

The Texas Commission on Environmental Quality (commission or agency) proposes the amendment of §210.33.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 Pollution 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*) as the indicator organism for disinfection. Both bacteria adequately demonstrate disinfection and are therefore protective of human health and the environment. This flexibility allows the provider to choose the more convenient, more 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

Proposed §210.33 requires the reclaimed water provider to demonstrate disinfection by measuring either fecal coliform or *E. coli* bacteria. This change is made so that reclaimed water providers that hold TPDES domestic wastewater permits with *E. coli* limits will not have to sample both *E. coli* and fecal coliform. It also allows providers with land application permits that do not require *E. coli* testing to continue to use fecal coliform testing. Both bacteria tests are adequate to demonstrate disinfection.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The agency will have to modify operational practices and record data regarding bacteria present in reclaimed water, but the agency will use current resources to implement the proposed rule. Other units of state or local governments will not experience fiscal implications as a result of the proposed rule since they will be given the option to choose which bacterium to use to demonstrate the disinfection level of reclaimed water.

The proposed rulemaking will modify Chapters 210, 309, and 319 to implement an agreement between the agency and the EPA to include bacterial effluent limitations and monitoring requirements in TPDES domestic wastewater discharge permits. The proposed rulemaking for Chapter 210 addresses bacteria testing for reclaimed water use authorizations and allows the provider of reclaimed water to test for fecal coliform limits per current rules or for *E. coli* limits per the proposed rules in Chapter 309 and Chapter 319. This flexibility allows the reclaimed water provider to choose the bacteria test that is most convenient and cost effective for its facility, and the proposed rule for Chapter 210 should have no significant fiscal impact on the estimated 232 governmental entities and seven private businesses that

provide reclaimed water for beneficial reuse.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a flexible, cost effective approach to providing a direct measure of the effectiveness of disinfection of reclaimed water.

The proposed rule is not expected to have a fiscal impact on businesses since the proposed rule contains no new requirements. The proposed rule offers reclaimed water providers a choice of which bacterium to sample and analyze to demonstrate disinfection of the reclaimed water. Staff estimates that there may be as many as seven private businesses that provide reclaimed water for beneficial reuse.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule since the proposed rulemaking contains no new requirement but offers regulatory flexibility.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not have an adverse effect on small or micro-businesses and are required to protect the environment.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has 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 criteria for a "major environmental rule" as identified in that statute. 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 proposal 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 proposed rulemaking is to allow flexibility in the indicator bacteria used to demonstrate disinfection for reclaimed water usage. The proposed 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 invites public comment regarding this draft regulatory impact analysis determination.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed 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, 319.9, and 319.10.

Promulgation and enforcement of the proposed rule will not be a statutory or constitutional taking of private real property. Specifically, the proposed 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 proposed rulemaking and found that the proposal 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 must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed 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 proposed 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 proposed 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.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 30, 2009, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services at (512) 239-2548. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments

should reference Rule Project Number 2009-005-309-PR. The comment period closes July 6, 2009.

Copies of the proposed rulemaking can be obtained from the commission's Web site at

http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Sherry

Smith, Water Quality Division, (512) 239-0571.

SUBCHAPTER C: QUALITY CRITERIA AND SPECIFIC USES FOR RECLAIMED WATER

§210.33

STATUTORY AUTHORITY

The amendment is proposed 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 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 proposed 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)

[Figure 1: 30 TAC §210.33(1)]

BOD ₅ or CBOD ₅	5 mg/l
Turbidity	3 NTU
Fecal coliform <u>or</u> <i>E. coli</i>	20 CFU/100 ml*
Fecal coliform <u>or</u> <i>E. coli</i> (not to exceed)	75 CFU/100 ml**

* geometric mean

* 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)

[Figure 2: 30 TAC §210.33(2)(A)]

BOD ₅	20 mg/l
or CBOD ₅	15 mg/l
Fecal coliform <u>or E. coli</u>	200 CFU/100 ml*
Fecal coliform <u>or E. coli</u> (not to exceed)	800 CFU/100 ml**
* geometric mean	
** single grab sample	

(B) for a pond system:

Figure 3: 30 TAC §210.33(2)(B)

[Figure 3: 30 TAC §210.33(2)(B)]

BOD ₅	30 mg/l
Fecal coliform <u>or E. coli</u>	200 CFU/100 ml*
Fecal coliform <u>or E. coli</u> (not to exceed)	800 CFU/100 ml**
* geometric mean	
** single grab sample	