

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 30, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2013-1674-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 305, Consolidated Permits
Amend 30 TAC §305.541 to Adopt New Federal Airport De-icing Rules by
Reference
Rule Project No. 2013-052-305-OW

Background and reason(s) for the rulemaking:

The United States Environmental Protection Agency (EPA) has issued technology-based effluent limitation guidelines and new source performance standards to control discharges of pollutants from airport de-icing operations (40 Code of Federal Regulations (CFR) Part 449). The requirements generally apply to the de-icing of airfield pavement at airports that have at least 1,000 annual jet (*i.e.*, non-propeller aircraft) departures and discharges associated with aircraft de-icing for new airports in certain cold climate areas that have more than 10,000 annual departures.

Existing and new airports with at least 1,000 annual jet departures that generate discharges associated with airfield pavement de-icing are to use de-icing agents that do not contain urea or, alternatively, meet a numeric effluent limitation for ammonia. Based on data provided by the Federal Aviation Administration, there are 42 existing airports in Texas that exceeded 1,000 jet departures for the period of August 2012 through July 2013 (See Attachment A).

New airports with more than 10,000 total annual departures (jet and other types of aircraft) that are located in areas with an annual heating degree day value of more than 3,000 are required to collect 60% of aircraft de-icing fluid after de-icing and meet a numeric effluent limitation for chemical oxygen demand. Heating degree day is defined as the number of degrees per day the daily average temperature is below 65 degrees Fahrenheit. The annual value is derived by summing the daily heating degree days over a calendar year. As shown in Attachment B, new airports with more than 10,000 annual departures located in the Trans-Pecos, Panhandle, and Wichita Falls areas of Texas would be subject to the aircraft de-icing requirements. The rule does not establish requirements for aircraft de-icing discharges at existing airports.

Re: Docket No. 2013-1674-RUL

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking amends §305.541 to adopt 40 CFR Part 449 by reference. These effluent limitation guidelines and new source performance standards will be incorporated into the Multi-Sector General Permit (MSGP), TXR050000, upon its renewal in 2016, and any applicable individual permits for airports during their next permit actions. Airports will not be required to comply with the new requirements until the requirements are incorporated into the MSGP or their individual permit.

B.) Scope required by federal regulations or state statutes:

The rulemaking is not required by state or federal statute, but is necessary to keep commission rules synchronized with EPA's rules as required by the Memorandum of Agreement (MOA) with EPA regarding National Pollutant Discharge Elimination System (NPDES) authority.

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

Statutory authority:

Texas Water Code, (TWC) §5.102, General Powers
TWC, §5.103, Rules
TWC, §5.105, General Policy
TWC, §5.120, Conservation and Quality of Environment
TWC, §26.027, Commission May Issue Permits
TWC, §26.040, General Permits
TWC, §26.121, Unauthorized Discharges Prohibited

Effect on the:

A) Regulated community: It is anticipated that this rule will have minimal effect on the regulated community.

- Existing airports with less than 1,000 annual jet departures are not affected by this rule.
- Existing and new airports with at least 1,000 annual jet departures have several options for managing discharges associated with airfield pavement de-icing activities:
 - Use de-icing agents that do not contain urea,
 - Dispose of de-icing agents that contain urea by means other than discharge to water in the state, or
 - Discharge to water in the state after meeting an ammonia effluent limitation.
- The requirements for aircraft de-icing activities only apply to new airports located in certain cold climate areas that have more than 10,000 total annual departures (all types of aircraft). New airports located in the Texas panhandle

Re: Docket No. 2013-1674-RUL

area could be impacted by this rule depending on the number of annual departures.

B) Public: No effect on the public is anticipated.

C) Agency programs: The agency will be required to modify inspection protocols (Field Operations Support Division), increase public outreach and update educational materials (Small Business and Local Government Assistance Division), and modify the requirements of the MSGP when it is renewed in 2016 (Water Quality Division) and any applicable individual permits for airports during their next permit actions.

Stakeholder meetings:

There were no stakeholder meetings since the requirements have been established in federal regulations. However, stakeholders will be notified of and updated quarterly about this rulemaking during the Water Quality Advisory Workgroup meetings.

Public comment:

This rule's comment period began on December 27, 2013, and closed on January 27, 2014. There were no comments received during the comment period.

Significant changes from proposal:

There were no changes from proposal to adoption.

Potential controversial concerns and legislative interest:

No controversial concerns or legislative interest are anticipated.

Does this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The alternative is to leave §305.541 unchanged, which would prevent the commission from implementing the new airport de-icing rules in 40 CFR Part 449. As a result, the TCEQ could be considered out of compliance with the MOA requirement that the TCEQ "ensure new federal NPDES regulations are incorporated into state regulations within one year of federal promulgation or within two years if a state statute must first be enacted."

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: December 27, 2013

Anticipated Texas Register adoption publication date: July 4, 2014

Anticipated effective date: July 10, 2014

Six-month Texas Register filing deadline: June 27, 2014

Commissioners

Page 4

May 30, 2014

Re: Docket No. 2013-1674-RUL

Agency contacts:

Laurie Fleet, Rule Project Manager, (512) 239-5445, Water Quality Division

Stefanie Skogen, Staff Attorney, (512) 239-0575

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments

Attachments A and B

40 CFR Part 449

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Dennise Braeutigam
Office of General Counsel
Laurie Fleet
Derek Baxter