

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to 30 TAC §50.15, concerning Scope of Proceedings.

Chapter 50, Subchapter B was adopted May 8, 1996, and effective June 6, 1996, replacing 30 TAC §305.98. These amendments will attain consistency with federal permitting requirements, which is required before EPA may approve the delegation of the federal National Pollutant Discharge Elimination System (NPDES) program to Texas for permitting discharges into waters in the state under the NPDES program.

EXPLANATION OF PROPOSED RULE

The proposed amendment to §50.15 is intended to attain consistency with NPDES program requirements. Specifically, federal requirements contained in 40 CFR Parts 122, 123 and 124 provide that point source dischargers, whenever their permit is up for renewal, submit an application that is subject to technology and water quality evaluation, as well as public participation in the decision to issue or deny the application. Existing §50.15 provides that the commission may limit consideration in permit renewal, amendment, or modification proceedings to only those portions of a permit for which the application requests action. The proposed rule is intended to remove the term “renewal” to achieve compliance with the federal requirements.

In addition, this rule change is consistent with the way §50.15 (and former §305.98) has been applied in other applicable program areas. Owners and operators of permitted facilities have been required to

apply for permit renewals in applicable program areas which have been subject to an unlimited scope of consideration by the commission. Removing the option of limiting the scope of consideration in a permit renewal in applicable programs does not change the way the rule has previously been applied, and serves the purpose of making the rule consistent with the delegated federal Resource Conservation and Recovery Act (RCRA), Underground Injection Control (UIC) and NPDES permitting programs. The rule change further specifies that the commission may continue to limit consideration in renewals of preconstruction permits consistent with §382.055 of the Texas Health & Safety Code, which limits the commission's authority to impose new requirements in such permits renewals.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section as proposed is in effect, there are no significant fiscal implications anticipated for state and local governments as a result of administration or enforcement of the section. While a significant number of affected permitted wastewater facilities are operated by units of local government, the proposed rule will amend state regulations to make them consistent with applicable federal regulations. The impact of the proposed state rule is not anticipated to be materially different from the existing federal requirements.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section

would be improvement in the consistency of state and federal requirements for permitting discharges from wastewater treatment facilities and the elimination of a dual permitting program in Texas upon delegation of the NPDES program. There are no economic costs anticipated for any person required to comply with the section 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 amendment is to facilitate compliance with the federal practice of mandating permitted discharges to go through technology and water quality evaluation and public participation every five years. The rule will advance this specific purpose by removing the existing authority to limit the scope of consideration in permit renewals. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because this rulemaking, which sets forth requirements applicable to all permitted facilities, does not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. Owners and operators of permitted facilities have been required to apply for permit renewals in applicable program areas which have been subject to an unlimited scope of consideration by the commission. Thus, removing the option of limiting the scope of consideration in a permit renewal does not change the way the rule has previously been applied. This rulemaking does not limit or restrict the owner's right to his or her property, nor is it the producing cause of a reduction in the market value of the affected private real property. Therefore, this action does not create a burden on the affected private real property.

PUBLIC HEARING

A public hearing on this proposal will be held October 7, 1997, at 10:00 a.m. in Room 2210 of commission Building F, located at 12100 Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512)239-5687. All comments should reference Rule Log Number 97171-050-WT. 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 Nina Fantl, Legal Division, at (512) 239-0605. Persons with disabilities who have special communication or other accommodation needs who are

planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law.

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

SUBCHAPTER B : ACTION BY THE COMMISSION

§50.15

§50.15. Scope of Proceedings.

The commission may limit consideration in permit [renewal,] amendment [,] or modification proceedings to only those portions of a permit for which the application requests action. The commission may limit consideration in the review of preconstruction permit renewals consistent with the requirements set forth in §382.055 of the Texas Health and Safety Code. All terms, conditions, and provisions of an existing permit remain in full force and effect during such proceedings, and the permittee shall comply with an existing permit until a new, amended, or modified permit is issued.

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

Issued in Austin, Texas on

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.2, 305.22, 305.23, 305.25, 305.533 and 305.535, concerning Consolidated Permits.

EXPLANATION OF PROPOSED RULE

Existing §305.2 defines “severe property damage” as substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. The proposed change to §305.2 is intended to clarify that “severe property damage” does not mean economic loss caused by delays in production consistent with 40 CFR §122.41(m)(1)(ii) governing authorized bypasses.

Existing §§305.22, 305.23, and 305.25 provide the bases under which a person may obtain a temporary or emergency order or executive director authorization. The proposed rules provide that a person desiring to obtain a temporary or emergency order or executive director authorization to discharge waste or pollutants, including untreated or partially treated wastewater, into water in the state shall submit a sworn application to the commission containing information that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss until Texas is delegated NPDES permit authority. The proposed changes are intended to clarify that “severe economic loss (other than economic loss caused by delays in production)” cannot be a basis for a temporary or emergency order or executive director authorization to discharge pollutants into waters in the state by facilities having TPDES permits.

Proposed new §305.22(b) addresses discharges of waste or pollutants, including untreated or partially treated wastewater, adjacent to waters in the state. It also requires a sworn application to the commission stating that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, but also allows severe economic loss (other than economic loss caused by delays in production) to be a basis for the temporary or emergency order. Section 305.25 is also proposed to be amended to delete the ground of severe economic loss for authorizing untreated or partially treated wastewater to be discharged from a facility having a TPDES permit. These proposed rule amendments would ensure consistency with NPDES requirements contained in 40 CFR 122, 123 and 124.

Proposed amendments to §305.533 (relating to Adoption of Environmental Protection Agency (EPA) Issued Permits and Pretreatment Programs) will clarify the transfer of jurisdiction of federally-issued NPDES permits to the commission and to ensure the section is consistent with all required NPDES requirements contained in 40 CFR 123.1(d)(1) relating to the transfer of these permits.

Additionally, the commission proposes amendment of §305.535 (relating to Bypasses from TPDES Permitted Facilities) to clarify that the section pertains only to TPDES permits issued by the commission after assumption of the NPDES program from the EPA and to clarify that the term, “severe economic loss (other than economic loss caused by delays in production),” cannot be a basis for an authorized bypass. Additionally, the section is being proposed to be amended to add a new subsection (d) which would establish secondary treatment standards for publicly owned treatment works having TPDES permits to attain consistency with NPDES requirements. The amendment proposes

minimum standards for the percentage of the removal of certain pollutants, including biochemical oxygen demand, total suspended solids, and pH. The subsection also specifies certain exceptions to these standards consistent with federal requirements contained in 40 CFR 123.25(a)(15) and 123.25(a)(36).

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there would be no significant fiscal implications anticipated for state and local governments as a result of administration or enforcement of the sections. While a significant number of affected permitted wastewater facilities are operated by units of local government, the proposed would will amend state regulations to make them consistent with applicable federal regulations. The impact of the proposed state rules, therefore, is not anticipated to be materially different from the existing federal requirements.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections would be improvement in the consistency of state and federal requirements for permitting discharges from wastewater treatment facilities and the elimination of a dual permitting program in Texas upon delegation of the NPDES program. There are no economic costs anticipated for any person required to comply with the 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 rule is to attain consistency with federal NPDES program requirements and meet federal requirements governing the process of delegation of the NPDES program to the state of Texas. The rules will substantially advance this specific purpose by removing “severe economic loss” as a basis for TPDES permit holders to obtain temporary and emergency orders and executive director authorization to discharge pollutants into waters of the state, clarifying jurisdictional issues after delegation, and revising treatment requirements for domestic wastewater dischargers to meet EPA criteria. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because this rulemaking is not the producing cause of a reduction in the market value of the affected private real property. Therefore, this action does not create a burden on the affected private real property.

PUBLIC HEARING

A public hearing on this proposal will be held October 7, 1997, at 10:00 a.m. in Room 2210 of commission Building F, located at 12100 Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the proposed rules will clarify that a proposed discharge permit will be subject to technology and water quality evaluation, as well as public participation in the decisions, every time a permit is up for renewal. Also, the proposed rule is consistent with the CMP because the proposed rules will clarify that emergency orders, temporary orders and executive director authorizations may not be issued after Texas has been delegated NPDES permit authority for discharges into the waters of the state on the grounds of economic loss. However, such orders and authorizations may be issued on the basis of economic loss (not including economic loss due to delays in production) for discharges adjacent to waters of the state. Finally, the rule will add more stringent requirements to domestic wastewater treatment facilities to mirror federal EPA treatment criteria.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512)239-5687. All comments should reference Rule Log Number 97171-050-WT. Comments must be received by 5:00 p.m. within 30 days from the date of this publication. For further information, please contact Nina Fantl at (512) 239-0605. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law.

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

SUBCHAPTER A : GENERAL PROVISIONS

§305.2

§305.2. Definitions.

The definitions contained in the Texas Water Code, §§ 26.001, 27.002, and 28.001, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, § 2, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Severe property damage - Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

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

Issued in Austin, Texas on

**SUBCHAPTER B : EMERGENCY ORDERS, TEMPORARY ORDERS, AND
EXECUTIVE DIRECTOR AUTHORIZATIONS**

§305.22

§305.22. Application for Orders or Authorizations to Discharge.

(a) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into [or adjacent to] water in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:

(1) a statement that the discharge is unavoidable to prevent severe economic loss (other than economic loss caused by delays in production) until the State of Texas receives delegation of NPDES authority, loss of life, serious injury, severe property damage [or, severe economic loss (other than economic loss caused by delays in production)] or to make necessary and unforeseen repairs to a facility; [,] that there are no feasible alternatives to the proposed discharge; [,] and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, for unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

- (3) an estimate of the dates on which the proposed discharge will begin and end;
- (4) a statement of the volume and quality of the proposed discharge;
- (5) an explanation of measures proposed to minimize the volume and duration of the discharge;
- (6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use;
- (7) for temporary orders, a list of potentially affected persons in accordance with §305.48(1) of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits); and
- (8) payment of appropriate application fees in accordance with §305.27 of this title (relating to Application Fees).

(b) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, adjacent to waters in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production) or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the area of or surrounding the discharge;

(3) an estimate of the dates on which the proposed discharge will begin and end;

(4) a statement of the volume and quality of the proposed discharge;

(5) an explanation of measures proposed to minimize the volume and duration of the discharge;

(6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use;

(7) for temporary orders, a list of potentially affected persons in accordance with §305.48(1) of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits); and

(8) payment of appropriate application fees in accordance with §305.27 of this title (relating to Application Fees).

(c) [(b)] If the applicant is other than an individual, the application must be sworn to by someone authorized to do so for the applicant, as provided for in §305.44 of this title (relating to Signatories To Applications).

(d) [(c)] If the executive director issues an authorization to discharge as provided in §305.25 of this title (relating to Executive Director Authorizations To Discharge), the applicant must submit the sworn application as required in subsections (a) or (b) of this section before the date of the commission's public hearing to consider the authorization.

(e) [(d)] This section does not apply to unpermitted facilities subject to TPDES regulation.

§305.23. Emergency Orders.

(a) The commission may issue emergency orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the following to be true:

(1) for discharges into water in the state, that the discharge is unavoidable to prevent severe economic loss (other than economic loss caused by delays in production) until the State of Texas receives delegation of NPDES authority, loss of life, serious injury, severe property damage, [or, severe economic loss (other than economic loss caused by delays in production)] or to make necessary and unforeseen repairs to a facility; [,] that there are no feasible alternatives to the proposed discharge; [,] and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) for discharges adjacent to any water in the state, that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production) or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause

significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(3) [(2)] that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(4) [(3)] that the estimate of the dates on which the proposed discharge will begin and end and the estimate of the volume and quality of the proposed discharge submitted by the applicant are reasonable and are attainable; and

(5) [(4)] that the measures proposed by the applicant to minimize the volume and duration of the discharge, and to maximize the waste treatment efficiency of treatment units not taken out of service or treatment facilities to be provided for interim use are reasonable.

(b) If the commission issues an emergency order under the authority of subsection (a) of this section without a hearing, the order shall fix a time and place for a hearing to be held before the commission which shall be held as soon after the emergency order is issued as is practicable and after such notice as is required under §305.24(a) of this title (relating to Notice).

(c) This section does not apply to discharges of hazardous waste or unpermitted facilities subject to TPDES regulation.

§305.25. Executive Director Authorizations to Discharge.

(a) If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into [or adjacent to] water in the state if he determines that the discharge is unavoidable to prevent severe economic loss (other than economic loss caused by delays in production) until the State of Texas receives delegation of NPDES authority, loss of life, serious injury, severe property damage, [or severe economic loss,] or to make necessary and unforeseen repairs to the facility;[,] that there are no feasible alternatives to the discharge;[,] and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant. [If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable but in no event later than 10 days after issuance of the authorization, to affirm, modify or set aside the authorization. This section does not enable the executive director to authorize the discharge of hazardous waste.]

(b) If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility adjacent to waters in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property

damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility; that there are no feasible alternatives to the discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant.

(c) If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable but in no event later than 10 days after issuance of the authorization, to affirm, modify or set aside the authorization. This section does not enable the executive director to authorize the discharge of hazardous waste.

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

Issued in Austin, Texas on

SUBCHAPTER O : ADDITIONAL CONDITIONS AND PROCEDURES
FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS
§305.533 and §305.535

§305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs.

On the date of TNRCC assumption of the administration of the Texas Pollutant Discharge Elimination System (TPDES) permit program, after the Environmental Protection Agency (EPA) approves the TPDES permit program, and the issuance of national pollutant discharge elimination system (NPDES) permits is delegated from the EPA to the state, the state adopts all EPA permits and pretreatment programs, except that EPA shall retain jurisdiction over certain permits until their expiration which it has issued as may be specified in a state/federal Memorandum of Agreement. This provision does not affect the right of the EPA to issue NPDES permits for facilities which expired in the twelve months preceding the date of program assumption [fiscal year 1996] or to modify NPDES permits under Clean Water Act, §304(l). If the requirements of a state permit and an EPA permit issued to the same permittee or for the same facility are not of equal stringency, any requirements of the state-issued permit that are [the] more stringent [requirements] shall apply above and beyond those requirements contained in the corresponding EPA permit.

§305.535. Bypasses From TPDES Permitted Facilities; Minimum Requirements for TPDES

Permitted Facilities.

(a) Authorized bypass. The permittee may allow any bypass to occur from a TPDES permitted facility which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (b) and (c) of this section.

(b) Notice.

(1) Anticipated bypass. In accordance with the procedures described in §§305.21, 305.22 and 305.23 of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) if the permittee knows in advance of the need for a bypass, it shall submit prior notice.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in §305.125(9) of this title (relating to Standards Permit Conditions) (24-hour notice).

(c) Prohibition of Bypass.

(1) Bypass of untreated or partially treated wastewater is prohibited from a TPDES permitted facility, and the commission may take enforcement action against the permittee for bypass, unless all of the following conditions are met:

(A) Bypass was unavoidable to prevent loss of life, personal injury, severe property damage, [severe economic loss (except economic loss due to delays in production),] or to make necessary and unforeseen repairs to a facility;

(B) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; [and]

(C) The permittee submitted notices as required under subsection (b) of this section

(2) The commission may approve an anticipated bypass in accordance with the procedures described in §305.21, 305.22 and §305.23 of this title (relating to Emergency Orders, Temporary Orders, Application for Orders or Authorizations To Discharge and Executive Director

Authorizations) after considering its adverse effects, if the executive director determines that it will meet the three conditions listed in paragraph (1) of this subsection.

(d) Establishing Limitations, Standards, and Other Conditions in TPDES Permits.

(1) Permits for POTWs shall contain technology-based treatment requirements based upon secondary treatment and “best practical waste treatment technology.”

(2) This paragraph describes the minimum level of effluent quality attainable by POTWs in terms of the parameters of five-day biochemical oxygen demand (BOD₅), total suspended solids (TSS), and pH. All requirements shall be achieved except as provided for in this subsection.

(A) For BOD₅, the 30-day average shall not exceed 30 mg/l and the 7-day average shall not exceed 45 mg/l. The 30-day average percent removal shall not be less than 85%. At the option of the commission, in lieu of the BOD₅ parameter, the parameter five-day carbonaceous biochemical oxygen demand (CBOD₅) may be substituted. For CBOD₅, the 30-day average shall not exceed 25 mg/l and the 7-day average shall not exceed 40 mg/l. The 30-day average percent removal shall not be less than 85%.

(B) For TSS, the 30-day average shall not exceed 30 mg/l and the 7-day average shall not exceed 45 mg/l. The 30-day average percent removal shall not be less than 85%.

(C) For pH, the effluent values for pH shall be maintained within the limits of 6.0 and 9.0 unless the POTW demonstrates that inorganic chemicals are not added to the waste stream as part of the treatment process and contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

(3) Treatment works shall be eligible for consideration of effluent limitations described for treatment equivalent to secondary treatment, as described in 40 CFR §133.105, if the BOD₅ and TSS effluent concentrations consistently achievable through proper maintenance and operation of the treatment works exceed the minimum level of the effluent quality set forth in paragraph (2) (A) and (2)(B) of this subsection, a trickling filter or waste stabilization pond is used as the principal process, and the treatment works provide significant biological treatment of municipal wastewater.

(4) The minimum TSS effluent quality concentration achievable with waste stabilization ponds may be adjusted in accordance with 40 CFR §133.103(c).

(5) The commission is authorized to substitute either a lower percent removal requirement or a mass loading limit for a percent removal requirement set forth in this subsection provided the permittee satisfactorily demonstrates that:

(A) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent effluent removal requirements cannot be met due to a less concentrated influent wastewater;

(B) To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards (where the term “significantly more stringent limitations” means BOD₅ and TSS limitations necessary to meet the percent removal requirements of at least 5 mg/l more stringent than the otherwise applicable concentration-based limitations of this subsection, if such limits would, by themselves, force significant construction or other significant capital expenditure); and

(C) The less concentrated influent wastewater is not the result of excessive inflow or infiltration (I/I). The determination of whether the less concentrated wastewater is not the result of excessive I/I will use the definition of excessive I/I in 40 CFR §35.2005(b)(16) plus the additional criterion that inflow is non-excessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

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

Issued in Austin, Texas on