

**SUBCHAPTER B : MUNICIPAL WATER POLLUTION CONTROL AND ABATEMENT**  
**§§216.21-216.30**  
**Effective March 9, 1999**

**§216.21. Purpose and Policy.**

(a) The purpose of this subchapter is to establish procedures and measures in accordance with Texas Water Code, §26.177(a) to address water pollution that is attributable to non-permitted sources in cities that have a population of 10,000 or more persons.

(b) An unauthorized discharge is a violation of Texas Water Code, §26.121. An unauthorized discharge relates to a discharge of waste and pollutants as it is defined in the Texas Water Code. Nothing in this subchapter is intended to limit or prevent the commission from abating or preventing the pollution of water in the state through permits, orders, or other enforcement actions authorized under the Texas Water Code, Chapter 26, or other applicable state or federal law.

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**§216.22. Applicability.**

(a) This rule applies to any city with a population of at least 10,000 persons, based on the most recent federal decennial census, and in which a water quality assessment report required by Texas Water Code, §26.0135 or other commission assessment or study, as described in §216.24 of this title (relating to Water Quality Assessments and Studies), has identified water pollution that is attributable to non-permitted sources, excluding sources over which a municipality does not have regulatory jurisdiction. Cities meeting applicability shall be required to satisfy applicable provisions of this subchapter upon receipt of notice issued by the executive director pursuant to §216.25 of this title (relating to Notice of Initial Determination).

(b) A city whose population falls below 10,000, based on the most recent federal decennial census, will no longer have a duty to satisfy the applicable provisions of this subchapter upon the executive director's receipt from the city of the most recent federal decennial census indicating that the population has fallen below 10,000.

(c) A Water Pollution Control and Abatement Program submitted under this subchapter is not a Water Pollution and Abatement Plan as provided by Texas Water Code, §26.121(a)(2)(B).

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**§216.23. Definitions.**

Terms defined in Chapter 3 of this title (relating to Definitions) will have the same meaning when used in this subchapter unless the definition is specifically modified in this section.

(1) **City** - A municipality or city existing, created, or organized under the general, home rule, or special laws of this state.

(2) **Extra territorial jurisdiction** - An area outside the corporate limits of a municipality as defined in Local Government Code, §42.021.

(3) **Non-permitted sources** - Sources of water pollution that are not authorized to discharge pollution into or adjacent to waters in the state by a valid permit, general permit, or rule pursuant to Texas Water Code, Chapter 26, the federal Clean Water Act, or other applicable state or federal law. This definition includes, but is not limited to, non-point sources of pollution as those sources are defined and identified pursuant to Chapter 220 of this title (relating to Regional Assessments of Water Quality), the federal Clean Water Act, the Coastal Zone Act Reauthorization Amendments of 1990, §6217, and other applicable state and federal statutes, regulations, policies, and guidance. This definition does not include discharges authorized by an NPDES or TPDES permit for municipal stormwater discharges.

(4) **Pollution** - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(5) **Significant waste discharge** - Point source discharges of waste or pollutants to receiving water that have been identified to cause pollution without regard to whether or not the discharges are authorized by the commission.

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#### **§216.24. Water Quality Assessments and Studies.**

Water quality assessments and studies that may be used by the executive director to identify water pollution that is attributable to non-permitted sources shall consist of one or more of the following.

(1) State water quality inventory. The state program which assesses the quality of surface and ground waters resulting in a report describing the status of water quality in the state in accordance with the Federal Clean Water Act, §305(b).

(2) Clean rivers program. Watershed water quality assessments conducted in accordance with Texas Water Code, §26.0135.

(3) State nonpoint source assessment. The state program implemented in compliance with Federal Clean Water Act, §319(a), which identifies surface and ground waters in the state which cannot

reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of the federal Clean Water Act without additional controls for nonpoint sources of pollution.

(4) Total maximum daily load. Pursuant to Clean Water Act, §303(d), states are required to develop total maximum daily loads for waters within the state for which the effluent limitations required by the Clean Water Act, §301(b)(1)(A) and (B) are not stringent enough to implement any water quality standard applicable to such waters.

(5) Other. Special studies, pilot projects, reports, or other quality assured assessments of water quality in the state prepared, approved, or accepted by the executive director that identify non-permitted sources of water pollution within cities, including information used by the executive director for the purpose of updating the state's list of impaired waters prepared in accordance with the federal Clean Water Act, §303(d).

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**§216.25. Notice of Initial Determination.**

If it is determined by the executive director that a city has met the criteria set forth in §216.22(a) of this title (relating to Applicability) or the executive director is requiring the city to amend an existing water pollution control and abatement program, the executive director shall notify the city. This notice shall specify the following:

(1) the basis for the executive director's determination;

(A) that the city meets the criteria set forth in §216.22(a) of this title; or

(B) that the city's existing Water Pollution Control and Abatement Program should be amended;

(2) that the executive director may undertake additional water quality assessments and studies in the impacted area as set out in §216.24 of this title (relating to Water Quality Assessments and Studies);

(3) that the city may undertake additional water quality assessments and studies in the impacted area within its jurisdiction which comply with quality assurance requirements of the executive director; and

(4) the time period (not to exceed five years) within which the city may try to correct the problem. The executive director may extend this time period when new or additional information or circumstances warrant such an extension.

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**§216.26. Final Determination of Applicability.**

(a) After expiration of the time period specified in §216.25(a)(4) of this title (relating to Notice of Initial Determination), the executive director shall determine whether a city still meets the criteria set forth in §216.22(a) of this title (relating to Applicability) based on water quality assessments and studies set out in §216.24 of this title (relating to Water Quality Assessments and Studies) performed subsequent to the initial determination, taking into consideration any measures taken and improvements that have resulted or that will result from allowing full implementation of the city's efforts to correct the problem.

(b) If the executive director determines that a city continues to meet the criteria set forth in §216.22(a) of this title, the executive director at a regularly scheduled meeting held by the commission shall recommend that the city be required to submit a Water Pollution Control and Abatement Program or, when appropriate, amend an existing Water Pollution Control and Abatement Program.

(c) Consideration at a regularly scheduled meeting of the commission shall not be required if the executive director and the city agree that the city will develop and implement a Water Pollution Control and Abatement Program, or amend an existing Program. In lieu of a public meeting, the city, based on an agreement with the executive director, may request that the commission issue an agreed order to submit a Program as described in §216.27 of this title (relating to Water Pollution Control and Abatement Programs) or an amendment to an existing Program as described in §216.29 of this title (relating to Amendment Procedures for Water Pollution Control and Abatement Programs).

(d) The burden of demonstrating that the city meets the criteria set forth in §216.22(a) of this title shall rest on the executive director.

(e) The executive director shall cause notice of the regularly scheduled meeting to be published in the *Texas Register* informing the public of the meeting and that the public has 30 days prior to the regularly scheduled commission meeting to provide written comment to the commission on whether the city should be required to develop and implement a Water Pollution Control and Abatement Program or amend an existing Water Pollution Control and Abatement Program.

(f) In considering the matter at the regularly scheduled meeting, the commission may:

(1) upon its own motion or upon the request of a party, conduct a contested case proceeding and consider evidence and hear oral argument of the parties, or refer the matter to SOAH for a contested case hearing conducted pursuant to the Administrative Procedure Act (APA) to determine whether the city continues to meet the criteria set forth in §216.22(a) of this title;

(2) determine that the city is not required to submit a Water Pollution Control and Abatement Program;

(3) determine that the city continues to meet the criteria set forth in §216.22(a) of this title and approve the executive director's recommendation that the city be required to develop, or where appropriate amend, and implement a Water Pollution Control and Abatement Program; or

(4) issue any other order the commission deems appropriate.

(g) Should the commission determine under subsection (f)(3) of this section that a Water Pollution Control and Abatement Program is required, the commission order shall specify the pollutants and non-permitted sources of concern and the deadline for the submission of a Water Pollution Control and Abatement Program.

(h) The regularly scheduled meeting held by the commission pursuant to this section shall satisfy the requirement of the public hearing mandated by Texas Water Code, §26.177.

(i) A commission order issued pursuant to subsection (f) of this section is a final and appealable order under Texas Water Code, §5.351. As a prerequisite to appeal, a motion for rehearing under §80.271 of this title (relating to Motion for Rehearing) must be filed within 20 days after the date the city or the city's attorney of record is notified of the commission's final decision or order under this subchapter.

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**§216.27. Water Pollution Control and Abatement Programs.**

(a) The Water Pollution Control and Abatement Program of a city shall encompass the area within a city's municipal boundaries and, subject to Texas Water Code, §26.179 (relating to Designation of Water Quality Protection Zones in Certain Areas), may include areas within its extra-territorial jurisdiction which in the judgment of the city should be included to enable the city to achieve its objectives for the area within its territorial jurisdiction.

(b) The city shall include in the Program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city to address water pollution attributable to non-permitted sources, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the commission;

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to paragraph (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance

with this chapter and any applicable permits, orders, or rules of the commission, and whether they should be covered by a permit from the commission;

(4) in cooperation with the commission, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings;

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater; and

(6) any additional services, functions, or other requirements as may be prescribed by commission rule to effectuate the purposes of this subchapter.

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**§216.28. Submittal of Water Pollution Control and Abatement Programs.**

A Water Pollution Control and Abatement Program shall be submitted to the executive director of the commission in accordance with the order issued pursuant to §216.26 of this title (relating to Final Determination of Applicability). Those elements requiring engineering design in the Water Pollution Control and Abatement Program for the city shall be signed and sealed by a professional engineer licensed in the State of Texas who shall certify that the city's Program is designed to abate and prevent water pollution attributable to non-permitted sources located within the city.

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**§216.29. Amendment Procedures for Water Pollution Control and Abatement Programs.**

(a) A city may amend the Water Pollution Control and Abatement Program for that city at any time by submitting an amended Water Pollution Control and Abatement Program to the executive director of the commission. Those elements requiring engineering design in the amended Water Pollution Control and Abatement Program for the city shall be signed and sealed by a professional engineer licensed in the State of Texas who shall certify that the city's Program is designed to abate and prevent water pollution attributable to non-permitted sources located within the city.

(b) The commission, upon its own motion or in response to a petition filed by the executive director, may require a city to amend a Water Pollution Control and Abatement Program for that city when new or additional information or circumstances warrant such changes to effectuate the purposes of this subchapter.

(c) The provisions for notice of initial determination under §216.25 of this title (relating to Notice of Initial Determination) and final determination of applicability under §216.26 of this title (relating to

Final Determination of Applicability) shall apply to an amendment of a Water Pollution Control and Abatement Program.

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**§216.30. Appeals.**

Pursuant to Texas Water Code, §26.177(d), any person affected by any ruling, order, decision, ordinance, program, resolution, or other act of a city relating to water pollution control and abatement outside the corporate limits, within the extraterritorial jurisdiction of such city adopted pursuant to this subchapter or any other statutory authorization may appeal such action to the commission or district court. An appeal must be filed with the commission's chief clerk within 60 days of the enactment of the ruling, order, decision, ordinance, program, resolution, or act of the city. The issue on appeal is whether the action or program is invalid, arbitrary, unreasonable, inefficient, or ineffective in its attempt to control water quality, and the commission's order on the appeal will be based on whether the city's actions or programs meet these criteria. The commission or district court may overturn or modify the action of the city. If an appeal is taken from a commission ruling, the commission ruling shall be in effect for all purposes until final disposition is made by a court of competent jurisdiction so as not to delay any permit approvals.

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