

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §319.9, Self-Monitoring and Quality Assurance Schedules, and §319.11, Sampling and Laboratory Testing Methods.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The amendments to §319.9 and §319.11 are proposed in order to address changes to Environmental Protection Agency (EPA) regulations. On September 14, 1998, the State of Texas was authorized by EPA 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 Federal Register 51164 (September 24, 1998), is administered by the commission. The change in §319.9 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 319.11 is proposed for amendment to clarify that analytical methods as described in more recent versions, as well as the latest version, of *Standard Methods for the Examination of Water and Wastewater (Standard Methods)*, are acceptable to the commission. The current language contained within §319.11 refers to 40 Code of Federal Regulations (CFR) Part 136 and the latest edition of *Standard Methods for the Examination of Water and Wastewater*. The EPA rules generally cite the 18th Edition of *Standard Methods*. However, laboratories may be using 18th, 19th, 20th, or, in the

near future, the 21st editions of *Standard Methods*. The commission has received inquiries from staff and commercial laboratory personnel concerning the application of the rule. It is not the intent to cite use of the older *Standard Methods* as a violation of §319.11(b).

SECTION BY SECTION DISCUSSION

Section 319.9 is proposed to be amended to add organic quality control analyses for pharmaceutical pollutants. Existing §319.9(c) analyses for organics are limited to Gas Chromatography (GC) and Gas Chromatography/Mass Spectroscopy (GC/MS). However, due to 40 CFR Part 439, Pharmaceutical Manufacturing Point Source Category, §319.9(c) must be amended to allow additional analytical methods acceptable to EPA. Part 136 of 40 CFR was amended to include additional methods for pharmaceuticals, found in Table 1F, List of Approved Methods for Pharmaceutical Pollutants. These methods include the use of High Performance Liquid Chromatography (method 1667) and Fluorescence Spectroscopy (method D4763). Currently, permittees are unable to comply with the quality assurance requirements specified in §319.9(c), Table 3, since organics are limited to analyses with GC and GC/MS. The entities impacted are direct and indirect dischargers of wastewater subject to 40 CFR Part 439.

Section 319.11 is proposed to be amended to clarify that effluents may be analyzed according to test methods specified in 40 Code of Federal Regulations Part 136 or more recent editions of *Standard Methods* than that cited in Part 136. Currently, EPA rules reference the 18th edition of *Standard Methods*. However, laboratories may be using 18th, 19th, 20th, or, in the near future, the 21st editions of *Standard Methods*. The commission has received inquiries from staff and commercial laboratory

personnel concerning the application of the rule. 40 CFR Part 136 generally sites the 18th edition of *Standard Methods*. Laboratories may be using 18th, 19th, 20th, or, in the near the 21st edition of *Standard Methods*. It is not the agency's intention to cite use of the 19th, or future, editions of *Standard Methods* as a violation of §319.11(b). Therefore, the rule is being revised to allow use of more recent editions of *Standard Methods* than cited in the federal regulations as well as the latest edition. The revision maintains existing regulatory flexibility and eliminates unintended permit violations. All wastewater permittees are affected by the proposed amendments.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications to units of state or local government as a result of implementation of the proposed amendments.

The proposed amendments are intended to conform to EPA CWA regulations clarifying existing agency regulations concerning effluent testing methods and analysis of organics in water. The commission received authority from EPA to issue TPDES permits on September 14, 1998. In order to keep this authority, the commission is required to adopt updated EPA rules that affect the TPDES program. This rulemaking will meet this requirement by adding provisions for two new test methods for pharmaceutical pollutants and by clarifying that effluents may be analyzed using newly adopted EPA methods.

All 24,000 TPDES permitted facilities and construction sites in Texas, many of which are owned and operated by units of state and local government, will be affected by the proposed amendments.

However, the proposed amendments are procedural in nature and do not introduce additional regulatory requirements that are not currently enforced by the EPA. Therefore, the commission does not anticipate significant fiscal implications for affected units of state and local government due to implementation of the proposed amendments.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be the elimination of unintended permit violations by revising commission rules to adopt updated EPA standards, clarify applicable rules, and provide for the use of enhanced and more recent analytical methods.

The proposed amendments are intended to revise the commission rules to conform to EPA CWA regulations under the CWA by clarifying existing agency regulations concerning effluent testing methods and analysis of organics in water. The commission received authority from EPA to issue TPDES permits on September 14, 1998. In order to keep this authority, the commission is required to adopt updated EPA rules that affect the TPDES program. This rulemaking will meet this requirement by adding provisions for two new test methods for pharmaceutical pollutants, by clarifying that effluents may be analyzed using newly adopted EPA methods, by clarifying applicable rules, and by providing for the use of enhanced and more recent analytical methods.

All 24,000 TPDES permitted facilities and construction sites in Texas, many of which are owned and operated by individuals and businesses, will be affected by the proposed amendments. However, the proposed amendments are procedural in nature and do not introduce additional regulatory requirements that are not currently enforced by the EPA. Therefore, the commission does not anticipate significant fiscal implications for affected individuals and businesses due to implementation of the proposed amendments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed amendments. The proposed amendments are intended to conform to EPA CWA regulations by clarifying existing agency regulations concerning effluent testing methods and analysis of organics in water. This rulemaking will add to existing commission regulations two new test methods for pharmaceutical pollutants, clarify that effluents may be analyzed using newly adopted EPA methods, clarify applicable rules, and provide for the use of enhanced and more recent analytical methods.

All 24,000 TPDES permitted facilities and construction sites in Texas, some of which may be owned and operated by small and micro-businesses, will be affected by the proposed amendments. However, the proposed amendments are procedural in nature and do not introduce additional regulatory requirements that are not currently enforced by the EPA. Therefore, the commission does not anticipate significant fiscal implications for affected small and micro-businesses due to implementation of the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed rule are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 §2001.0225(g)(3), and because it does not trigger any of the four criteria in §2001.0225(a). The proposed amendments would 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 proposed amendments would update permit rules to incorporate certain federal regulations regarding NPDES permitting requirements. The proposed amendments do 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 rulemaking does not meet the definition of a “major environmental rule” as defined in §2001.0225(g)(3) and because it does not trigger any of the four criteria in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of these proposed amendments in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed rulemaking is to ensure that permit requirements are equivalent to EPA NPDES permitting regulations. The proposed amendments will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to this proposed 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 proposed 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 proposed 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 proposed to be incorporated in the commission’s rules are consistent with and will aid in achieving CMP goals and policies. The commission also determined that the proposed 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.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-023-305-WT. Comments must be received by 5:00 p.m., May 13, 2002. For further information or questions concerning this proposal, please contact Auburn Mitchell, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1873.

SUBCHAPTER A: MONITORING AND REPORTING SYSTEM

§319.9, §319.11

STATUTORY AUTHORITY

The amendments are proposed under 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.

The amendments implement provisions of TWC, including §26.011, which requires the commission to establish and control water quality in the state; §26.023, which requires the commission to establish water quality standards; §26.027, which grants the commission the authority to issue permits for discharges into water in the state; §26.121, which prohibits the unauthorized discharge of waste into water in the state; and §26.127, which designates the commission as the principal authority on matters relating to the quality of water in the state.

§319.9. Self-Monitoring and Quality Assurance Schedules.

(a) - (b) (No change.)

(c) The following table sets forth the quality assurance requirements for wastewater analyses.

Figure: 30 TAC §319.9(c)

[Figure: 30 TAC §319.9(c)]

Table 3

REQUIRED QUALITY CONTROL ANALYSES

<u>Parameter</u>	<u>Blank</u>	<u>Standard</u>	<u>Duplicate</u>	<u>Spike</u>
Bacterial	A		B	
Alkalinity		A	B	
Ammonia Nitrogen	A	A	B	B
BOD	A	A	B	
BOD-carbonaceous	A	A	B	
COD	A	A	B	B
Chloride	A	A	B	B
Chlorine-Total or Free		D		
Cyanide-Total or Amenable to Chlorination	A	A	B	B
Fluoride	A	A	B	B
pH		C		
Kjeldahl Nitrogen	A	A	B	B
Metals (all)	A	A	B	B
Nitrate Nitrogen	A	A	B	B
Nitrite Nitrogen	A	A	B	B
Oil & Grease	A	D		
Orthophosphate	A	A	B	B
Oxygen (dissolved)		A	B	
Phenols	A	A	B	
Phosphorus-Total	A	A	B	B
Specific Conductance	A	A		
Sulfate	A	A	B	B
Sulfide	A	A	B	

Sulfite	A	A	B	
TOC	A	A	B	B
TSS	A		B	
TDS	A	A	B	
Organics by GC or GC/MS <u>or other approved methods</u>	A	A	E	E

§319.11. Sampling and Laboratory Testing Methods.

(a) (No change.).

(b) Sample containers, holding times, and preservation methods shall meet requirements specified in 40 Code of Federal Regulations (CFR) Part 136. [Sample containers, holding times, preservation methods, and the physical, chemical, and microbiological and analyses of effluents shall meet the requirements specified in regulations published in the 40 Code of Federal Regulations, Part 136, pursuant to the Federal Water Pollution Control Act, §304(g), and be conducted according to this federal regulation or the latest edition of Standard Methods for the Examination of Water and Wastewater.]

(c) Effluents shall be analyzed according to test methods specified in 40 CFR Part 136 or more recent editions of *Standard Methods for the Examination of Water and Wastewater* than those cited in Part 136.

(d) [(c)] Flow measurements, equipment, installation, and procedures shall conform to those prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the executive director.

(e) [(d)] Laboratories shall routinely use and document intralaboratory quality control practices as recommended in the latest edition of the Environmental Protection Agency manual entitled *Handbook for Analytical Quality Control in Water and Wastewater Laboratories*. These practices will include the use of internal quality control check samples.

(f) [(e)] The sampling and laboratory facilities, data, and records of quality control are subject to periodic inspection by commission personnel. Should the procedures specified in this section not be suitable to any particular situation, nonstandard sampling and testing techniques may be employed in accordance with the procedures outlined in §319.12 of this title (relating to Alternate Sampling and Laboratory Testing Methods).