

The Texas Commission on Environmental Quality (commission or agency) adopts the amendment of §210.33, *with changes* to the proposed text as published in the June 5, 2009, issue of the *Texas Register* (34 TexReg 3495).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The executive director and the United States Environmental Protection Agency (EPA) reached an agreement in July 2008 regarding bacterial effluent limitations and monitoring requirements in Texas Pollutant Discharge Elimination System (TPDES) domestic wastewater permits. The agreement included the commission proposing rulemaking to establish requirements for bacteria limitations in all TPDES domestic wastewater permits.

Chapter 210, which authorizes the use of reclaimed wastewater, is being amended to allow the reclaimed water provider to select either the currently required fecal coliform or the new requirement for TPDES domestic permits, *Escherichia coli* (*E. coli*) or *Enterococci* as the indicator organism for disinfection. All three bacteria adequately demonstrate disinfection and are therefore protective of human health and the environment. This flexibility allows the provider to choose the most convenient, most cost-effective bacteria test for its facility. This rulemaking also amends 30 TAC Chapters 309 and 319 to include bacteria testing and set its frequency for TPDES domestic wastewater permits. A reclaimed water use authorization can only be issued to an entity that has a permitted method to dispose of the effluent if at any time there is not a beneficial use for it. The most typical scenario is for a domestic wastewater treatment facility to supply reclaimed water to a user for purposes of irrigation, dust suppression, cooling tower make-up water, or oil and gas drilling.

## SECTION DISCUSSION

Adopted §210.33 requires a reclaimed water provider to demonstrate disinfection by measuring fecal coliform, *E. coli* or *Enterococci* bacteria. Limits for *Enterococci* were added since proposal to allow either new indicator organism to be substituted for fecal coliform. Reclaimed water providers that hold TPDES domestic wastewater permits with *E. coli* or *Enterococci* limits will not have to sample both fecal coliform and the bacteria required by their wastewater permit. Providers with land application permits that do not require *E. coli* or *Enterococci* testing may continue to use fecal coliform testing. All three bacteria tests are adequate to demonstrate disinfection.

## FINAL 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 criteria for a "major environmental rule" as identified in that statute. A major environmental rule is defined as 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. This rule adoption 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. The specific intent of this portion of the adopted rulemaking is to allow flexibility in the indicator bacteria used to demonstrate disinfection for reclaimed water usage. The rulemaking modifies the state rules to allow a choice of indicator bacteria measured for demonstration of disinfection in reclaimed water authorizations.

Furthermore, the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in 2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

The commission invited public comment regarding this draft regulatory impact analysis determination during the comment period. No comments were received on this draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to modify the Texas Administrative Code to reflect bacteria effluent limitations and monitoring in all TPDES domestic wastewater permits, as mandated by the EPA. This rulemaking substantially advances that stated purpose by modifying 30 TAC §§210.33, 309.3, and 319.9, and repealing §319.10.

Promulgation and enforcement of the adopted rule will not be a statutory or constitutional taking of private real property. Specifically, the rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right

to real property or reduce any property value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore is required to be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with the Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rule includes the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas and ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the adopted rule includes 31 TAC §501.21(b)(1) and (2), which state that discharges shall comply with water quality-based effluent limits and that discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

This rulemaking would adopt bacteria limits for all domestic wastewater facilities that discharge into

waters in the state. By adopting bacteria limits, there will be a more direct and possibly more accurate measure of the level of disinfection achieved in domestic effluent discharged to both fresh and salt water in the areas of concern to the CMP.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with those CMP goals and policies and because the rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding consistency with the coastal management program during the comment period. No comments were received on the consistency with the coastal management program.

#### PUBLIC COMMENT

The commission held a public hearing for this rulemaking in Austin, Texas at TCEQ Building E, at 10:00 a.m. on June 30, 2009. No oral comments were received at the public hearing. The comment period closed on July 6, 2009. The commission received written comments from AECOM USA Group, Inc. (AECOM); EPA; Harris County Attorney's Office on behalf of Harris County Public Infrastructure Department, Harris County Flood Control District, and Harris County Public Health & Environmental Services Department Environmental Public Health Division (Harris County); and Water Environmental Association of Texas (WEAT). All entities supported the rulemaking, either partially or with changes. No comments were received concerning Chapter 210.

## **SUBCHAPTER C: QUALITY CRITERIA AND SPECIFIC USES FOR RECLAIMED WATER**

### **§210.33**

#### **STATUTORY AUTHORITY**

The amendment is adopted under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by the TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC. TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and natural resources of the state. TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

This adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

**§210.33. Quality Standards for Using Reclaimed Water.**

The following conditions apply to the types of uses of reclaimed water. At a minimum, the reclaimed water producer shall only transfer reclaimed water of the following quality as described for each type of specific use:

(1) for Type I reclaimed water uses, reclaimed water on a 30-day average shall have a quality of:

Figure 1: 30 TAC §210.33(1)

BOD <sub>5</sub> or CBOD <sub>5</sub>	5 mg/l
Turbidity	3 NTU
Fecal coliform or <i>E. coli</i>	20 CFU/100 ml*
Fecal coliform or <i>E. coli</i>	75 CFU/100 ml**
<i>Enterococci</i>	4 CFU/100 ml*
<i>Enterococci</i>	9 CFR/100 ml**

\* 30-day geometric mean

\*\* maximum single grab sample

(2) for Type II reclaimed water use, reclaimed water on a 30-day average shall have a quality of:

(A) for a system other than pond system:

Figure 2: 30 TAC §210.33(2)(A)

BOD <sub>5</sub>	20 mg/l
or CBOD <sub>5</sub>	15 mg/l
Fecal coliform or <i>E. coli</i>	200 CFU/100 ml*
Fecal coliform or <i>E. coli</i>	800 CFU/100 ml**
<i>Enterococci</i>	35 CFU/100 ml*
<i>Enterococci</i>	89 CFU/100 ml**
* 30-day geometric mean	
** maximum single grab sample	

(B) for a pond system:

Figure 3: 30 TAC §210.33(2)(B)

BOD <sub>5</sub>	30 mg/l
Fecal coliform or <i>E. coli</i>	200 CFU/100 ml*
Fecal coliform or <i>E. coli</i> (not to exceed)	800 CFU/100 ml**

<i>Enterococci</i>	35 CFU/100 ml*
<i>Enterococci</i>	89 CFU/100 ml**
* 30-day geometric mean	
** maximum single grab sample	