

Chapter 21: Water Quality Fees
§§21.1 - 21.4
Effective July 30, 2009

§21.1. Purpose and Scope.

- (a) It is the purpose of this chapter to implement the Water Quality Fee Program.
- (b) An annual fee will be assessed against wastewater permit holders authorized to treat or discharge wastewater into or adjacent to the waters in the state under Texas Water Code (TWC), Chapter 26, and against each person holding a right acquired under authority of TWC, Chapter 11, and the rules of the commission to impound, divert, or use state water, except for those exemptions specified in §21.3(c) of this chapter (relating to Fee Assessment). Only one fee is assessed for each permit.
- (c) The fees to be assessed under this chapter do not apply to general permits.
- (d) The fee shall be in proportion to the level of authorization for use of state water or for the treatment or discharge of wastewater.
- (e) All resulting revenue shall be deposited in the Water Resources Management Account for the purpose of supplementing other revenue appropriated by the legislature to pay the expenses of the commission in the following programs:
 - (1) Water quality administration, including, but not limited to, inspection of wastewater treatment facilities and enforcement of the provisions of TWC, Chapter 26, the rules and orders of the commission related to wastewater discharges and waste treatment facilities, and the provisions of commission permits governing wastewater discharges and wastewater treatment facilities;
 - (2) The Texas Clean Rivers Program, under TWC, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001(5)); and
 - (3) Any other water resource management programs reasonably related to the activities of the persons required to pay a fee under TWC, §26.0291.

Adopted September 13, 2002

Effective October 6, 2002

§21.2. Definitions and Abbreviations.

- (a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) **Aquaculture**--The commercial propagation and/or rearing of aquatic species utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(2) **Flow**--The total by volume of all wastewater discharges authorized under a permit issued in accordance with Texas Water Code (TWC), Chapter 26, expressed in order of preference, as an average flow per day, an annual average, a maximum flow per day, or an annual maximum, exclusive of variable or occasional storm water discharges. Generally, the flow amount used to calculate fees is the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional storm water discharges.

(3) **Flow type**--

(A) **Contaminated**--Sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters, or flows containing more than one million gallons per day process wastewater regardless of the percent of total comprised of process wastewater.

(B) **Uncontaminated**--Non-contact cooling water or mixed flows containing not more than one million gallons per day of process wastewater, with the overall mixture being at least 90% non-contact cooling water.

(4) **Inactive permit**--A permit which authorizes a waste treatment facility which is not yet operational or where operation has been suspended, and where the commission has designated the permit as inactive.

(5) **Land application (retention) permit**--A permit which does not authorize the discharge of wastewater into surface waters in the state, including, but not limited to, permits for systems with evaporation ponds or irrigation systems.

(6) **Major permit**--A permit designated as a major permit, by either EPA or the commission and subject to provisions of the National Pollutant Discharge Elimination System or Texas Pollutant Discharge Elimination System's permit authority.

(7) **Parameter**--A variable which defines a set of physical properties whose values determine the pollution potential for a waste discharge.

(8) **Report only permit**--A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported, but without any limitation on the volume of discharge.

(9) **State water**--The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, and watercourse in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state. Additionally, state water injected into the ground for an aquifer storage and recovery project remains state water. State water does not include percolating

groundwater, nor does it include diffuse surface rainfall runoff, groundwater seepage, or springwater before it reaches a watercourse.

(10) **Storm water authorization**--Some individual permits authorize the variable or occasional discharge of accumulated storm water and storm water runoff, but without any specific limitation on the volume of discharge. Storm water discharge may be the only discharge authorized in a permit, or it may be included in addition to other parameters.

(11) **Toxicity rating**--A graduated rating, with Groups I - VI, assigned to an industrial permit based on the source(s) of wastewater, the standard industrial classification of the facility, and the specific type of operation.

(12) **Traditional pollutants**--Certain parameters typically found in wastewater permits, specifically oxygen demand (biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC)), total suspended solids (TSS), and ammonia (NH₃).

(13) **Uses of state water**--Types of use of surface water authorized by water rights under TWC, Chapter 11.

(A) **Agricultural use**--Any use or activity involving agriculture, including irrigation. The definition of "agriculture use" is the same as in TWC, §11.002(12), as follows:

(i) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(ii) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(iii) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(iv) raising or keeping equine animals, wildlife management; and

(v) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purposes of participating in any governmental program or normal crop or livestock rotation procedure.

(B) **Consumptive use**--The use of state water for domestic and municipal, industrial, agricultural, or mining purposes, consistent with the meaning of these uses for which water may be appropriated under TWC, Chapter 11.

(C) **Hydropower use**--The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(D) **Industrial use**--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including, without

limitation, commercial feedlot operations, commercial fish and shellfish production, and the development of power by means other than hydroelectric.

(E) **Irrigation use**--The use of state water for the irrigation of crops, trees, and pasture land including, but not limited to golf courses and parks which do not receive water through a municipal distribution system. This use is now part of the definition of agriculture use in TWC, §11.002(12).

(F) **Mariculture use**--The propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water. This use is exempt from the need for a water right.

(G) **Mining use**--The use of state water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(H) **Municipal**--The use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the application of municipal sewage effluent on land, pursuant to a TWC, Chapter 26, permit where:

(i) the application site is land owned or leased by the Chapter 26 permit holder; or

(ii) the application site is within an area for which the commission has adopted a no-discharge rule.

(I) **Non-consumptive uses**--The use of state water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation, and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under TWC, Chapter 11.

(J) **Other use**--Any beneficial use of state water not otherwise defined herein.

(K) **Recharge**--The use of a surface source of state water for injection into an aquifer, or for increasing the amount of natural recharge to an underground aquifer.

(L) **Recreational use**--The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aquatic and wildlife enjoyment, and aesthetic land enhancement of a subdivision, golf course, or similar development.

(14) **Wastewater permit**--An order issued by the commission in accordance with the procedures prescribed by TWC, Chapter 26, establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made, and including those permits issued

under the authority of TWC, Chapter 26, and other statutory provisions (such as the Texas Health and Safety Code, Chapter 361) for the treatment or discharge of wastewater. For the purpose of this subchapter, the term "permit" shall include any other authorization for the treatment or discharge of wastewater, including permits by rule and registrations and similar authorizations other than general permits.

(A) **Individual permit**--A wastewater permit, as defined in TWC, §26.001, including registrations and permits by rule, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in TWC, Chapter 26 (other than TWC, §26.040).

(B) **General permit**--A wastewater permit issued under the provisions of §205.1 of this title (relating to Definitions) authorizing the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by TWC, §26.040.

(15) **Water right**--A right acquired under authority of TWC, Chapter 11 and the rules of the commission to impound, divert, store, convey, or use state water.

(b) Abbreviations. The following abbreviations apply to this chapter.

(1) **lb/day**--Pounds per day.

(2) **mgd**--Million gallons per day.

(3) **mg/l**--Milligrams per liter. For fee calculations, mg/l are converted to pounds per day (lb/day) using mg/l multiplied by flow volume in mgd, and multiplied by 8.34 equals lb/day.

(4) **SIC**--Standard Industrial Classification assigned to a facility generating wastewater.

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§21.3. Fee Assessment.

(a) The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year, without regard to the actual amount or quality of effluent discharged or the actual amount of water used.

(b) Assessment for wastewater permits.

(1) An annual fee is assessed against each person holding a wastewater permit. A separate fee is assessed for each wastewater permit.

(2) The maximum fee which may be assessed any permit, including an aquaculture permit, is the amount, if any, set forth in Texas Water Code (TWC), Chapter 26. The minimum fee for an active permit is \$1,250. The minimum fee for an inactive permit is \$620.

(3) In assessing a fee under this chapter, the commission considers the following factors:

- (A) flow volume, and type;
- (B) traditional pollutants;
- (C) toxicity rating;
- (D) storm water discharge;
- (E) major designation;
- (F) active or inactive status;
- (G) discharge or retention;
- (H) the designated uses and ranking classification of waters affected by waste discharges; and
- (I) the costs of administering the following commission programs:

(i) water quality administration, including inspection of waste treatment facilities and enforcement of the provisions of TWC, Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities;

(ii) the Texas Clean Rivers Program, under TWC, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001(5)).

(4) For the purpose of fee calculation, chemical oxygen demand (COD) and total organic carbon (TOC) are converted to biochemical oxygen demand (BOD) values and the highest value is used for fee calculation. The conversion rate for TOC is three pounds of TOC is equal to one pound of BOD (3:1). The conversion rate for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(5) Fee rate schedule. Except as provided in paragraph (6) of this subsection, the fee shall be determined as the sum of the following factors:

- (A) contaminated flow, an amount up to a maximum of \$1,090 per million gallons per day (mgd);
- (B) uncontaminated flow, an amount up to a maximum of \$18 per mgd;
- (C) traditional pollutants, an amount up to a maximum of \$23 per pound per day;
- (D) toxic rating for industrial discharges:

- (i) Group I, an amount up to a maximum of \$310;
- (ii) Group II, an amount up to a maximum of \$1,090;
- (iii) Group III, an amount up to a maximum of \$1,640;
- (iv) Group IV, an amount up to a maximum of \$2,460;
- (v) Group V, an amount up to a maximum of \$4,910; and
- (vi) Group VI, an amount up to a maximum of \$9,830;

(E) major permit designation, an amount up to a maximum of \$3,120; and

(F) storm water authorization, an amount up to a maximum of \$780.

(6) For the types of permits listed in this paragraph, these additional guidelines will apply in determining the fee assessment.

(A) Land application (retention) permits. The fee assessed a land application permit shall be 50% of that calculated under paragraph (5) of this subsection. However, in no event shall the fee for an active land application permit be less than \$1,250 per year.

(B) Inactive permits. The fee assessed an inactive permit shall be 50% of that calculated under paragraph (5) of this subsection. In the event an inactive permit is for a land application operation, the fee assessed shall be 25% of that calculated under paragraph (5) of this subsection. However, in no event shall the fee for an inactive permit be less than \$620 per year.

(C) Storm water only permits. The fee for an active permit which authorizes discharge of storm water only, with no other wastewater, is an amount up to a maximum of \$780.

(D) Aquaculture permits.

(i) In determining the flow volume to be used in fee calculation for an aquaculture production facility under paragraph (5) of this subsection, the flow for the facility shall be the facility's permitted annual average flow, or the facility's projected annual average flow if the permit does not have an annual average flow limitation.

(ii) If the facility's permit does not have an annual average flow limitation, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 preceding the fee year and shall be signed and certified as required by §305.44 of this title (relating to Signatories to Applications), and that amount will be used for fee calculation.

(iii) The maximum annual fee for aquaculture production facilities is the amount, if any, set forth in TWC, Chapter 26.

(7) A multiplier may be applied to adjust the total fee per permit, which would also adjust the total assessment for all permits under the Water Quality Fee Program. The multiplier will be an amount up to a maximum of 1.75. As part of the approval of the annual operating budget, the executive director shall report to the commission the multiplier that will be applied for the upcoming fiscal year.

(c) Assessment for water rights.

(1) An annual fee is assessed against each person holding a water right, except for those exemptions specified in this section. A separate fee is assessed for each water right. These fees do not apply to water uses, including domestic and livestock use, which are exempt from the need for authorization from the commission under TWC, Chapter 11.

(2) This fee will apply to all municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (b) of this section, and to all other types of water rights except agriculture water rights and certain hydroelectric water rights described in paragraph (5) of this subsection.

(3) The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use shall be \$.385 per acre-foot.

(4) An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the non-consumptive rate described in paragraph (5) of this subsection.

(5) The fee for water rights for non-consumptive use above 2,500 acre feet per year, including hydropower purposes, shall be \$.021 per acre-foot. The fee shall not be assessed against a holder of a non-priority hydroelectric right who owns or operates privately-owned facilities which collectively have a capacity of less than two megawatts.

(6) Water which is authorized in a water right for consumptive use, but which is designated by a provision in the water right as unavailable for use, may be exempted from the assessment of a fee under paragraph (3) of this subsection.

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§21.4. Fee Period, Adjustment, and Payment.

(a) The annual water quality fee assessment is for the period from September 1 through August 31, and is based on the authorized permit or water right limits as of September 1 each year, as stated in §21.3(a) of this title (relating to Fee Assessment).

(b) New or amended wastewater permits and water rights granted after September 1 will be billed for the new or amended authorization in the annual assessment for the fee year subsequent to the fee year in which the new authorization was granted.

(c) Cancellation or revocation, whether by voluntary action on the part of the holder of a wastewater permit or a water right, or as a result of proceedings initiated by the commission, will not constitute grounds for a change in the amount of a water quality fee previously assessed, or for a refund of fees previously paid.

(d) Transfer of ownership of a wastewater permit or a water right will not constitute grounds for a change in the amount of a water quality fee previously assessed, or for a refund of fees previously paid. The commission shall not process a transfer request until all annual fees owed the commission by the applicant, or for the permitted facility, are paid in full. Any wastewater permit holder or water right holder to whom a permit is transferred shall be liable for payment of any associated outstanding fees and penalties owed the commission.

(e) Annual water quality fees are payable within 30 days of the billing date each year. Fees shall be paid by check, certified check, electronic funds transfer, or money order payable to the Texas Commission on Environmental Quality (to be effective September 1, 2002).

(f) Water quality fees are payable regardless of whether the permitted wastewater facility actually is constructed or in operation, or whether any authorized water right facility has been constructed or diversion of state water made.

(g) Owners or operators of a facility failing to make payment of the fees imposed under this chapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees). In addition, failure to make payment in accordance with this chapter constitutes a violation subject to enforcement pursuant to the provisions of Texas Water Code, §26.123.

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