

The Texas Natural Resource Conservation Commission (commission) adopts the amendment to §205.2, Purpose and Applicability, *without change* to the proposed text as published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 2957) and it will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The primary purpose of the adopted amendment is to revise the commission rule to conform to certain United States Environmental Protection Agency (EPA) regulations by introducing language which corresponds to the federal regulations.

On September 14, 1998, EPA authorized the State of Texas to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters in the state under the federal Water Pollution Control Act, as amended, 33 United States Code, §§1251 *et seq.* (commonly referred to as the Clean Water Act or CWA). The approved state program, i.e., the Texas Pollutant Discharge Elimination System (TPDES) program, 63 FR 51164 (September 24, 1998), is administered by the commission. The amendment to Chapter 205, necessitated by EPA revisions to its regulations, is part of the commission's effort to revise several chapters of its rules to maintain equivalency with EPA regulations and to thereby maintain delegated NPDES permitting authority.

SECTION DISCUSSION

Section 205.2 is amended to incorporate language contained in 40 Code of Federal Regulations (CFR) §122.28(a)(3). The EPA revised its general permit regulations to clarify that if a water quality-based

effluent limit (WQBEL) is derived for a category or subcategory of dischargers, and a general permit is issued for the same category or subcategory of dischargers, then the general permit must contain the same WQBEL.

The EPA believes that there are situations where general permits can effectively impose WQBELs such as where a general permit is developed in close coordination with a total maximum daily load and/or a wasteload allocation. The EPA states that cases (e.g., in Puerto Rico) exist in which general permits are being used to impose WQBELs on facilities within a specific category or subcategory of discharges. Therefore, EPA believes that there are enough situations in which WQBELs are appropriate in general permits for the modification of the rule to be useful. Currently, no general permit in Texas contains numeric WQBELs. In addition, no WQBELs have been established for a specific category or subcategory of dischargers. If a general permit is issued containing WQBELs, the impact on a specific category or subcategory of dischargers will be the same as if the entity chose to obtain an individual permit.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and 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 that statute. The adopted rule will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment will update the general permits for waste discharge rules to

incorporate certain federal regulations regarding NPDES permitting requirements. The amendment does not meet the definition of a “major environmental rule” as defined in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The commission concludes that a regulatory analysis is not required because the proposed amendment does not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission assessed the amendment in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted rulemaking is to ensure that the permit requirements are equivalent to EPA NPDES permitting regulations. The amendment will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The commission’s assessment is that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the adopted rule is subject to the CMP and must be consistent with applicable CMP goals and policies in 31 TAC §501.12 and §501.14. The rulemaking will conform commission rules to EPA requirements for regulating discharges of pollutants under the CWA to maintain delegated NPDES permitting authority. The NPDES requirements incorporated in the commission's rules are consistent with and will aid in achieving CMP goals and policies. The commission also determined that the rulemaking will not have a direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

PUBLIC COMMENT

A public hearing was not held on this rulemaking. The public comment period closed May 13, 2002, and no comments were received.

SUBCHAPTER A: GENERAL PERMITS FOR WASTE DISCHARGES

§205.2

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§205.2. Purpose and Applicability.

(a) The commission may issue a general permit to authorize the discharge of waste into or adjacent to water in the state by category if the commission finds the discharges in the category are storm water or the dischargers in the category:

- (1) engage in the same or substantially similar types of operations;
- (2) discharge the same types of waste;

(3) are subject to the same requirements regarding effluent limitations or operating conditions;

(4) are subject to the same or similar monitoring requirements; and

(5) are more appropriately regulated under a general permit than under individual permits, on the basis that both:

(A) the general permit can be readily enforced and the executive director can adequately monitor compliance with the terms of the general permit; this requirement being satisfied if the provisions of the general permit are clear and unambiguous and it requires adequate monitoring, recordkeeping, and reporting, appropriate to the type of activity authorized; and

(B) the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to surface or groundwater quality.

(b) The commission may issue a general permit to authorize the discharge of waste by categories of dischargers designated under subsection (a) of this section either within the entire state or within a discrete geographical area identified by an appropriate division or combination of geographic or political boundaries.

(1) General permits granted for discrete geographical areas may be based upon, but not limited to, factors such as related water quality standards, climatological conditions, and watershed specific standards in accordance with Chapter 311 of this title (relating to Watershed Protection).

(2) Discharges to be regulated with effluent limitations specific to a particular water body may be covered under a general permit limited to a particular watershed or geographical area.

(c) Authorization to discharge under a general permit does not confer a vested right.

(d) Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed under Chapter 307 of this title (relating to Texas Surface Water Quality Standards), the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations in Chapter 307.