

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: April 22, 2016

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

From: Ramiro Garcia, Jr., Deputy Director
Office of Compliance and Enforcement

Docket No.: 2015-1076-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 305, Consolidated Permits
Chapter 327, Spill Prevention and Control
SB 912: Volume-Based Exemptions for Certain Accidental Discharges
Rule Project No. 2015-024-305-CE

Background and reason(s) for the rulemaking:

Senate Bill (SB or bill) 912, 84th Texas Legislature, 2015, authored by Senator Kevin Eltife, provides for volume-based exemptions from reporting requirements for certain accidental discharges or spills from wastewater treatment facilities or collection systems. SB 912 amends Texas Water Code (TWC), §26.039(b) and (e) and adds TWC, §26.039(g) - (j).

The bill provides that single, accidental discharges or spills at wastewater treatment facilities or collection systems can be reported monthly instead of within 24 hours under certain conditions. Specifically, any single, accidental discharge or spill of treated or untreated domestic wastewater that occurs at a wastewater treatment or collection system owned or operated by a local government will be reported as a summary of spills to the Texas Commission on Environmental Quality (TCEQ or commission) on a monthly basis when the following conditions are met:

1. The spill volume is 1,000 gallons or less;
2. It is not associated with another accidental discharge or spill;
3. It is controlled or removed before entering water in the state;
4. It does not adversely affect a public or private source of drinking water;
5. It will not endanger human health or safety or the environment; and
6. It is not otherwise subject to local regulatory control and reporting requirements.

The bill requires the TCEQ to establish standard method(s) for calculating the volume of an accidental discharge or spill, consider the compliance history of the individual, and establish procedures for formatting and submitting a summary. The summary shall include the location, volume, and content of each accidental discharge or spill that occurred during the preceding month.

The bill also requires the owner or operator of the facility to use the established standard method(s) for calculating the volume of an accidental discharge or spill.

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Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking will amend 30 Texas Administrative Code (TAC) Chapters 305 and 327 to implement SB 912. The rules are amended to allow single, accidental discharges or spills of treated or untreated domestic wastewater that occur at a wastewater treatment facility or collection system owned or operated by a local government to be reported as a summary of spills to the TCEQ on a monthly basis when the following conditions are met:

1. The spill volume is 1,000 gallons or less;
2. It is not associated with another accidental discharge or spill;
3. It is controlled or removed before entering water in the state;
4. It does not adversely affect a public or private source of drinking water;
5. It will not endanger human health or safety or the environment; and
6. It is not otherwise subject to local regulatory control and reporting requirements.

The adopted rulemaking also establishes standard methods for calculating the volume of an accidental discharge or spill and requires the owner or operator of the facility or collection system to use the standard methods in the adopted rules.

The adopted rulemaking identifies the minimum data that must be submitted on the summary, consistent with SB 912.

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

This rulemaking is required to implement the provisions of SB 912.

C.) Additional staff recommendations that are not required by federal rule or state statute:

There are no additional staff recommendations that are not required by federal rule or state statute.

Statutory authority:

TWC, §§5.013, 5.103, 5.105, 5.102, 26.039, and 26.121.

Effect on the:

A.) Regulated community:

The adopted rulemaking is applicable to wastewater treatment facilities and collection systems owned and operated by local governments. Currently, any accidental discharge or spill is required to be reported to the agency within 24 hours verbally and a written report is required within five days. The adopted rulemaking will allow owners or operators of wastewater treatment facilities or collection systems to report applicable lessor accidental discharges or spills once a month. If a local government has numerous spills to report, there may be minor cost savings from the consolidation of notifications.

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B.) Public:

There is no effect to the public.

C.) Agency programs:

Updates will need to be made to the boilerplate language for Municipal Wastewater Permits. A new noncompliance notification form will need to be created to include the data summary which includes the method for spill estimation. A new Regulatory Guidance will be created (or existing RG-395, Unauthorized Discharges and Sanitary Sewer Overflows, will be amended) to explain the methods for determining accidental discharge and spill estimates.

Stakeholder meetings:

A stakeholder meeting was conducted in Austin on September 15, 2015. Approximately 50 people were in attendance. The majority in attendance were with local governments and utilities. Some consulting firms and environmental groups were also in attendance. Inquiries were made about the information that the commission will be collecting on the monthly notification form. The utilities also provided information on current practices for determining standard volumes of spills. These standards were incorporated into the adopted rulemaking.

Public comment:

The comment period was from February 5, 2016 through March 7, 2016. The commission held a public hearing in Austin on March 1, 2016, and received an oral comment from Water Environment Association of Texas (WEAT). The commission received written comments from Harris County Pollution Control Services Department (HCPCSD); Lloyd Gosselink; San Jacinto River Authority; WEAT and Texas Association of Clean Water Agencies; and one individual. The comments received were neither in support nor against the proposed rulemaking, but each recommended changes to the proposed language. Their main comment was allowing an additional option for the responsible person to use to calculate spill volumes that contains elements of the three options described in the proposed rule language. Additionally, commenters recommended removing the word "exact" from the requirements for reporting time of the accidental discharge or spill; and removing the requirement for the monthly summary to include the steps taken to reduce, eliminate and prevent reoccurrence of the accidental discharge or spill that is required under the current 24-hour reporting requirements.

Significant changes from proposal:

In response to comments: the reference to the 50-gallon barrel in §305.132(d)(1) and §327.32(e)(1) is changed to 55 gallons to be consistent with industry standards; the word "exact" is removed from §305.132(c)(4) and §327.32(d)(4); a fourth standard for estimating spill volumes is added to §305.132(d) and §327.32(e); the definition of history of noncompliance in §305.132(a)(2) and §327.32(a)(d) is updated to address reoccurrence of spills; and the definition of wastewater treatment facility is updated to be consistent with 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

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Potential controversial concerns and legislative interest:

Some groups that opposed the legislation cited that reduced reporting will lead to an increase in *E. coli* in water bodies that are already impaired. During the legislative session, a desire was expressed to maintain reporting of accidental discharges as currently required. Only one concern was also brought up in the stakeholder meeting that the rulemaking will allow this reporting change not only to the treatment facility but also to the collection system.

Does this rulemaking affect any current policies or require development of new policies?

This rulemaking does not affect any current policies or require development of new policies.

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

Without approval, Chapters 305 and 327 will be inconsistent with state statutes. There are no alternatives to rulemaking.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** February 5, 2016

Anticipated *Texas Register* adoption publication date: May 27, 2016

Anticipated effective date: June 2, 2016

Six-month *Texas Register* filing deadline: August 5, 2016

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Attachments

SB 912

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