

The Texas Commission on Environmental Quality (commission) adopts the repeal of Subchapter A, Program for Monitoring and Assessment of Water Quality by Watershed and River Basin, §§220.1 - 220.7; and Subchapter B, Program for Water Quality Assessment Fees, §220.21 and §220.22. The commission adopts a concurrent replacement of the repealed sections with new §§220.1 - 220.8. The commission adopts repealed §§220.1 - 220.7, 220.21 and 220.22; and new §§220.1 - 220.8 *without changes* as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3506), 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 repeal rules relating to WQAFs and move them to new 30 TAC Chapter 21, Water Quality Fees. Concurrently, new Chapter 21 is adopted in this issue of the *Texas Register*. This rulemaking would also repeal and reformat provisions that are still applicable to the water quality assessment program, also referred to as the Texas Clean Rivers Program (TCRP).

SECTION BY SECTION DISCUSSION

Existing §§220.1 - 220.7 are repealed and replaced with new §§220.1 - 220.8 for the purpose of non-substantive formatting. These provisions were not substantively revised.

Existing §220.21 and §220.22 are repealed because the fee rules for this program are concurrently adopted in new Chapter 21.

Section 220.1, Purpose and Scope

New §220.1(a) provides that the purpose and scope of the chapter is to establish procedures for the implementation of the TCRP.

New §220.1(b) provides that river authorities or designated local governments shall be eligible for reimbursement based on equitable apportionment and that allocation procedures be periodically reviewed.

Section 220.2, Definitions

New §220.2 includes definitions for the following words used in this chapter: assessment report; designated local government; nonpoint source pollution; pollution; quality assurance project plan; river authority; river basins and coast basins; total maximum daily load; unclassified waters; wastewater permit; water right; and work plan.

Section 220.3, Responsibilities of the Commission

New §220.3(a) provides that the commission shall establish a program to provide oversight and evaluation of the strategic and comprehensive monitoring of water quality.

New §220.3(b) provides that the commission shall develop cooperative agreements and contracts with river authorities and designated local governments to implement the TCRP.

New §220.3(c) provides that the commission develop quality control/quality assurance procedures to insure that water quality data collected will maintain statewide consistency.

New §220.3(d) provides that the commission has the primary responsibility for implementation of water quality management functions.

New §220.3(e) provides that the commission will utilize water quality assessments to develop water pollution control and abatement programs to reduce water pollution from non-permitted sources.

New §220.3(f) provides that the commission will assess and collect fees from wastewater permit holders and water right holders and will apportion those funds equitably among the basins.

Section 220.4, Responsibilities of River Authorities and Designated Local Governments

New §220.4(a) provides that each river authority and designated local government that has entered into an agreement with the commission shall: organize and lead a basin-wide steering committee; develop and maintain a basin-wide water quality monitoring program; establish and maintain a watershed and river basin water quality database and/or clearinghouse; identify water quality problems and known pollution sources and set priorities for taking appropriate actions; develop a process for public participation; recommend water quality management strategies; and develop work plans.

New §220.4(b) provides that each local government or other agency that collects water quality data within the watershed shall cooperate in developing the basin monitoring plan and assessment.

New §220.4(c) provides that monitoring and assessment is a continuing duty and shall be revised periodically as appropriate.

Section 220.5, Responsibilities of Steering Committees

New §220.5(a) provides that the steering committee's role is advisory in nature and involves assistance with the review of local issues and creation of priorities.

New §220.5(b) provides that a steering committee established by the commission and contracted to implement this program in areas without a river authority or other designated local government willing to carry out the program is not subject to certain requirements related to agency advisory committees.

New §220.5(c) provides that steering committees should serve as the focus of public input to assist the river authorities and other agencies to develop water quality objectives and priorities.

Section 220.6, Reporting Requirements

New §220.6(a) provides that each river authority submit a written summary report to the appropriate entities at the appropriate year of the permitting cycle.

New §220.6(b) provides that each river authority and designated local government develop a Basin Highlight Report annually to be provided to each member of the basin steering committee and all fee payers in the basin.

Section 220.7, Leveraging of Funds to Support Federal and State Grant Programs

New §220.7 provides that the commission, river authorities, and designated local governments may use funding from this chapter to leverage other state and federal program funds to support the overall goals of this chapter.

Section 220.8, Allocation of Water Quality Fee Revenue for the Purpose of Regional Assessments of Water Quality

New §220.8(a) provides that a river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

New §220.8(b) provides that the schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan.

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 definition of a “major environmental rule” as defined 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. The rulemaking repeals rules relating to fees for this program; the new fee rules are adopted in new Chapter 21. The rulemaking also repeals and replaces rules for the purpose of non-substantive formatting.

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 prepared a takings impact assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The primary purpose of this rulemaking is to repeal rules relating to fees for this program; the new fee rules will be adopted in new Chapter 21. The repeal of these rules will not burden private real property because the repeal of these fees does not relate to private real property. The rulemaking also repeals and replaces rules for the purpose of non-substantive formatting which also will not burden private real property because it does not relate to private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission reviewed the rulemaking and found that the adopted repeals and 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 assessments of water quality and is

intended to repeal Subchapters A and B of Chapter 220, and replace the chapter with language from Subchapter A that is applicable to the water quality assessment program, while Subchapter B will be replaced by new Chapter 21. 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. No comments on the repeals and reformatting in this chapter were received. However, the substantive comments received on this rulemaking have been addressed in the **RESPONSE TO COMMENTS** section in the new Chapter 21, which is published concurrently in this issue of the *Texas Register*.

**SUBCHAPTER A: PROGRAM FOR MONITORING AND ASSESSMENT OF WATER
QUALITY BY WATERSHED AND RIVER BASIN**

§§220.1 - 220.7

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (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.

§220.1. Purpose and Scope.

§220.2. Definitions and Abbreviations.

§220.3. Responsibilities of the Commission.

§220.4. Responsibilities of River Authorities and Designation Local Governments.

§220.5. Responsibilities of Steering Committees.

§220.6. Reporting Requirements.

§220.7. Leveraging Funds to Support Federal and State Grant Programs.

SUBCHAPTER B: PROGRAM FOR WATER QUALITY ASSESSMENT FEES

§220.21, §220.22

STATUTORY AUTHORITY

The repeals 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.

§220.21. Water Quality Assessment Fees.

§220.22. Allocation of Water Quality Assessment Fee Revenue.

CHAPTER 220: REGIONAL ASSESSMENTS OF WATER QUALITY

§§220.1 - 220.8

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.

§220.1. Purpose and Scope.

(a) The purpose of this chapter is to establish procedures for the implementation of the Texas Clean Rivers Program under Texas Water Code (TWC), §26.0135, which commission program 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)). The commission has the responsibility of ensuring that regional monitoring and assessments of water quality by watershed and river basin shall be conducted by the river authorities and designated local governments that have entered into cooperative agreements with the commission, or by the commission where a river authority does not exist or is unwilling to participate. Whenever feasible the monitoring and assessment will be the result of a cooperative partnership between river

authorities, designated local governments, other political subdivisions, other state agencies, and the commission to provide the commission and other state agencies, river authorities, and local governments with sufficient information to take appropriate corrective action necessary to meet the goals of the TWC. The regional water quality monitoring and assessment program shall be designed to allow citizens and private organizations opportunities for involvement in protecting the state's water resources. The monitoring program shall provide data to identify significant, long-term water quality trends, characterize water quality conditions, support the wastewater discharge permitting process including support for the total maximum daily load process as necessary, and classify unclassified streams. The assessments must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.

(b) A river authority or designated local government shall be eligible for reimbursement of the actual costs of administration of the Texas Clean Rivers Program and implementation of the provisions of this chapter. The schedule and amount of any reimbursement shall be based on an equitable apportionment among basins. The allocation procedure shall be reviewed periodically and may be adjusted to reflect results of contractor evaluations, to address emerging issues, or to focus on problem areas identified in the water quality assessments.

§220.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings. Unless specifically defined for this chapter, definitions for other words and terms may be found in Chapter 3 of this title (relating to Definitions).

- (1) **Assessment report** -- A comprehensive record of historical, existing, and projected water quality conditions of a watershed.
- (2) **Designated local government** -- A local government that has been designated through cooperative agreement or contract with the commission to perform a regional assessment pursuant to this chapter.
- (3) **Nonpoint source pollution** -- Generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Any source of pollution that is not subject to regulation as a “point source.”
- (4) **Pollution** -- The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(5) **Quality assurance project plan (QAPP)** -- The formal document which describes in comprehensive detail the necessary quality assurance/quality control activities that must be implemented to ensure that results of work performed will satisfy stated performance criteria.

(6) **River authority** - Any district or authority created by the legislature under Texas Water Code (TWC), §30.003, which contains an area within its boundaries of ten or more counties and any other river authority or special district created under Article III, §52 and Article XVI, §59 of the Texas Constitution, which are designated by rule of the commission to comply with this chapter.

(7) **River basins and coastal basins** -- The river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Water Development Board, including, but not limited to, the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes and portions of them, as well as the lands drained by them.

(8) **Total Maximum Daily Load (TMDL)** -- Water quality-based process used to establish pollution control limits for waters not meeting water quality standards. The process is established under the federal Clean Water Act to establish control limits where technology-based controls are not adequate and should include determination of loading capacity, allocations of wasteload and loading from other pollutant sources, and an appropriate margin of safety.

(9) **Unclassified waters** -- Those waters for which no classification has been assigned and which have not been identified in Appendix A of §307.10 of this title (relating to Appendices A-E).

(10) **Wastewater permit** -- A permit issued by the commission under authority of TWC, Chapter 26, 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 purpose of this section, a permit shall include any authorization under TWC, Chapter 26 to treat or discharge wastewater, including a registration or permit by rule.

(11) **Water right** -- A right acquired under the laws of the state and the rules of the commission to impound, divert, or use state water.

(12) **Work plan** -- A document outlining the proposed scope of work, including a time schedule and cost expenditures, from a river authority or designated local government to perform a service and/or provide a comprehensive regional assessment of the watershed.

§220.3. Responsibilities of the Commission.

(a) The commission shall establish a program to provide oversight and evaluation of the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

(b) Subject to available funding described in Chapter 21 of this title (relating to Water Quality Fees), the commission shall develop cooperative agreements and contracts with river authorities and designated local governments to implement the Texas Clean Rivers Program. These contracts and cooperative agreements will be administered by the commission staff in accordance with the most recent State of Texas Uniform Grants and Contract Management Standards for State Agencies (Texas Government Code, Chapter 783) and any specific requirements of the applicable State General Appropriations Act.

(c) As part of the administration of this program the commission will develop quality control/quality assurance procedures to insure that water quality data collected under this chapter will maintain statewide consistency and will become part of the statewide database to be used in establishing water quality management permitting decisions.

(1) The commission will establish a schedule for review and approval of quality assurance plans and updates which describe procedures to be implemented by contracting agencies. Use of the quality assurance plans by commission program staff will assure that water quality monitoring data are collected consistent with statewide objectives.

(2) The commission program staff will conduct periodic program audits of contractors and subcontractors using a risk-based procedure to insure adherence to the quality assurance procedures.

(d) The commission has primary responsibility for implementation of water quality management functions and will implement these functions on a watershed basis in consideration of priorities established by river authorities and basin steering committees. Data collected in accordance with an approved quality assurance plan will be added to the statewide water quality database and used for the development and implementation of water quality management functions of the commission including review and revision of surface water quality standards and wastewater discharge permits.

(e) The commission will utilize water quality assessments developed in this program, along with other water quality assessments and studies in determining the need for cities with populations of 10,000 or more to develop water pollution control and abatement programs to reduce water pollution from non-permitted sources.

(f) The commission will assess and collect fees from wastewater permit holders and water right holders as described in Chapter 21 of this title and will apportion these funds equitably among the basins.

§220.4. Responsibilities of River Authorities and Designated Local Governments.

(a) Each river authority and designated local government that has entered into an agreement with the commission to perform duties under this chapter shall:

(1) organize and lead a basin-wide steering committee to assist with the development of water quality objectives and priorities for the basin and to fulfill responsibilities described in §220.5 of this title (relating Responsibilities of Steering Committees). Membership of the committee will reflect a diversity of interests in the basin and will include persons paying fees described under Chapter 21 of this title (relating to Water Quality Fees), the Texas State Soil and Water Conservation Board and other appropriate state agencies (for example, Texas Parks and Wildlife Department, Texas Water Development Board, Texas General Land Office, Texas Department of Health, Texas Department of Agriculture, Texas Railroad Commission, and the Texas Department of Transportation), private citizens, representatives from political subdivisions, and other persons with an interest in water quality matters in the watershed or river basin;

(2) develop and maintain a basin-wide water quality monitoring program that eliminates duplicative monitoring, facilitates the assessment process to identify problem areas and support long-term trend analyses, and targets monitoring to support the wastewater discharge permitting and standards process.

(A) A quality assurance project plan must be developed and approved to support all data collection activities. Data collected by subcontractors and others under this program must conform to the approved quality assurance project plans.

(B) The water quality monitoring program shall address collection of baseline water quality data to support trend analyses and development of the statewide water quality inventory required under federal Clean Water Act, §305(b).

(C) The water quality monitoring program shall include site-specific data collection to support the wastewater discharge permitting process for fee payers in the basin. Data collection efforts for this aspect of the program should be coordinated with the permitting cycle developed in accordance with Texas Water Code, §26.0285 (relating to permitting by basin).

(D) The water quality monitoring program shall include watershed specific data collection to address priority water quality problem areas identified by river authority trends analyses or steering committee input.

(3) establish and maintain a watershed and river basin water quality database and/or clearinghouse composed of quality-assured data, river authority programs, wastewater discharge permit holders, state and federal agencies, and other relevant data sources. This data shall be submitted to the commission for inclusion in the State of Texas Surface Water Quality Monitoring database and shall be made available to any interested person.

(A) Each river authority and designated local government shall establish and maintain the technology to aid in the electronic dissemination of water quality data and information for

their basin. Water quality data for the basin shall be submitted to the commission at a minimum of once every six months in an agreed format for inclusion in the statewide water quality database.

(B) River authorities and designated local governments shall participate in task force meetings to establish, review, and update data management procedures to reflect changes in information management technology.

(4) identify water quality problems and known pollution sources and set priorities for taking appropriate actions to eliminate those problems and sources.

(A) Each river authority shall utilize the commission's procedures for data evaluation and analyses to the maximum extent possible. If alternative evaluation processes are necessary, the procedure must be presented in writing to the commission for approval by the executive director prior to its application.

(B) In order to assure inclusion in the development of the statewide water quality inventory, the analytical procedures shall be comparable to those used by the commission.

(C) Steering committees shall be provided the opportunity to actively participate in the identification of priority problem areas and the development of appropriate actions to address the problems and pollutant sources. Steering committees shall have the opportunity to determine the priority of maintaining or protecting watersheds with existing good quality water.

(5) develop a process for public participation that includes the basin steering committee and that provides for meaningful review and comments by private citizens and organizations in the local watersheds;

(6) recommend water quality management strategies for correcting identified water quality problems and pollution sources;

(7) develop work plans which include priorities of the state and regional water quality management program. Upon agreement between the commission, the river authority, and/or designated local government, the provisions of the work plan become the scope of work of the program contract or cooperative agreement.

(b) Each local government or other agency that collects water quality data within the watershed shall cooperate with the river authority or designated local government in developing the basin monitoring plan and assessment by providing to the river authority all of the information available to that organization about water quality within its jurisdiction, including the extraterritorial jurisdiction of a municipality. Data collected by local governments must be consistent with an approved quality assurance plan to be included for wastewater discharge permitting and standards decisions.

(c) Monitoring and assessment is a continuing duty and shall be revised periodically with appropriate amendments and updates to the quality assurance plans to reflect changes in procedures and factors subject to the assessment.

§220.5. Responsibilities of Steering Committees.

(a) The steering committee's role is advisory in nature and will involve assistance with the review of local issues and creation of priorities by watershed for the basin. Committee members should also assist with the review and development of work plans, reports, basin monitoring plans, and basin action plans for the basin.

(b) A steering committee established by the commission and contractor to implement this program in areas without a river authority or other designated local government willing to carry out the program is not subject to Revised Statutes, Article 6252-33 (relating to agency advisory committees).

(c) Steering committees should serve as the focus of public input to assist the river authorities and other agencies to develop water quality objectives and priorities by watershed and by basin that are achievable considering available technology and economic impact.

§220.6. Reporting Requirements.

(a) Summary reports. In the appropriate year of the permitting cycle developed in accordance with Texas Water Code, §26.0285 (30 TAC §305.71) relating to Basin Permitting, each river authority will submit a written summary report to the commission, the State Soil and Water Conservation Board, and Texas Parks and Wildlife Department on the water quality of the watershed or river basin.

(1) The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source or use impairment, and recommended actions that may be taken to address those concerns.

(2) The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process.

(3) Prior to submittal of the report to the agencies listed in subsection (a) of this section, the river authority will present the report to the basin steering committee for approval and will also make the report available to water right holder and wastewater permit holders for review and comment.

(4) All comments regarding satisfaction with or suggestions for modification of the report for the watershed, the operation and/or effectiveness of the monitoring and assessment program, and the use of funds shall be considered, summarized, and submitted, along with the approved summary report, to the governor, the lieutenant governor, and the speaker of the house of representatives not later than 90 days after submission to the commission and other agencies listed in paragraphs (1) - (3) of this subsection.

(b) Basin highlight reports. Each river authority and designated local government will develop a basin highlight report annually to be provided to each member of the basin steering committee and all fee payers within the basin. This report should summarize Texas Clean Rivers Program activities conducted in the basin. Procedures for electronic distribution should be developed to ensure most efficient availability to the public.

§220.7. Leveraging of Funds to Support Federal and State Grant Programs.

The commission, river authorities, and designated local governments may use funding from this chapter to leverage other state and federal program funds to support the overall water quality monitoring and assessment goals of this chapter.

§220.8. Allocation of Water Quality Fee Revenue for the Purpose of Regional Assessments of Water Quality.

(a) A river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

(b) The schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan as required under §220.4 of this title (relating to Responsibilities of River Authorities and Designated Local Governments).