or conduct alleged to warrant the intended action. The registration holder shall have the opportunity to show compliance with all requirements of law for the retention of the license by providing such showing within 30 days of the date the executive director's letter was mailed.

(b) A person who wishes to appeal the executive director's decision to revoke, suspend, annul, or withdraw a registration shall file a letter with the chief clerk of the commission within 30 days of the date of the executive director's letter of decision. Following such an action, the facility shall cease any discharge until such time as the facility is issued an individual wastewater discharge registration or permit, an emergency order, or temporary order as provided by Chapter 305, Subchapter B, of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) for the discharge of wastewater into or adjacent to waters in the state.

§321.280. Annual Waste Treatment Fee.

(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge wastes to surface waters from aquaculture production facilities under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.

(b) The fee, assessed annually, shall be in accordance with the following fee rate schedule:

(1) for any active facility, the fee shall be \$500, as determined by either the information specified on the application for registration or on the Aquaculture Production Facilities Report forms submitted during the calendar year;

(2) for any inactive facility, the fee shall be \$250; and

(3) any increased assessment above the amounts in paragraphs (1) or (2) of this subsection shall be in accordance with regulations adopted by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on