

The Texas Commission on Environmental Quality (commission or TCEQ) proposes to amend §317.1.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The legislature passed House Bill 346 in 1993 which required rules to be developed by the commission and the Texas State Board of Plumbing Examiners for graywater use in Texas. The commission adopted rules in June 2001 that allow water from clothes-washing machines as the only graywater to be discharged without going through an on-site sewage facility (OSSF). Water from other sources in a residence was not included in the use of graywater.

In 2003, the 78th Legislature passed House Bill 2661 which amended Texas Water Code (TWC), §26.0311 and Texas Health and Safety Code (THSC), §341.039 and §366.012. These amendments modify the definition of graywater and require the commission to adopt and implement standards by June 1, 2004 for the use of graywater and to address the separation of graywater in a residence served by an OSSF system. To implement this legislation, the commission proposes to concurrently amend 30 TAC Chapter 210, Use of Reclaimed Water; 30 TAC Chapter 285, On-Site Sewage Facilities; and Chapter 317. Proposed amendments to Chapter 210 and Chapter 285 are also published in the Proposed Rules section of this issue of the *Texas Register*.

SECTION DISCUSSION

Throughout this rulemaking, the commission made wording changes to bring the existing rule language into agreement with agency rule writing standards.

The commission proposes to amend §317.1, General Provisions, by adding a requirement in subsection (c) that the final engineering design report include how the design of the collection system and the treatment plant can handle the loss of graywater as defined in TWC, §26.0311. The commission proposes this amendment to implement TWC, §26.0311.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jan Washburn, program specialist in the Strategic Planning and Appropriations Section, determined that, for the first five-year period the proposed amendment is in effect, there will be no significant fiscal implications for the agency or any other unit of state government. Ms. Washburn also determined that there will be no significant fiscal impact to units of local government as a result of the proposed rule.

The proposed rule will allow the use of graywater from showers, bathtubs, handwashing lavatories, and sinks not used in the disposal of hazardous or toxic wastes, for on-site irrigation or outside use at the single family residence.

PUBLIC BENEFITS AND COSTS

Ms. Washburn also determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from the proposed amendment is water conservation by allowing the use of residential graywater for irrigation purposes. The reduction in the use of potable water for irrigation or outside use could decrease the demand on public drinking water systems as well as possibly reduce homeowners' water bills. Demands on wastewater systems could also decline as a result of the proposed rule.

The use of these systems is purely voluntary. To meet the standards in the proposed rule, the cost for a graywater system in a new home can range from \$500 to \$4,000. For those residences with on-site septic systems, there could be an impact resulting from the reduced flow of water to those systems.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Ms. Washburn also determined that there will be no adverse fiscal implications to small or micro-businesses as a result of implementation of the proposed amendment. It is possible that small and micro-businesses may be able to decrease costs or increase revenue by installing graywater systems.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this 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" in that statute. 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 proposed amendment to §317.1(c) would require that the final engineering design report include how the design of the collection system and the treatment plant can handle the loss of graywater as defined in TWC, §26.0311. The proposed rule does not meet the definition of a major environmental rule as it does 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.

In addition, the proposed amendment is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four criteria specified in §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, 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 proposed amendment to Chapter 317 does not meet any of these requirements. First, the revision does not exceed a standard set by federal law as there are no federal requirements for this rule. As a result, there are no applicable standards set by federal law that could be exceeded by the rule. Second, the revision does not exceed an express requirement of state law, but is being proposed to implement state law. Therefore, the rulemaking does not exceed an express requirement of state law. Third, the commission is not a party to delegation agreement with the federal government concerning a state and federal program that would be applicable to requirements set forth in the rule. Therefore, there are no

delegation agreement requirements that could be exceeded by the rule. Fourth, the proposed rule was not developed solely under the commission's general powers, but rather was developed to implement the specific requirements of House Bill 2661, amending TWC, §26.0311 and THSC, §341.039 and §366.012. Therefore, the commission does not propose the rule solely under the commission's general powers. Thus, the commission concludes that a regulatory analysis is not required in this instance because the proposed rule does not meet any of the criteria of a major environmental rule as defined by Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of the proposed rule in accordance with Texas Government Code, §2007.043. The purpose of this rulemaking is to implement House Bill 2661 which amended TWC, §26.0311 and THSC, §341.039 and §366.012. This amendment modifies the definition of graywater and requires the commission to adopt and implement standards for the use of graywater and to address the separation of graywater in a residence served by an OSSF system. The proposed graywater rules are voluntary. Thus, the commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to this rulemaking because the promulgation and enforcement of this rule will not create a burden on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in §505.11. Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on September 8, 2004, at 2:00 p.m., 12100 Park 35 Circle, Building E, Room 254S. Individuals may present oral or written statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-056-317-WT. Comments must be received by 5:00 p.m., September 13, 2004. For further information, please contact Kathy Ramirez, Regulation Development Section, at (512) 239-6757.

CHAPTER 317: DESIGN CRITERIA FOR SEWERAGE SYSTEMS

§317. 1

STATUTORY AUTHORITY

The amended section is proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 366. The amended section implements THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in TWC, §26.0311 and THSC, §341.039 and §366.012, relating to Standards for Control of Graywater, Graywater Standards, and Rules Concerning On-Site Disposal Systems. Specific statutory authorization derives from House Bill 2661, 78th Legislature, 2003, which amended TWC, §26.0311 and THSC, §341.039 and §366.012. The amendment is also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(14)(b); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

The proposed amendment implements TWC, §26.0311 and THSC, §341.039 and §366.012.

§317. 1. General Provisions.

(a) Purpose. These design criteria are minimum guidelines to be used for the comprehensive consideration of domestic sewage collection, treatment, or disposal systems and establish the minimum

design criteria pursuant to existing state statutes pertaining to effluent quality necessary to meet state water quality standards. These criteria are intended to promote the design of facilities in accordance with good public health and water quality engineering practices. These criteria include the minimum requirements for a preliminary engineering report which provides the general engineering concepts underlying the proposed project as well as the final engineering report detailing the fully developed project along with related plans and specifications.

(1) Authority for Requirement. The Texas Water Code prescribes the duties of the commission [Texas Natural Resource Conservation Commission (commission)] relating to the control of pollution including the review and approval of plans and specifications for sewage disposal systems. This authority is found in Texas Water Code (TWC), §§5.013, 12.081-12.083, 15.104, 15.114, 26.023, 26.034, 49.181-49.182, 54.024, and 51.333.

(2) (No change.)

(3) Submittal requirements.

(A) "Sanitary sewer collection system projects," which will be constructed within the jurisdiction of a municipality which performs technical reviews of sanitary sewer collection system projects under TWC [the Texas Water Code], §26.034, and which are not prepared by the staff of a municipality, need not be submitted to the agency for review.

(B) "Sanitary sewer collection system projects," which are prepared by the

staff of a municipality, which will be constructed within the jurisdiction of a municipality which performs technical reviews of sanitary sewer collection system projects under TWC [the Texas Water Code], §26.034, and where the entire project falls into one or more of the categories outlined in clause (i)-(iii) of this subparagraph, need not be submitted to the agency for review.

(i) - (iii) (No change.)

(C) - (F) (No change.)

(4) (No change.)

(5) Municipalities performing technical reviews of sanitary sewer collection systems under TWC [Texas Water Code], §26.034, within 90 days of the effective date of this rule and/or within 90 days of a boundaries change, shall submit maps to the agency's Wastewater Permits Section detailing the boundaries of the review authority. If a municipality decides to perform technical reviews of sanitary sewer collection systems after the effective date of this rule, the municipality shall submit maps detailing the boundaries of the review authority, within the 30 days before starting these reviews. If at any time a municipality, which has chosen to implement this review authority, decides to cease review of sanitary sewer collection system plans and specifications, the municipality shall notify the executive director within 30 days of the date on which the final plans and specifications review is expected to be performed. In order to meet the standards specified in TWC [the Texas Water Code], §26.034, municipalities shall incorporate the items detailed in subparagraphs (A) - (E) of this paragraph into their review programs:

(A) - (E) (No change.)

(6) (No change.)

(b) Preliminary engineering report.

(1) (No change.)

(2) General requirements. The following is required for each project as applicable.

(A) - (C) (No change.)

(D) The preliminary engineering report shall include the technical information described in §317.10 of this title (relating to Appendix B - Overland Flow Process [Land Application of Sewage Effluent]) for all overland flow projects.

(3) (No change.)

(4) Treatment plant. The following information is required in a preliminary engineering report.

(A) - (D) (No change.)

(E) Treatment plant site information and the siting analysis. The location of the plant, the area included in the plant site, dedicated buffer zone, and a description of the surrounding area including a map or a sketch of the area. Particular reference should be made as to the plant's proximity to present and future housing developments, industrial sites, prevailing winds, highways and/or public thoroughfares, water plants, water supply wells, parks, schools, recreational areas, and shopping centers. If the effluent is to be discharged to the waters of the state, the immediate receiving stream, canal, major water course, etc., shall be designated. The siting analysis shall include:

(i) (No change.)

(ii) buffer zone analysis. Demonstrate that the location of each proposed treatment unit is consistent with the buffer zone criteria specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting [Treatment Plant Siting]).

(5) - (6) (No change.)

(c) Final engineering design report. The final engineering design report shall be submitted with the final plans and technical specifications. The report shall include calculations and any other engineering information pertaining to the plant design as may be necessary in the review of the plans and specifications by the commission. The report shall include how the design of the collection system and treatment plant will handle the potential loss of graywater as defined in TWC, §26.0311. This report shall bear the signed and dated seal of the registered professional engineer responsible for the design. Information should be included to describe any changes that have been made since a

preliminary engineering report was submitted, along with additional information as follows.

(1) - (3) (No change.)

(d) - (f) (No change.)