

**SUBCHAPTER O: ADDITIONAL CONDITIONS AND PROCEDURES
FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS
§§305.531 - 305.539
Effective October 11, 2007**

§305.531. Establishing and Calculating Additional Conditions and Limitations for TPDES Permits.

The following regulations contained in 40 Code of Federal Regulations Part 122, Subpart C, Permit Conditions, and Part 124, Subpart C, Specific Procedures Applicable to Texas pollutant discharge elimination system (TPDES) permits, which are in effect as of the date TPDES program authorization, as amended, are adopted by reference:

(1) §122.42 -- Additional conditions applicable to specified categories of NODES permits. Section 122.42 provides additional conditions for existing manufacturing, commercial, mining, and silvicultural dischargers, and for publicly owned treatment works (POTWs).

(2) §122.43(a) and (b) -- Establishing permit conditions. Section 122.43 relates to conditions assuring compliance with all applicable requirements of the CWA and regulations.

(3) §122.44 -- Establishing limitations, standards, and other permit conditions applicable to state NODES programs. Section 122.44 relates to technology-based effluent limitations and standards, other effluent limitations and standards, reopener clauses, water quality standards and State requirements, toxic pollutants, notification levels, twenty-four hour reporting, durations for permits, monitoring requirements, pretreatment programs for POTWs, best management practices, reissued permits, privately owned treatment works, grants, sewage sludge, Coast Guard, and navigation.

(4) §122.45 -- Calculating NODES permit conditions. Section 122.45 relates to outfalls and discharge points, production-based limitations, metals, continuous discharges, noncontinuous discharges, mass limitations, pollutants in intake water, internal waste streams, and disposal of pollutants into wells, into POTWs, or by land application.

(5) §122.50 -- Disposal of pollutants into wells, into POTWs, or by land application.

(6) §124.59 -- Conditions requested by the Corps of Engineers and other government agencies.

§305.532. Adoption of Appendices by Reference.

The following appendices contained in 40 Code of Federal Regulations Part 122, which are in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, are adopted by reference and apply only to TPDES permits:

(1) Appendix A - NODES Primary Industry Categories.

(2) Appendix B - Criteria for Determining a Concentrated Animal Feeding Operation.

(3) Appendix C - Criteria for Determining a Concentrated Aquatic Animal Production Facility.

(4) Appendix D - NODES Permit Application Testing Requirements.

§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 EPA-issued or proposed 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 12 months preceding the date of program assumption 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 more stringent shall apply above and beyond those requirements contained in the corresponding EPA permit.

Date Adopted: November 5, 1997

Date Effective: December 1, 1997

§305.534. New Sources and New Dischargers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Existing source - any source which is not a new source or a new discharger.

(2) Facilities or equipment - for the purposes of this section, buildings structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. These terms exclude facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(3) New source, new discharger, and site are defined in §305.2 of this title (relating to Definitions).

(4) Source - any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(b) Criteria for new source determination.

(1) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in §305.2 of this title (relating to Definitions) and:

(A) it is constructed at a site at which no other source is located; or

(B) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(C) its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the director shall consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraph (1) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

(3) Construction on a site at which an existing source is located results in an amendment subject to §305.62 of this title (relating to Amendments) rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (1)(B) or (C) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under §305.2 of this title (relating to Definitions) has commenced if the owner or operator has:

(A) begun, or caused to begin as part of a continuous on-site construction program:

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(B) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under this paragraph.

(c) Effect of compliance with new source performance standards. (The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)

(1) Except as provided in paragraph (2) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-

based standards under, Clean Water Act (CWA), §301(b)(2), for the soonest ending of the following periods:

(A) 10 years from the date that construction is completed;

(B) 10 years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(C) the period of depreciation or amortization of the facility for the purposes of the Internal Revenue Code of 1954, §167 or §169 (or both).

(2) The protection from more stringent standards of performance afforded by paragraph (1) of this subsection does not apply to:

(A) additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under CWA, §307(a); or

(B) additional permit conditions in accordance with 40 Code of Federal Regulation (CFR) §125.3, adopted by §308.1 of this title (relating to Criteria and Standard for Imposing Technology-Based Treatment Requirements) controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When a TPDES permit issued to a source with a protection period under paragraph (1) of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of CWA, §301, and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 40 CFR §122.47(a)(2).

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

§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 Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions), if the permittee knows in advance of the need for a bypass, it shall submit prior notice under §35.24 of this title (relating to Application for Emergency or Temporary Order) if possible at least ten days before the date of the bypass.

(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, or severe property damage;

(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;

(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 Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions), after considering its adverse effects, if the commission 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 be based upon the following definitions and criteria:

(i) Excessive infiltration/inflow is the quantity of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

(ii) Nonexcessive infiltration is the quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

(iii) Nonexcessive inflow is the maximum total flow rate during storm events which does not result in chronic operational problems related to hydraulic overloading of the treatment works or which does not result in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

Adopted November 18, 1998

Effective December 10, 1998

§305.536. Requirements for Applications and Permits with Sludge Related Conditions.

(a) Sludge standards. The permittee shall comply with standards for sewage sludge use or disposal established under the Clean Water Act, §405(d) (40 Code of Federal Regulations, Part 503) within the time provided in the regulations that established such standards, even if the permit has not yet been modified to incorporate standards.

(b) Additional Contents of Applications. In addition to all other requirements for information described in §305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), all treatment works treating domestic sewage shall submit to the executive director within the time frames established in subsection (c) of this section the information described in 40 CFR §§501.15(a)(2)(viii)-(xii), as amended.

(c) Time Frames for Applications.

(1) Any POTW with a currently effective TPDES permit shall submit the application information required by subsection (b) of this section when its next application for TPDES permit renewal is due or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to POTWs' sludge use or disposal practices, whichever occurs first.

(2) Any other existing treatment works treating domestic sewage not covered under subsection (c)(1) of this section shall submit an application to the executive director within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practices or upon request of the executive director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the executive director determines that a permit is necessary to protect

public health and the environment from any adverse effect that may occur from toxic pollutants in sewage sludge.

(3) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the executive director at least 180 days prior to the date proposed for commencing operations.

(d) Fact Sheets. A fact sheet shall be prepared for every draft permit described in 40 CFR §501.15(d)(4), as amended. The executive director shall send this fact sheet to the applicant and, on request, to any other person. The fact sheet shall include the information required by 40 CFR §501.15(d)(4), as amended.

§305.537. Reporting Requirements for Planned Physical Changes to a Permitted Facility.

Except to the extent that it is less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations §122.41(l)(1), which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference.

§305.538. Prohibitions for TPDES Permits.

No permit may be issued under the conditions prohibited in 40 Code of Federal Regulations §122.4, as amended.

§305.539. Additional Requirements for Shrimp Aquaculture Facilities Within the Coastal Zone.

(a) A commercial aquaculture facility, located within the coastal zone as delineated under rules of the Coastal Coordination Council, 31 TAC §503.1, and engaged in the production of shrimp that will discharge into water in the state shall comply with the following requirements.

(1) The applicant shall apply to the executive director for an individual Texas pollutant discharge elimination system (TPDES) permit. The application, in addition to the information required by the application form, shall include:

(A) a copy of the site-assessment environmental report submitted to the Texas Department of Agriculture (TDA) as part of the application for an aquaculture license; and

(B) a copy of an emergency plan, approved by the Texas Parks and Wildlife Department (TPWD), for incorporation into the TPDES permit.

(2) The applicant shall obtain an individual TPDES wastewater discharge permit in accordance with the requirements of this chapter before discharging into water in the state.

(3) The applicant shall obtain an amendment to an individual TPDES permit prior to an increase in the amount of discharge above the levels allowed in the existing permit or a change in the nature of the discharge, except as otherwise provided by Chapter 35, Subchapter F of this title (relating to Water Quality Emergency and Temporary Orders).

(4) The facility shall comply with the terms and conditions of its individual TPDES permit, and any quarantine conditions imposed by TPWD, except in cases where the facility is in imminent danger of overflow, flooding, or similar conditions that could result in either the release of exotic species that are regulated by the TPWD or that would result in the violation of a quarantine condition imposed by the TPWD. In such cases, the facility may discharge effluent in excess of the permitted flow rates, but only to the extent necessary to comply with an emergency plan that is approved by the TPWD, and the following provisions shall also apply.

(A) The facility is not subject to effluent limitations, discharge flow limitations, and other effluent monitoring requirements in the permit for discharges that comply with an emergency plan approved by the TPWD.

(B) A facility shall notify the appropriate TCEQ regional office at least 48 hours, or as soon as practicable, prior to initiating any action under an emergency plan in response to an emergency event, such as landfall of a hurricane, and shall notify the regional office as soon as practicable following initiation of the emergency plan.

(C) The facility shall control discharges made under an emergency plan in the most environmentally sound manner that is practicable.

(D) Within 30 days following initiation of the emergency plan, the facility shall submit a written report to the appropriate TCEQ regional office that includes the following information:

- (i) the reason for initiation of the plan;
- (ii) actions taken to prevent or mitigate impacts of the discharge to the receiving stream;
- (iii) volumes of wastewater discharged;
- (iv) the dates that discharges occurred; and
- (v) a general summary of receiving stream conditions at the time of the discharges.

(E) The facility is responsible for demonstrating that the discharges were necessary and that conditions required initiation of the emergency plan.

(5) A facility engaged in the propagation or rearing of shrimp which exhibit one or more manifestations of disease as defined by TPWD in 31 TAC §57.111 and §69.75 shall immediately report the apparent disease to the TCEQ regional office and Wastewater Permitting Section, and to TPWD, and shall comply with 31 TAC §57.114 and §69.77. The executive director shall be immediately notified of the results of any analyses by a shellfish disease specialist. Any actions which are deemed necessary by the discharger to prevent transmission of the disease to aquatic life endemic to waters in the state shall be implemented as soon as possible. The executive director may require suspension or termination of the

discharge of effluent from infected portions of the facility as is necessary to protect aquatic life in the receiving stream from potential adverse effects.

(6) A facility required to hold a permit from TPWD regulating the possession and sale of exotic fish and shellfish shall immediately notify the TCEQ regional office and Wastewater Permitting Section if the TPWD places the facility under quarantine condition. There shall be no discharge during the quarantine period, except upon approval by the executive director and TPWD. The executive director and TPWD may suspend or terminate the prohibition on discharge to allow for implementation of the facility's emergency plan approved by TPWD, following the lifting of the quarantine condition by TPWD, or based on other relevant factors.

(7) Except as provided in paragraph (4) of this subsection, a facility shall comply with the terms and conditions in its individual TPDES permit, which shall include conditions related to suspended solids based on levels and measures adequate to prevent:

(A) a potential significant adverse response in aquatic organisms, changes in flow patterns of receiving waters, or excessive sedimentation of bays; and

(B) a potential significant adverse response in aquatic plants caused by reduction of light due to suspended solids in discharges.

(b) All new, amendment, or renewal applications for an individual TPDES permits to which the requirements of this section apply are subject to review by a three-member application review committee comprised of one representative each from the executive director, TPWD, and TDA.

(c) In considering whether to approve an application for a new, amended, or renewed individual TPDES permit for a commercial aquaculture facility located within the coastal zone and engaged in the production of shrimp, the commission shall consider all relevant factors, including:

(1) the site-assessment environmental report provided by the applicant under subsection (a)(1)(A) of this section;

(2) any sensitive aquatic habitat guidelines established by TPWD; and

(3) any comments on the application provided by the three-member application review committee referred to in subsection (b) of this section.

Adopted September 19, 2007

Effective October 11, 2007