

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §311.6, Storm Water Runoff and Certain Non-Storm Water Discharges; §311.16, Storm Water Runoff and Certain Non-Storm Water Discharges; and §311.56, Storm Water Runoff and Certain Non-Storm Water Discharges.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Chapter 311 provides that the disposal of wastewater within defined watersheds, or water quality areas, is either prohibited or is allowed only under certain conditions. Subchapters A and B prohibit all discharges within the Lakes Travis and Austin Water Quality Areas and Lakes Inks and Buchanan Water Quality Areas, respectively, except for discharges from sewage treatment facilities that meet a defined level of effluent quality. Subchapter F prohibits discharges into or adjacent to water in the state within the Lakes Lyndon B. Johnson and Marble Falls Water Quality Areas except for discharges from treatment facilities that meet a defined level of effluent quality.

The commission received authority from the United States Environmental Protection Agency (EPA) to issue storm water and certain non-storm water discharge permits on September 14, 1998. In a September 14, 1998 memorandum of agreement (MOA) between the EPA and the commission, the EPA agreed to continue to administer storm water and certain non-storm water discharge permits that were issued prior to September 14, 1998 until they expire. Following the expiration of these permits, the commission would reissue and administer these permits as Texas pollutant discharge elimination system (TPDES) permits.

Although the TNRCC has not operated a separate state storm water permitting program, the current requirements in Subchapters A, B, and F could be interpreted to restrict the development and issuance of TPDES storm water permits within these watersheds. The commission is proposing to revise these subchapters to allow the discharge of storm water runoff and certain other non-storm water runoff if authorized by a TPDES permit. TPDES discharge permits are currently being developed to authorize storm water and certain non-storm water discharges throughout the state. The proposed new sections would allow the issuance of these permits within the specified watersheds.

SECTION BY SECTION DISCUSSION

Proposed new §§311.6, 311.16, and 311.56 (Storm Water Runoff and Certain Non-Storm Water Discharges) would allow the commission to issue TPDES permits to regulate the discharge of storm water runoff from industrial facilities, municipal separate storm sewer systems, and construction activities into the Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls Water Quality Areas. The proposal would also allow the commission to issue TPDES permits to regulate the discharge of the following 11 non-storm water discharges into these water quality areas: fire-fighting activities; fire hydrant flushings; potable water sources, including drinking fountain water and water line flushings; uncontaminated air conditioning or compressor condensate; lawn watering and similar irrigation drainage; pavement washdown without the use of detergents or other chemicals and where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed); routine external building wash down that does not use detergents or other compounds; uncontaminated ground water or spring water; foundation or footing drains where flows are not contaminated with process materials such as solvents; spray down of lumber and wood product storage

yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage; and storm water and ground water seepage from mine dewatering activities at construction sand and gravel, industrial sand, or crushed stone mining facilities.

These discharges are currently authorized in the federal national pollutant discharge elimination system (NPDES) storm water permit program. The TNRCC could choose to be more stringent in the TPDES program than the EPA is in the NPDES program, by imposing a blanket prohibition on all such discharges. However, the TNRCC's opinion is that it is probably environmentally appropriate and economically sound to allow the discharges to continue. These point source storm water and other discharges have been authorized under the NPDES program for several years, and they existed before they were regulated. Continuing the discharges under a regulatory program of individual and general permits is appropriate to ensure that the discharges do not cause an environmental problem. The commission will carefully consider the necessary terms and conditions of each proposed permit before it is issued.

Conversely, to now entirely prohibit these discharges would cause serious economic disruption. Businesses that rely on being able to discharge their storm water and other discharges would have to either find another means of disposing of the water, or shut down their business. Because of the volume of storm water, methods other than discharge would likely be prohibitively expensive. The EPA has issued permits for these discharges based on EPA's finding that the permit conditions maintain water quality. The TPDES program will continue to regulate these discharges to ensure that they do not have an adverse environmental impact. Therefore, amending this rule to enable the commission to

continue the NPDES policy authorizing these discharges is appropriate.

COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed new sections are in effect, there will be fiscal implications which are not anticipated to be significant for any single unit of state and local government as a result of administration or enforcement of the proposed new sections.

The proposed new sections would provide the authority for the commission to issue TPDES storm water and certain non-storm water discharge permits, covering industrial facilities, municipal separate storm sewer systems, and construction sites located within the Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls Water Quality Areas (located in Travis, Burnet, and Llano Counties). The EPA currently grants permits covering storm water and certain non-storm water discharges into the areas covered by the proposed new sections. State law currently allows the issuance of permits for storm water and certain non-storm water discharges statewide; however, current commission rules prohibit storm water and certain non-storm water discharges in the areas covered by the proposed new sections.

The commission received authority from the EPA to issue storm water and certain non-storm water discharge permits on September 14, 1998. In a September 14, 1998 memorandum of agreement (MOA) between the EPA and the commission, the EPA agreed to continue to administer storm water and certain non-storm discharge permits that were issued prior to September 14, 1998 until they expire.

Following expiration of these permits, the commission would reissue and administer these storm water and certain non-storm water permits as TPDES permits. The MOA also stipulated that any new storm water and certain non-storm water permits would be issued by the commission as TPDES storm water and certain non-storm water discharge permits. If the rules are not amended, facilities located within the Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls Water Quality Areas currently permitted by the EPA will have to capture and dispose of, in a manner that would not discharge to water in the state, all storm water and certain non-storm water that falls on their facilities. TPDES storm water and certain non-storm water discharge permits are currently being developed to authorize storm water and certain non-storm water discharges throughout the state. The proposed new sections would allow the issuance of these permits within the specified watersheds.

Examples of facilities that would be allowed to discharge as a result of these proposed new sections include: dairy product processing sites; textile mills; feedlots; cement, fertilizer, soap, glass, and rubber manufacturing facilities; metal and coal mining facilities; oil and gas extraction facilities; hazardous waste treatment, storage and disposal facilities; landfills; metal scrap yards; battery reclaimers; salvage yards; automobile junkyards; steam electric power generating facilities; transportation facilities; wastewater facilities; municipal separate storm sewer systems; and construction sites (including clearing, grading, excavation) that disturb one acre or larger tracts of land.

Units of state and local government that operate a facility, subject to these rules, that want to discharge storm water and certain non-storm water into the water quality areas covered under this rulemaking will be required to pay application and annual fees. These will be new fees for the affected facilities.

According to the EPA and based on the 1990 census, there are approximately 189 industrial sites and 822 construction sites that have obtained permits under the federal storm water discharge program that are located within Blanco, Llano and Travis Counties. There is also one municipal separate storm sewer system (Austin) within the aforementioned counties. Not all of these federally permitted industrial and construction sites are located within the covered water quality areas. Therefore, the total number of sites located within the specific water quality areas covered by this rulemaking should be less than the total number of facilities cited. Any new storm water and certain non-storm water discharge permits issued by the commission will be at least as stringent as those permits administered by the EPA. Currently, the cost to comply for units of state and local government only includes the payment of application and annual fees. The commission anticipates that all facilities, except for municipal separate storm sewer systems, seeking permits as a result of this rulemaking will be required to pay an approximate \$100 application fee. The operator of a municipal separate storm sewer system will be required to pay an approximate \$2,000 application fee. Additionally, all facilities seeking permits authorized by this rulemaking, except for construction sites, will be required to pay an approximate \$100-\$600 annual fee. Construction sites will not be required to pay an annual fee for the duration of the permit.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed new sections are in effect, the public benefit anticipated from enforcement of and compliance with the proposed new sections will be standardization and clarification of storm water permit requirements within the water quality areas covered by this rulemaking and the continued granting of storm water and certain non-storm water discharge permits currently authorized by the EPA.

The proposed new sections would provide the authority for the commission to issue TPDES storm water and certain non-storm water discharge permits, covering industrial facilities, municipal separate storm sewer systems, and construction sites located within the Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls Water Quality Areas (located in Travis, Burnet, and Llano Counties). The EPA currently grants permits covering storm water and certain non-storm water discharges into the areas covered by the proposed new sections. State law currently allows the issuance of permits for storm water and certain non-storm water discharge statewide; however, current commission rules prohibit storm water and certain non-storm water discharges in the areas covered by the proposed new sections.

There will be fiscal implications which are not anticipated to be significant to persons and businesses as a result of administration and enforcement of the proposed new sections. Owners and operators of facilities, subject to these rules, that want to discharge storm water and certain non-storm water into the covered water quality areas of this rulemaking will be required to pay application and annual fees.

These will be new fees for the affected facilities. According to the EPA there are approximately 189 industrial sites and 822 construction sites that have obtained permits under the federal storm water discharge program that are located within Blanco, Llano and Travis Counties. Not all of these federally permitted industrial and construction sites are located within the covered water quality areas.

Therefore, the total number of sites located within the specific water quality areas covered by this rulemaking should be less than the total number of facilities cited. Any new storm water and certain non-storm water discharge permits issued by the commission will be at least as stringent as those permits administered by the EPA. Currently, the cost to comply for persons and businesses only

includes the payment of application and annual fees. The commission anticipates that all facilities seeking permits as a result of this rulemaking will be required to pay an approximate \$100 application fee. Additionally, all facilities seeking permits under this rulemaking, except for construction sites, will be required to pay an approximate \$100-\$600 annual fee. Construction sites will not be required to pay an annual fee for the duration of the permit.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be fiscal implications which are not anticipated to be adverse to any affected small business and micro-business as a result of implementing the proposed new sections.

Small and micro-businesses that own and operate facilities, subject to these rules, that want to discharge storm water and certain non-storm water into the water quality areas covered under this rulemaking, will be required to pay application and annual fees. These will be new fees for the affected facilities. According to the EPA there are approximately 189 industrial sites and 822 construction sites that have obtained permits under the federal storm water discharge program that are located within Blanco, Llano and Travis Counties. Not all of these federally permitted industrial and construction sites are located within the covered water quality areas. Therefore, the total number of sites located within the specific water quality areas covered by this rulemaking, some of which are small and micro-businesses, should be less than the total number of facilities cited. Any new storm water and certain non-storm water discharge permits issued by the commission will be at least as stringent as those permits administered by the EPA. Currently, the cost to comply for small and micro-businesses only includes the payment of application and annual fees. The commission anticipates that all facilities seeking permits under this

rulemaking will be required to pay an approximate \$100 application fee. Additionally, all facilities seeking permits under this rulemaking, except for construction sites, will be required to pay an approximate \$100-\$600 annual fee. Construction sites will not be required to pay an annual fee for the duration of the permit.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Government Code.

The specific intent of the proposed new sections is to protect the environment by authorizing, and thus controlling, storm water and certain non-storm water discharges into the Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls Water Quality Areas. The proposed new sections, however, will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state; therefore, the new sections do not constitute a major environmental rule.

The proposed rules will not adversely affect the economy, or a sector of the economy. In actuality, the rules will result in an overall economic savings because, without these proposed new sections, all covered discharges would have to be collected and disposed of in some other manner. Any alternative discharge method would be very expensive, and would thus result in an adverse economic impact.

The proposed new sections will not adversely affect productivity, because the proposed changes will authorize the discharge of storm water directly into the lakes in the affected water quality areas. If the rules are not amended, however, there will be an adverse affect on productivity, competition, and jobs, because the affected industries would be required to contain and dispose of storm water in some other manner than discharging to water in the state.

The proposed new sections will not aversely affect jobs, because the affected industries will be able to discharge storm water in a way that is both economically practical and environmentally safe. If the rules are not amended there could be a negative impact on jobs, because the impacted industries would be required to spend resources on collecting and disposing of storm water. If the affected industries are required to collect and treat storm water, there will necessarily be less money to spend on other areas of the business; thus, jobs could be affected.

Additionally, the proposed new sections will not adversely affect competition; in fact, if the rule is not amended, there will be a significant adverse impact on competition. Industries that do not discharge into the affected water quality areas will have a definite competitive advantage over those that do discharge into the water quality areas. Because industries that do not discharge into one of the affected water quality areas will not be required to collect storm water, but the same industries that do discharge into affected water quality areas will be required to collect the storm water; those industries that do not discharge into the affected water quality areas will have a definite competitive advantage.

Furthermore, the proposed rules will not adversely affect the environment for two reasons. First, discharges authorized under the rules will not add significant concentrations of pollutants to the lakes because the quality of storm water and the certain other non-storm water discharges will be maintained through the TPDES permit. Second, storm water is currently being discharged into the affected lakes, under the terms existing authorization from the EPA. Under federal law, Texas permits must be at least as stringent as the expiring NPDES permit; thus, these proposed new sections will not degrade the affected water bodies.

The public health and safety of the state will not be adversely affected by the proposed new sections because the proposed new sections only give the agency the authority to authorize storm water discharges. The proposed new sections do not authorize any specific discharge; thus, the new sections will not have an impact on public health and safety.

TAKINGS IMPACT ASSESSMENT

The commission's preliminary assessment is that Texas Government Code, Chapter 2007 does not apply to these proposed rules because the proposed new sections are not a taking as defined in Chapter 2007, nor are they a constitutional taking of private real property. The specific purpose of the proposed new sections is to authorize the discharge of storm water and certain types of non-storm water into the water quality areas of Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls.

Promulgation and enforcement of these proposed rules will not affect private real property which is the subject of the rules because the proposed new sections will neither restrict or limit the owner's right to

the property, nor cause a reduction of 25% or more in the market value of the property. First, the new sections will enable the commission to authorize discharges of storm water, and certain other kinds of non-storm water, which would otherwise not be authorized. Thus, property owner's use of their property will not be restricted.

Secondly, property values will not be decreased because the new sections will not limit the use of the property. Conversely, if the rules are not amended, property values will be decreased because industries that would discharge into the affected water quality areas would be forced to collect and dispose of storm water, and the other authorized non-storm water discharges. The collection and treatment cost would render the property less valuable, thus reducing the property value. Thus, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, nor will they affect any action or authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on September 11, 2000 at 2:00 p.m. at the TNRCC Complex in Building F, Room 2210, located at 12015 Park 35 Circle. The hearing will be

structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments must reference Rule Log No. 2000-010-311-WT. Comments must be received by 5:00 p.m., September 25, 2000. For further information, please contact Mary Ambrose, Policy and Regulations Division, at (512) 239-4813.

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code, §5.103 and §26.011, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code or other laws of this state. Section 26.011 gives the commission the duty to administer the provisions of Texas Water Code, Chapter 26, to establish the level of quality to be maintained in water in the state, and to control the quality of water in the state.

No other codes or statutes will be affected by this proposal.

SUBCHAPTER A: LAKES TRAVIS AND AUSTIN WATER QUALITY

§311.6

§311.6. Allowable Storm Water Runoff and Certain Non-Storm Water Discharges.

(a) The following discharges of storm water runoff may be authorized by a Texas pollutant discharge elimination system (TPDES) permit:

(1) storm water runoff from industrial facilities;

(2) storm water runoff from municipal separate storm sewer systems; and

(3) storm water runoff from construction activities.

(b) The following non-storm water discharges may be authorized by a TPDES permit:

(1) discharges from fire fighting activities;

(2) discharges from fire hydrant flushings;

(3) discharges from potable water sources, including drinking fountain water and water line flushings;

(4) discharges from uncontaminated air conditioning or compressor condensate;

(5) discharges from lawn watering and similar irrigation drainage;

(6) discharges from pavement washdown without the use of detergents or other chemicals and where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed);

(7) discharges from routine external building wash down that does not use detergents or other compounds;

(8) discharges from uncontaminated groundwater or spring water;

(9) discharges from foundation or footing drains where flows are not contaminated with process materials such as solvents;

(10) discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage; and

(11) discharges of storm water and groundwater seepage from mine dewatering activities at construction sand and gravel, industrial sand, or crushed stone mining facilities.

SUBCHAPTER B: LAKES INKS AND BUCHANAN WATER QUALITY

§311.16

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code, §5.103 and §26.011, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties the Texas Water Code or other laws of this state. Section 26.011 gives the commission the duty to administer the provisions of Texas Water Code, Chapter 26, to establish the level of quality to be maintained in water in the state, and to control the quality of water in the state.

No other codes or statutes will be affected by this proposal.

§311.16. Allowable Storm Water Runoff and Certain Non-Storm Water Discharges.

(a) The following discharges of storm water runoff may be authorized by a Texas pollutant discharge elimination system (TPDES) permit:

(1) storm water runoff from industrial facilities;

(2) storm water runoff from municipal separate storm sewer systems; and

(3) storm water runoff from construction activities.

(b) The following non-storm water discharges may be authorized by a TPDES permit:

(1) discharges from fire fighting activities;

(2) discharges from fire hydrant flushings;

(3) discharges from potable water sources, including drinking fountain water and water line flushings;

(4) discharges from uncontaminated air conditioning or compressor condensate;

(5) discharges from lawn watering and similar irrigation drainage;

(6) discharges from pavement washdown without the use of detergents or other chemicals and where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed);

(7) discharges from routine external building wash down that does not use detergents or other compounds;

(8) discharges from uncontaminated groundwater or spring water;

(9) discharges from foundation or footing drains where flows are not contaminated with process materials such as solvents;

(10) discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage; and

(11) discharges of storm water and groundwater seepage from mine dewatering activities at construction sand and gravel, industrial sand, or crushed stone mining facilities.

SUBCHAPTER F: LAKES LYNDON B. JOHNSON AND MARBLE FALLS WATER

QUALITY

§311.56

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code, §5.103 and §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code or other laws of this state. Section 26.011 gives the commission the duty to administer the provisions of Texas Water Code, Chapter 26, to establish the level of quality to be maintained in water in the state, and to control the quality of water in the state.

No other codes or statutes will be affected by this proposal.

§311.56. Allowable Storm Water Runoff and Certain Non-Storm Water Discharges.

(a) The following discharges of storm water runoff into or adjacent to water in the state may be authorized by a Texas pollutant discharge elimination system (TPDES) permit:

(1) storm water runoff from industrial facilities;

(2) storm water runoff from municipal separate storm sewer systems; and

(3) storm water runoff from construction activities.

(b) The following non-storm water discharges into or adjacent to water in the state may be authorized by a TPDES permit:

(1) discharges from fire fighting activities;

(2) discharges from fire hydrant flushings;

(3) discharges from potable water sources, including drinking fountain water and water line flushings;

(4) discharges from uncontaminated air conditioning or compressor condensate;

(5) discharges from lawn watering and similar irrigation drainage;

(6) discharges from pavement washdown without the use of detergents or other chemicals and where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed);

(7) discharges from routine external building wash down that does not use detergents or other compounds;

(8) discharges from uncontaminated groundwater or spring water;

(9) discharges from foundation or footing drains where flows are not contaminated with process materials such as solvents;

(10) discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage; and

(11) discharges of storm water and groundwater seepage from mine dewatering activities at construction sand and gravel, industrial sand, or crushed stone mining facilities.