

The Texas Commission on Environmental Quality (commission) adopts new Chapter 21, Water Quality Fees, §§21.1 - 21.4. Sections 21.2 - 21.4 are adopted *with changes* to the proposed text as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3459). Section 21.1 is adopted *without change* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2912, §§3.04 - 3.06, 77th Legislature, 2001 mandates the commission to consolidate the water quality assessment fee (WQAF) and the waste treatment inspection fee (WTF). The rulemaking would implement this mandate by creating new Chapter 21 using language from 30 TAC Chapters 220, Regional Assessments of Water Quality and 305, Consolidated Permits, that is applicable to the WQAF and the WTF, respectively. As directed by the legislature, the rules would establish a new consolidated methodology for assessing water quality fees. The consolidated water quality fee would replace both the current WQAF (referred to as the Clean Rivers Fee) and the WTF. This consolidated water quality fee is required by Texas Water Code (TWC), §26.0291 and will provide funding for the Texas Clean Rivers Program (TCRP) described in TWC, §26.0235 and funding for administration of water quality programs. Reasonable fees assessed to persons who benefit from the programs are necessary for these two programs to run efficiently and effectively.

Consolidation of the two current fees involves careful consideration of the requirements of the two programs, the amount of fees paid by holders of the various types, and sizes of wastewater permits. Historically, two methods have been used to calculate the annual fees assessed against wastewater permit holders. The WQAF calculation was relatively simple, assigning set dollar amounts for certain

parameters. The WTF calculation was more complicated and comprehensive and included assigning points for parameters indicative of the facility's pollution potential. For the consolidated water quality fee, the calculation method has been kept as simple as possible, while following statutory criteria and using parameters which reflect the character and the pollution potential of the wastewater being considered. The result was a combination of the best aspects of both of the current methodologies used for the annual fees for wastewater permit holders. For water rights, the fee methodology was not changed.

The adopted fee structure is based upon permit limits.

SECTION BY SECTION DISCUSSION

New §21.1, *Purpose and Scope*, provides that the purpose and scope of the chapter is to implement the Water Quality Fee Program. This fee will be assessed against wastewater permit holders and holders of a water right permit or certificate of adjudication.

New §21.2, *Definitions and Abbreviations*, includes definitions and abbreviations used in this chapter. These definitions are necessary to administer the fee programs.

New §21.3, *Fee Assessment*, details the methodology for the fee calculations and assessments for wastewater permits and water rights. Section 21.3(b)(5)(B) is adopted with changes to the proposed text to decrease the fee for uncontaminated flow from \$13 per million gallons per day (mgd) to \$10 per mgd. Section 21.3(b)(2) and (6)(A) and (B) is adopted with change to the proposed text to decrease the

minimum fee from \$1000 to \$800 for active permits and \$500 to \$400 for inactive permits. The methodology for the consolidated water quality fee retained the basic calculation method related to flow volume and traditional pollutants used for the WQAF while including consideration of the “major” designation type of facility, toxic ratings for industrial permits, and storm water discharge authorization, and making reductions for permits that are inactive or are for land application facilities, in order to maintain the current fee base needed to support the programs. The methodology for assessment of fees for water rights is not changed. This description of the methodology for assessing fees is necessary to provide notice to permit holders concerning the basis of the fees charged.

New §21.4, *Fee Period, Adjustment, and Payment*, explains the fee period, restrictions regarding adjustments, and requirements regarding payments of the water quality fee. These provisions provide procedures which are necessary to administer the fee program. These provisions relate to time periods assessed, how amendments and cancellations are assessed, how transfers of ownership of permits are handled, and payment provisions. Subsection (e) has been modified since proposal to allow electronic funds transfer as a method of payment to be consistent with other commission rule language.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as specified in the statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material

way 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. The rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is intended to create new Chapter 21 using language from Chapters 220 and 305 that is applicable to the WQAF and the WTF, respectively. The consolidation of these fees does not affect the environment or public health. Also, the rulemaking does not affect the economy, productivity, competition, or jobs because it is a combining and restructuring of water fees to be paid for the water quality program. While there may be increased fees to some entities, there would also be reduced fees to some entities, and this should not impact the economy or jobs.

Written comments on the draft regulatory impact analysis determination were solicited. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for this rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of this rulemaking is to create new Chapter 21, using language from Chapters 220 and 305 that is applicable to the WQAF and the WTF, respectively. This rulemaking would not burden private real property because they are fee rules which relate to payment for commission water quality programs.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission reviewed the rulemaking and found that the adopted new rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules subject to the Texas Coastal Management Program, nor do they affect any action or authorization identified in §505.11. This rulemaking concerns only administrative rules of the commission intended to establish a new consolidated methodology for assessing fees as directed by the legislature as a replacement for the WQAF and the WTF. Therefore, the rulemaking is not subject to the CMP.

Written comments on the consistency of this rulemaking with the CMP were solicited. No comments were received on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held on May 21, 2002, in Austin. The comment period closed on May 28, 2002. The commission received comments from Alliance For A Clean Texas (ACT); Association of Electric Companies of Texas (AECT); City of Austin (COA); City of Fort Worth (COFW); Reliant Energy (RE); San Antonio Water System (SAWS); Storm Water Management Joint Task Force (SWMJTF); TXU Energy (TXU); Representatives Ron Lewis and Gary L. Walker; and Representative David Counts, Chairman, House Committee on Natural Resources. Oral comments were provided at the public hearing by AECT and COA.

Four commenters generally supported the rulemaking with suggested revisions. Two commenters specifically opposed a portion of the rulemaking. Five commenters did not support or oppose the rulemaking, but made suggestions.

RESPONSE TO COMMENTS

ACT commented it acknowledges the efforts by the commission to seek public input from cities, industries, and the public interest community both through meetings and a formal comment process and believes that the commission arrived at a water quality fee that is fair and simpler to understand; however, ACT submitted specific suggestions to improve the rules. The first suggestion was to include a requirement that the commission submit information about how the monies raised by the new fee are spent to both political leaders and the public. The second suggestion was to lower the minimum fees to \$750 for an active permit and \$375 for an inactive permit to address ACT's concern that many of the smallest systems will see a large increase. The third suggestion was to include a toxicity fee for municipal discharges such as a \$250 surcharge to be added for permit holders who have permits requiring biomonitoring testing and a \$250 surcharge to be added for public and private wastewater discharge permit holders who have permits with numerical limits. The fourth suggestion was to add a \$100 surcharge for any active permit holder who discharges into a stream, reservoir, or bay which is on the state's most current 303d list of impaired waterbodies. Lastly, ACT suggested that the fee be based on actual average yearly discharge data, but recognized that this suggestion may have to be considered at a later date because of its complexity.

The commission appreciates ACT's support, but disagrees with the first, third, and fourth suggestions. The commission disagrees with creating another report because the commission currently reports on how the commission monies are spent through quarterly and annual performance measures submitted to the Legislative Budget Board and the United States Environmental Protection Agency. Also, the TCRP will continue to submit a document detailing program expenditures, as has been done in the past with the cost accounting report. These reports adequately indicate commission expenditures. The commission disagrees with including a toxicity fee for permits that have biomonitoring requirements or toxicant numerical limits because the conditions which necessitate those requirements in permits are, in all but a few cases, based on flow volume, which is currently included in the proposed fee calculation methodology. The commission declines to add a surcharge for permit holders discharging into 303(d) impaired waterbodies because the 303(d) list is not always directly related to the waste stream discharge; therefore it is not a fair and equitable methodology to use the 303(d) list as a mechanism to generate revenue. The commission appreciates ACT's comment on a fee based on actual average yearly discharge data and will examine this option after further study. No changes have been made in response to these comments.

Upon review and analysis of ACT's second comment, the commission determined that lowering the minimum fees would still adequately fund the program. It is therefore appropriate to lower the minimum fee from \$1000 to \$800 for active permits and \$500 to \$400 for inactive permits. Section 21.3(b)(2) and (6)(A) and (B) has been changed in response to this comment.

AECT commented that it appreciates the commission's efforts in making the water quality fees revenue neutral and avoiding major increases within specific segments; however, it does not believe that this has been achieved within the electrical generating sector. AECT also commented that the existing fee cap was \$65,000 and the new consolidated fee cap would be \$75,000. AECT suggested a \$15,000 cap on the fee for uncontaminated flow.

The commission appreciates AECT's support, but disagrees with a \$15,000 cap on uncontaminated flow because it would not be equitable to place a cap on only one parameter of the methodology. There is no justification for having a cap on one parameter and not the others. However, because of the nature of uncontaminated flow, it is appropriate to adjust the fee from \$13 per million gallons per day (mgd) to \$10 per mgd. Section 21.3(b)(5)(B) has been changed in response to this comment.

COA commented that the commission's efforts were commendable, but would like to see a performance based system in the future based on actual discharge and performance.

The commission appreciates COA's support and will examine this option after further study. No changes have been made in response to this comment.

COFW objected and expressed concerns that the characterization of storm water as wastewater in the proposed rules would result in financial and administrative burdens placed on municipalities. COFW requested that wastewater and storm water be defined, characterized, and regulated as distinct things.

The commission responds that it is inappropriate to make changes that would affect the operation of the program during a rulemaking package specifically intended to only address fee assessments and fee consolidation. No changes have been made in response to these comments.

RE commented that the commission has done an admirable job in developing a rate schedule uniting the two existing water fees into the new Water Quality Fee and that it appreciates the efforts in making the schedule revenue neutral, which avoids major increases within specific segments and disproportionate effects; however, it does not believe that this has been achieved within the electrical generating sector. RE suggested a \$15,000 cap on the fee for uncontaminated flow.

The commission appreciates RE's support, but as stated previously, disagrees with a \$15,000 cap on uncontaminated flow because it would not be equitable to place a cap on only one parameter of the methodology. However, because of the nature of uncontaminated flow, it is appropriate to adjust the fee from \$13 per mgd to \$10 per mgd. Section 21.3(b)(5)(B) has been changed in response to this comment.

SAWS stated that it recognizes the value and importance of the TCRP in maintaining surface water quality throughout the state, but is concerned about a disproportional funding of the program being placed on larger utilities. SAWS also stated that it was important that the same level of monies currently derived from the TCRP be returned to local river authorities under the new rules to ensure that local water quality issues will be addressed by local partners and stakeholders.

The commission disagrees that the fee is disproportional on large utilities. Because the fee is based on actual amounts and no longer on ranges, the fee is equitable and proportional to the amount of permitted discharges. The new rules would not change the funding levels for the TCRP in Fiscal Years (FY) 2002 and 2003. Any changes in funding for the TCRP after FY 2003 would be done in consultation with affected parties, the commission, and the legislature. No changes have been made in response to these comments.

SWMJTF objected to the characterization of storm water as wastewater and submitted specific suggestions to revise the rules to distinguish between storm water discharges and wastewater discharges. The first suggestion was to replace the term “wastewater permit” with the term “discharge permit.” The second suggestion was to replace the phrase “wastewater discharges” with “wastewater and storm water discharges.” The third suggestion was to replace the phrase “waste treatment facilities” with “waste treatment and storm sewer facilities.” The fourth suggestion was to remove the reference to TWC, Chapter 26, §21.1(b). The fifth suggestion was to list storm water as a third flow type in §21.2(a)(3). The sixth suggestion was to amend §21.2(a)(14) to modify the definition of “wastewater permit” to become “discharge permit” and include wastewater and storm water as they apply to individual and general permits. Lastly, SWMJTF suggested the removal of the word “other” in §21.3(b)(6)(C).

The commission responds that it is inappropriate to make changes that would affect the operation of the program during a rulemaking package specifically intended to only address fee assessments and fee consolidation. No changes have been made in response to these comments.

TXU commented that there is ambiguity associated with the rate schedule called the Toxicity Rating. It points out that the toxicity rating is not presented in the permit and the permittee does not have the opportunity to comment on this rating at the time an application is reviewed. TXU also suggested a cap of \$15,000 on the fee for uncontaminated flow.

The commission agrees that the permittee should have the opportunity to comment on the toxicity rating factor. Permittees will have the opportunity to evaluate the toxicity rating during the application process, or any time throughout the life of the permit; however, no change has been made to the rule language in response to this comment. The commission disagrees with a \$15,000 cap on uncontaminated flow because it would not be equitable to place a cap on only one parameter of the methodology. However, because of the nature of uncontaminated flow, it is appropriate to adjust the fee from \$13 per mgd to \$10 per mgd. Section 21.3(b)(5)(B) has been changed in response to this comment.

Representatives Ron Lewis, Gary L. Walker, and David Counts commented that the statutory increase in the cap to \$75,000 was not intended to affect a large group of fee payers, particularly industrial users of uncontaminated water.

The agency projects that less than 1.61% of all fee payers will pay the maximum fee of \$75,000 in FY 03. However, because of the nature of uncontaminated flow, it is appropriate to adjust the fee from \$13 per mgd to \$10 per mgd. Section 21.3(b)(5)(B) has been changed in response to this comment.

CHAPTER 21: WATER QUALITY

§§21.1 - 21.4

STATUTORY AUTHORITY

The new rules are adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the TCRP.

§21.1. Purpose and Scope.

- (a) It is the purpose of this chapter to implement the Water Quality Fee Program.

- (b) An annual fee will be assessed against wastewater permit holders authorized to treat or discharge wastewater into or adjacent to the waters in the state under Texas Water Code (TWC), Chapter 26, and against each person holding a right acquired under authority of TWC, Chapter 11, and the rules of the commission to impound, divert, or use state water, except for those exemptions specified in §21.3(c) of this chapter (relating to Fee Assessment). Only one fee is assessed for each permit.

(c) The fees to be assessed under this chapter do not apply to general permits.

(d) The fee shall be in proportion to the level of authorization for use of state water or for the treatment or discharge of wastewater.

(e) All resulting revenue shall be deposited in the Water Resources Management Account for the purpose of supplementing other revenue appropriated by the legislature to pay the expenses of the commission in the following programs:

(1) Water quality administration, including, but not limited to, inspection of wastewater treatment facilities and enforcement of the provisions of TWC, Chapter 26, the rules and orders of the commission related to wastewater discharges and waste treatment facilities, and the provisions of commission permits governing wastewater discharges and wastewater treatment facilities;

(2) The Texas Clean Rivers Program, under TWC, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001(5)); and

(3) Any other water resource management programs reasonably related to the activities of the persons required to pay a fee under TWC, §26.0291.

§21.2. Definitions and Abbreviations.

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

(1) **Aquaculture** -- The commercial propagation and/or rearing of aquatic species utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(2) **Flow** -- The total by volume of all wastewater discharges authorized under a permit issued in accordance with Texas Water Code (TWC), Chapter 26, expressed in order of preference, as an average flow per day, an annual average, a maximum flow per day, or an annual maximum, exclusive of variable or occasional storm water discharges. Generally, the flow amount used to calculate fees is the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional storm water discharges.

(3) **Flow type** --

(A) **Contaminated** -- Sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters, or flows containing more than one

million gallons per day process wastewater regardless of the percent of total comprised of process wastewater.

(B) **Uncontaminated** -- Non-contact cooling water or mixed flows containing not more than one million gallons per day of process wastewater, with the overall mixture being at least 90% non-contact cooling water.

(4) **Inactive permit** -- A permit which authorizes a waste treatment facility which is not yet operational or where operation has been suspended, and where the commission has designated the permit as inactive.

(5) **Land application (retention) permit** -- A permit which does not authorize the discharge of wastewater into surface waters in the state, including, but not limited to, permits for systems with evaporation ponds or irrigation systems.

(6) **Major permit** -- A permit designated as a major permit, by either EPA or the commission and subject to provisions of the National Pollutant Discharge Elimination System or Texas Pollutant Discharge Elimination System's permit authority.

(7) **Parameter** -- A variable which defines a set of physical properties whose values determine the pollution potential for a waste discharge.

(8) **Report only permit** -- A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported, but without any limitation on the volume of discharge.

(9) **State water** -- The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, and watercourse in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state. Additionally, state water injected into the ground for an aquifer storage and recovery project remains state water. State water does not include percolating groundwater, nor does it include diffuse surface rainfall runoff, groundwater seepage, or springwater before it reaches a watercourse.

(10) **Storm water authorization** -- Some individual permits authorize the variable or occasional discharge of accumulated storm water and storm water runoff, but without any specific limitation on the volume of discharge. Storm water discharge may be the only discharge authorized in a permit, or it may be included in addition to other parameters.

(11) **Toxicity rating** -- A graduated rating, with Groups I - VI, assigned to an industrial permit based on the source(s) of wastewater, the standard industrial classification of the facility, and the specific type of operation.

(12) **Traditional pollutants** -- Certain parameters typically found in wastewater permits, specifically oxygen demand (biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC)), total suspended solids (TSS), and ammonia (NH₃).

(13) **Uses of state water** -- Types of use of surface water authorized by water rights under TWC, Chapter 11.

(A) **Agricultural use** -- Any use or activity involving agriculture, including irrigation. The definition of “agriculture use” is the same as in TWC, §11.002(12), as follows:

(i) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(ii) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(iii) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(iv) raising or keeping equine animals, wildlife management; and

(v) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purposes of participating in any governmental program or normal crop or livestock rotation procedure.

(B) **Consumptive use** -- The use of state water for domestic and municipal, industrial, agricultural, or mining purposes, consistent with the meaning of these uses for which water may be appropriated under TWC, Chapter 11.

(C) **Hydropower use** -- The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(D) **Industrial use** -- The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including, without limitation, commercial feedlot operations, commercial fish and shellfish production, and the development of power by means other than hydroelectric.

(E) **Irrigation use** -- The use of state water for the irrigation of crops, trees, and pasture land including, but not limited to golf courses and parks which do not receive water through a municipal distribution system. This use is now part of the definition of agriculture use in TWC, §11.002(12).

(F) **Mariculture use** -- The propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water. This use is exempt from the need for a water right.

(G) **Mining use** -- The use of state water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(H) **Municipal** -- The use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the application of municipal sewage effluent on land, pursuant to a TWC, Chapter 26, permit where:

(i) the application site is land owned or leased by the Chapter 26 permit holder; or

(ii) the application site is within an area for which the commission has adopted a no-discharge rule.

(I) **Non-consumptive uses** -- The use of state water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation, and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under TWC, Chapter 11.

(J) **Other use** -- Any beneficial use of state water not otherwise defined herein.

(K) **Recharge** -- The use of a surface source of state water for injection into an aquifer, or for increasing the amount of natural recharge to an underground aquifer.

(L) **Recreational use** -- The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aquatic and wildlife enjoyment, and aesthetic land enhancement of a subdivision, golf course, or similar development.

(14) **Wastewater permit** -- An order issued by the commission in accordance with the procedures prescribed by TWC, Chapter 26, establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made, and including those permits issued under the authority of TWC, Chapter 26, and other statutory provisions (such as the Texas Health and Safety Code, Chapter 361) for the treatment or discharge of wastewater. For the

purpose of this subchapter, the term "permit" shall include any other authorization for the treatment or discharge of wastewater, including permits by rule and registrations and similar authorizations other than general permits.

(A) **Individual permit** -- A wastewater permit, as defined in TWC, §26.001, including registrations and permits by rule, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in TWC, Chapter 26 (other than TWC, §26.040).

(B) **General permit** -- A wastewater permit issued under the provisions of §205.1 of this title (relating to Definitions) authorizing the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by TWC, §26.040.

(15) **Water right** -- A right acquired under authority of TWC, Chapter 11 and the rules of the commission to impound, divert, store, convey, or use state water.

(b) Abbreviations. The following abbreviations apply to this chapter.

(1) **(lb/day)** -- Pounds per day.

(2) **mgd** – Million gallons per day.

(3) **mg/l** -- Milligrams per liter. For fee calculations, mg/l are converted to pounds per day (lb/day) using mg/l multiplied by flow volume in mgd, and multiplied by 8.34 equals lb/day.

(4) **SIC** -- Standard Industrial Classification assigned to a facility generating wastewater.

§21.3. Fee Assessment.

(a) The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year, without regard to the actual amount or quality of effluent discharged or the actual amount of water used.

(b) Assessment for wastewater permits.

(1) An annual fee is assessed against each person holding a wastewater permit. A separate fee is assessed for each wastewater permit.

(2) The maximum fee which may be assessed any permit is \$75,000, except that the maximum for an aquaculture permit is \$5,000. The minimum fee for an active permit is \$800. The minimum fee for an inactive permit is \$400.

(3) In assessing a fee under this chapter, the commission considers the following factors:

(A) flow volume, and type;

(B) traditional pollutants;

(C) toxicity rating;

(D) storm water discharge;

(E) major designation;

(F) active or inactive status;

(G) discharge or retention;

(H) the designated uses and ranking classification of waters affected by waste discharges; and

(I) the costs of administering the following commission programs:

(i) water quality administration, including inspection of waste treatment facilities and enforcement of the provisions of Texas Water Code (TWC), Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities;

(ii) the Texas Clean Rivers Program, under TWC, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001 (5)).

(4) For the purpose of fee calculation, chemical oxygen demand (COD) and total organic carbon (TOC) are converted to biochemical oxygen demand (BOD) values and the highest value is used for fee calculation. The conversion rate for TOC is three pounds of TOC is equal to one pound of BOD (3:1). The conversion rate for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(5) Fee rate schedule. Except as provided in paragraph (6) of this subsection, the fee shall be determined as the sum of the following factors:

(A) contaminated flow, \$700 per mgd;

(B) uncontaminated flow, \$10 per mgd;

(C) traditional pollutants, \$15 per pound per day;

(D) toxic rating for industrial discharges:

(i) Group I, \$200;

(ii) Group II, \$700;

(iii) Group III, \$1,050;

(iv) Group IV, \$1,575;

(v) Group V, \$3,150; and

(vi) Group VI, \$6,300;

(E) major permit designation, \$2,000; and

(F) storm water authorization, \$500.

(6) For the types of permits listed in this paragraph, these additional guidelines will apply in determining the fee assessment.

(A) Land application (retention) permits. The fee assessed a land application permit shall be 50% of that calculated under paragraph (5) of this subsection. However, in no event shall the fee for an active land application permit be less than \$800 per year.

(B) Inactive permits. The fee assessed an inactive permit shall be 50% of that calculated under paragraph (5) of this subsection. In the event an inactive permit is for a land application operation, the fee assessed shall be 25% of that calculated under paragraph (5) of this subsection. However, in no event shall the fee for an inactive permit be less than \$400 per year.

(C) Storm water only permits. The fee for an active permit which authorizes discharge of storm water only, with no other wastewater, is \$500.

(D) Aquaculture permits.

(i) In determining the flow volume to be used in fee calculation for an aquaculture production facility under paragraph (5) of this subsection, the flow for the facility shall be the facility's permitted annual average flow, or the facility's projected annual average flow if the permit does not have an annual average flow limitation.

(ii) If the facility's permit does not have an annual average flow limitation, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 preceding the fee year and shall be

signed and certified as required by §305.44 of this title (relating to Signatories to Applications), and that amount will be used for fee calculation.

(iii) The annual fee for aquaculture production facilities shall not exceed \$5,000.

(7) A multiplier may be applied to adjust the total fee per permit, which would also adjust the total assessment for all permits under the Water Quality Fee Program. At the time of initial implementation, the multiplier is set at 1.0, with no impact on the fees.

(c) Assessment for water rights.

(1) An annual fee is assessed against each person holding a water right, except for those exemptions specified in this section. A separate fee is assessed for each water right. These fees do not apply to water uses, including domestic and livestock use, which are exempt from the need for authorization from the commission under TWC, Chapter 11.

(2) This fee will apply to all municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (b) of this section, and to all other types of water rights except agriculture water rights and certain hydroelectric water rights described in paragraph (6) of this subsection.

(3) The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use shall be \$.22 per acre-foot up to 20,000 acre-feet, and \$.08 per acre-foot thereafter.

(4) An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the nonconsumptive rate described in paragraph (5) of this subsection.

(5) Except for water rights for hydropower purposes, the fee shall be \$.021 per acre-foot for water rights for non-consumptive use above 2,500 acre-feet per year, up to 50,000 acre-feet, and \$.0007 per acre-foot thereafter.

(6) The fee for water rights for hydropower purposes shall be \$.04 per acre-foot per year up to 100,000 acre-feet, and \$.004 per acre-foot thereafter. This fee shall not be assessed against a holder of a non-priority hydroelectric right who owns or operates privately-owned facilities which collectively have a capacity of less than two megawatts.

(7) Water which is authorized in a water right for consumptive use, but which is designated by a provision in the water right as unavailable for use, may be exempted from the assessment of a fee under paragraph (3) of this subsection.

§21.4. Fee Period, Adjustment, and Payment.

(a) The annual water quality fee assessment is for the period from September 1 through August 31, and is based on the authorized permit or water right limits as of September 1 each year, as stated in §21.3(a) of this title (relating to Fee Assessment).

(b) New or amended wastewater permits and water rights granted after September 1 will be billed for the new or amended authorization in the annual assessment for the fee year subsequent to the fee year in which the new authorization was granted.

(c) Cancellation or revocation, whether by voluntary action on the part of the holder of a wastewater permit or a water right, or as a result of proceedings initiated by the commission, will not constitute grounds for a change in the amount of a water quality fee previously assessed, or for a refund of fees previously paid.

(d) Transfer of ownership of a wastewater permit or a water right will not constitute grounds for a change in the amount of a water quality fee previously assessed, or for a refund of fees previously paid. The commission shall not process a transfer request until all annual fees owed the commission by the applicant, or for the permitted facility, are paid in full. Any wastewater permit holder or water right holder to whom a permit is transferred shall be liable for payment of any associated outstanding fees and penalties owed the commission.

(e) Annual water quality fees are payable within 30 days of the billing date each year. Fees shall be paid by check, certified check, electronic funds transfer, or money order payable to the Texas Commission on Environmental Quality (to be effective September 1, 2002).

(f) Water quality fees are payable regardless of whether the permitted wastewater facility actually is constructed or in operation, or whether any authorized water right facility has been constructed or diversion of state water made.

(g) Owners or operators of a facility failing to make payment of the fees imposed under this chapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees). In addition, failure to make payment in accordance with this chapter constitutes a violation subject to enforcement pursuant to the provisions of Texas Water Code, §26.123.