

The Texas Commission on Environmental Quality (commission or TCEQ) proposes an amendment to §21.3.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Water Resource Management Account 153 (Account 153) is the primary source of state funding for essentially all water program related activities of the commission. In 2001, the 77th Legislature passed House Bill 2912 which provided that revenues deposited to Account 153 would be available to the Legislature and the TCEQ to support activities associated with ensuring the protection of the state's water resources. Account 153 supports a wide range of activities associated with water rights, storm water, public drinking water, Total Maximum Daily Load development, water utilities, dam safety, wastewater, river compacts, water availability modeling, water assessment, Confined Animal Feeding Operations, sludge, Clean Rivers Program, and groundwater protection. Historically, the agency has used Account 153 as well as the majority of its general revenue appropriations to support its water program activities.

General revenue appropriations to the commission have declined from the \$51 million received in the 2004 - 2005 biennium. In addition, many of the water related fees that the agency does assess have not increased in seven to ten years. While revenue from existing fees deposited to Account 153 has remained stable, the overall financial obligations of the account have increased. As a result, the fund balance is close to being depleted. The current revenue estimates for Account 153 reveal that there are insufficient funds for the agency to cover the costs of its water program activities in fiscal year (FY) 2010 - 2011.

Given the declining availability of funds in Account 153, the commission reviewed those water related fees it has the authority to change. After a review of the commission's existing water related fees, the

commission is proposing revisions to the consolidated water quality (CWQ) fee, the public health service (PHS) fee, and the water use assessment fee (WUF) to generate sufficient revenue to cover the costs of its water program activities beginning in FY 2010. These fees were identified for a fee increase because, in terms of numbers and categories of fee payers, they represent some of the most broad-based water related fees the agency assesses, revision of these three fees does not require statutory changes and their revenue stream represents significant water fee collections.

With the depletion of fund balances in Account 153, the commission is proposing changes to ensure that funds to support water program activities will be available in FY 2010. Proposing this change at this time is intended to provide ample notification to potentially affected fee payers to prepare for changes in FY 2010 billings.

This proposal would amend Chapter 21, Water Quality Fees, to ensure that there are sufficient funds in FY 2010 to carry out the tasks required to protect the water resources of the state. In a corresponding rulemaking published in this issue of the *Texas Register*, the commission proposes to amend 30 TAC Chapter 290, Public Drinking Water.

Within the scope of this proposal, this rulemaking may be adjusted in response to any action taken by the 81st Legislature affecting the commission's water fee structure and appropriations. Possible legislative actions could include an increase or decrease in the amount of general revenue given to the commission compared to previous bienniums, and an adjustment to the cap on the fee for individual wastewater discharge permits. An increase in the amount of the cap or an elimination of the cap would likely result in changes in fee assessments for a significant portion of fee payers. The amount of general revenue

appropriated to the agency to support water program activities could also likely affect the final assessment for both the CWQ and the PHS fee assessments, but will not affect the WUF fee included in this rule package.

SECTION DISCUSSION

The commission proposes to amend §21.3(b)(2) by deleting the reference to a maximum fee for wastewater permits and aquaculture permits in this paragraph and instead referring to the amount as provided in the Texas Water Code (TWC). The existing statutory caps of \$75,000 for wastewater permits and \$5,000 for aquaculture permits are set forth in TWC, §26.0291 and §29.0292, respectively. The commission proposes this change to refer to any statutory caps and to allow for the possibility that the caps may be amended by the legislature in the future. In this paragraph, the commission also proposes increasing the minimum fee for active permits to \$1,250 and for inactive permits to \$620.

The commission proposes to amend §21.3(b)(5) by revising the fee rate schedule to delete the fixed dollar amount for each factor and in its place provide a maximum amount that could be assessed for each factor. The maximum amount proposed for each factor is an increase above the fixed dollar amount that currently exists in the rules. The amount applied to each factor will be determined by the annual appropriations and other costs from Account 153, in addition to any statutory cap on fees for individual permits, and would be applied uniformly to all permits subject to the particular factor being applied. In §21.3(b)(5)(A), the commission proposes to increase the amount for contaminated flow from a fixed amount of \$700 per million gallons per day (mgd) to a maximum amount that could be assessed of \$1,090 per mgd. In addition, the commission proposes in §21.3(b)(5)(A) to define the acronym mgd as million of gallons per day. In §21.3(b)(5)(B), the commission proposes to increase the amount for uncontaminated

flow from a fixed amount of \$10 per mgd to a maximum amount that could be assessed of \$18 per mgd. In §21.3(b)(5)(C), the commission proposes to increase the amount for traditional pollutants from a fixed amount of \$15 per pound per day to a maximum amount that could be assessed of \$23 per pound per day. In §21.3(b)(5)(D)(i), the commission proposes to increase the amount for industrial discharges with a toxic rating of Group I from a fixed amount of \$200 to a maximum amount that could be assessed of \$310. In §21.3(b)(5)(D)(ii), the commission proposes to increase the amount for industrial discharges with a toxic rating of Group II from a fixed amount of \$700 to a maximum amount that could be assessed of \$1,090. In §21.3(b)(5)(D)(iii), the commission proposes to increase the amount for industrial discharges with a toxic rating of Group III from a fixed amount of \$1,050 to a maximum amount that could be assessed of \$1,640. In §21.3(b)(5)(D)(iv), the commission proposes to increase the amount for industrial discharges with a toxic rating of Group IV from a fixed amount of \$1,575 to a maximum amount that could be assessed of \$2,460. In §21.3(b)(5)(D)(v), the commission proposes to increase the amount for industrial discharges with a toxic rating of Group V from a fixed amount of \$3,150 to a maximum amount that could be assessed of \$4,910. In §21.3(b)(5)(D)(vi), the commission proposes to increase the amount for industrial discharges with a toxic rating of Group VI from a fixed amount of \$6,300 to a maximum amount that could be assessed of \$9,830. In §21.3(b)(5)(E), the commission proposes to increase the amount for a major permit designation from a fixed amount of \$2,000 to a maximum amount that could be assessed of \$3,120. In §21.3(b)(5)(F), the commission proposes to increase the amount for a storm water authorization from a fixed amount of \$500 to a maximum amount that could be assessed of \$780. The commission proposes these changes to allow the commission the ability to assess fees as needed to cover, in part, the cost of its water program activities. The increase will be used to fund the water program activities of the state based on the appropriation levels set by the state legislature.

The commission proposes to amend §21.3(b)(6)(A) by increasing the minimum amount for an active land application permit fee from \$800 per year to \$1,250 per year. The commission proposes this change to allow the commission the ability to assess fees as needed to cover, in part, the costs of its water program activities. The commission proposes to amend §21.3(b)(6)(B) by increasing the minimum amount for an inactive permit fee from \$400 per year to \$620 per year. The commission proposes this change to allow the commission the ability to assess fees as needed to cover, in part, the costs of its water program activities. The commission proposes to amend §21.3(b)(6)(C) by increasing the fee for an active storm water permit which authorizes the discharge of storm water only, with no other wastewater, from a fixed amount of \$500 to a maximum amount that could be assessed of \$780. The commission proposes this change to allow the commission the ability to assess fees as needed to cover, in part, the costs of its water program activities. The commission proposes to amend §21.3(b)(6)(D)(iii) by deleting the reference to a maximum fee for aquaculture permits in this paragraph and instead referring to the amount as provided in the TWC. The existing statutory cap of \$5,000 is set forth in TWC, §26.0292. The commission proposes this change to refer to any statutory cap and to allow for the possibility that the cap may be adjusted by the legislature in the future.

The commission proposes to amend §21.3(b)(7), which provides the commission authority to adjust CWQ fees through the use of a multiplier. The commission proposes to change the current multiplier from 1 to an amount up to a maximum of 1.75 to give the commission sufficient flexibility in assessing fees within the specified parameters. The use and amount of the multiplier will be determined by the annual appropriations and other associated costs from Account 153, in addition to any statutory cap on fees for individual permits, and would be applied uniformly to all permits subject to the water quality fee.

Additionally, the commission proposes to add a requirement that the executive director report to the commission as part of the approval of the annual operating budget the multiplier that will be applied for the upcoming fiscal year.

The commission proposes to amend §21.3(c)(3), which provides the commission authority to assess a fee for consumptive use under a water right that authorizes diversion of more than 250 acre-feet per year. The existing rule provides that the fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use is \$.22 per acre-foot up to 20,000 acre-feet, and \$.08 per acre-foot thereafter. Under the proposed change, a fee of \$.385 per acre-foot would be assessed for all water rights for consumptive use that authorize diversion of more than 250 acre-feet per year, including those above 20,000 acre-feet. The proposed change would delete the provision that reduces the fee to \$.08 for water rights above 20,000 acre-feet per year. The amount of the increase from \$.22 to \$.385 reflects the application of a factor of 1.75, which is the maximum amount proposed as a multiplier for the CWQ fee.

The commission proposes to amend §21.3(c)(5) by combining paragraphs (5) and (6) to eliminate a stand-alone provision for the fee for water rights for hydropower purposes and incorporate it into the non-consumptive use paragraph. By incorporating the fee for water rights for hydropower purposes into the non-consumptive use paragraph the fee amount of \$.04 per acre-foot in the existing rule would change to \$.021 per acre-foot. Additionally, the proposed rule would delete the tiered structure that exists for both the non-consumptive use paragraph and the water rights for hydropower purposes paragraph. That structure provided for reduced fee amounts for usage above a certain threshold. Under the proposed rule the minimum threshold of 2,500 acre-feet per year for assessing a fee is eliminated. The proposed change

does not affect the exemption from the fee for 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. The subsequent paragraph is renumbered to reflect this proposed change.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Chris Hayden, financial analyst with the Chief Financial Officer Division, determined that for the first five-year period the proposed rule is in effect there will be fiscal implications for the agency, with an increase in fee revenue estimated to be \$15.7 million to Account 153. The proposed amendment is not expected to have significant fiscal implications for other state agencies. No significant fiscal implications are anticipated for units of local governments since any fee increases for facilities owned or operated by units of local government are anticipated to be passed on to their customers. The overall increase in fee revenue statewide collected from units of local government is anticipated to be approximately \$7.8 million annually in additional fees.

The proposed rule will increase revenue to Account 153. The current revenue from all assessments is approximately \$18.9 million of which units of state and local government contribute \$9 million. The proposed increase is necessary to continue to adequately fund the agency's water program activities. TCEQ is currently supporting the water programs using the existing fund balances from Account 153 without replenishing the fund balance.

Fee adjustments under the proposed rule

The calculations for the CWQ fees used in preparing this fiscal note were performed using the maximum dollar amounts proposed for each factor in addition to using a multiplier of 1.56 and assumes the

commission will receive no general revenue for water program activities. Although the maximum amounts for each factor were needed to generate sufficient revenue with the current statutory cap on individual permits, if the legislature raised the cap of \$75,000 per permit, the use of a range would enable the commission to lower amounts for the factors which in many instances would result in lowering overall fee amounts. While an increase in the cap would allow for lowering fee rates and result in lowering overall fee amounts for individual permit holders in the proposed rule, permits that are currently at the \$75,000 cap, would experience an increase in fee cost.

Water right holders paying the WUF will pay a fee of \$.385 per acre-foot for consumptive use and \$.021 per acre-foot for non-consumptive use, including, water rights for hydropower purposes.

Other state and local governments would be assessed approximately \$7.4 million in additional CWQ fees annually under the proposed rule. The average increase for the approximately 1,800 state and local government permits is \$4,100 per year. The largest increase for any individual permit under the proposed rule is for a local government and is approximately \$47,000. The largest overall increase for any local government is \$678,000 because the local government has multiple individual permits. The proposed rule increases the various fee assessments and fee minimums by approximately 56% and adjusts the fee multiplier to an amount not to exceed 1.75. The current rule identifies the current statutory cap of \$75,000 per individual permit and \$5,000 for aquaculture permits. The proposed rule removes the specific dollar amount for the CWQ caps and replaces it with language referring to the statute to determine the caps in the event that the legislature amends any of the current caps that exist for individual permits and aquaculture permits. There are 30 state and local government permits that are at the current statutory cap and absent a change to the cap will not be affected by the proposed rule.

The WUF increase would bring in an estimated \$675,000 per year in additional revenue and would affect approximately 115 state and local governments with the average increase of \$5,300 per year. Local governments will fund 83% of the total increased amount with river authorities accounting for 48% of the total, and municipalities accounting for 13% of the total.

It is anticipated that units of local government will pass the CWQ increase on to the customer in the waste water utility bill and, therefore, the fee increases will not be a significant cost to units of state or local governments. It is also anticipated that units of local government will pass the WUF increase on to the customer. Staff does not anticipate increases to customer rates will have a significant impact on individual permit holders or water rights holders.

The increase will be used to fund the water program activities of the state based on the appropriation levels set by the state legislature. The final CWQ fee assessment will be applied uniformly to all fee payers and will be determined by the annual appropriations and other associated costs from Account 153, in addition to any statutory cap on fees for individual permits.

PUBLIC BENEFITS AND COSTS

Mr. Hayden determined for each year of the first five years the proposed rule is in effect, the public benefit will be the continued protection of the state's water resources by adequate funding of the state's water programs. It is anticipated that individual permit holders and water rights holders will pass any increase on to their respective customers.

Fee adjustment under the proposed rule

Most entities that currently pay the CWQ fee and the WUF will be affected. Individual permits and individual aquaculture permit holders that are at the statutory cap will not see an increase in CWQ fees under the proposed rule unless there is a change to either or both of the statutory caps by the state legislature. Statewide the cost increase to the 1,500 individual CWQ permits owned by businesses and individuals is projected to be \$7.6 million annually with an average increase of \$5,000 in fees. The increase for any single individual permit is limited to the \$75,000 cap set in statute. The increase in cost in WUF fees for the approximately 81 water rights owned by businesses and individuals is projected to be \$73,000 with the average increase of \$901 per water right. The proposed rule deletes the reference to a specific dollar amount and instead will refer to the statute for the cap for the CWQ fee to allow for the possibility that the legislature changes this cap in the future. These business-owned and individually-owned permits will be subject to the same CWQ fee rate structure as those experienced by local governments. It is anticipated that the non-governmental permit holders will pass the increase on to their customer and, therefore, the proposed rule is not expected to have a significant fiscal impact on these waste water permit holders or water right holders.

The increase in revenue will be used by the commission to fund the water programs based on the appropriation levels set by the state legislature. The final CWQ fee rate assessment will be applied uniformly to all permits subject to the water quality fee and will be determined by the annual appropriations and other associated costs from Account 153, in addition to any statutory cap on fees for individual permits.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impact to the estimated 640 small or micro-businesses, which have an individual waste water permit subject to the proposed rule since any CWQ fee increase is expected to be recouped in pricing of products or services. The proposed amendment is anticipated to increase CWQ fees by approximately \$3 million with an average annual increase of approximately \$4,700 per year. These small business permit holders will be subject to the same fee rate structure as those experienced by local governments and large businesses. The 33 small or micro-businesses, which have water rights are anticipated to have an approximate increase of \$4,500 per year with an average annual increase of \$136 per permit per year. Small or micro-business permit holders account for only 1% of the total fee revenue and less than 1% of the increase amount.

It is anticipated that the individual permit holders and water right holders will pass the increase on to the customer. The increase will be used to fund the water programs of the state based on the appropriation levels set by the state legislature. The final CWQ fee rate assessment will be applied uniformly to all permits subject to the water quality fee and will be determined by the annual appropriations and other associated costs from Account 153, in addition to any statutory cap on fees for individual permits.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed the proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect. Small or micro-businesses are expected to recover any increased costs by passing any fee increases to their customers.

The increase in revenue for the commission will be used to fund the water program activities of the state based on the appropriation level set by the state legislature. The final CWQ fee rate assessment will be applied uniformly to all permits subject to the water quality fee and will be determined by the annual appropriations and other associated costs from Account 153, in addition to any statutory cap on fees for individual permits.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined 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 rule is part of a larger proposed rulemaking to increase fees in order to provide funding for the commission's water program activities. The corresponding rulemaking, proposed amendments to Chapter 290, Public Drinking Water, is published in this issue of the *Texas Register*. The proposed

amendment to Chapter 21 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 specific intent of the proposed rulemaking is to provide the commission with the additional revenue necessary to operate its water programs in a manner that is consistent with the statutory requirements set forth in the TWC. Therefore, the commission finds that this rulemaking is not a "major environmental rule."

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, it is not subject to the 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 only applies to a state agency's adoption of a major environmental rule, 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 requirements of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or a 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.

In this case, the proposed rulemaking does not meet any of these requirements. First, there are no applicable federal standards that this rulemaking would address. Second, the proposed rulemaking does not exceed an express requirement of state law, but rather seeks to provide the commission with the additional revenue necessary to operate its water programs in a manner that is consistent with state law. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or a contract between the state and an agency or representative of the federal government to implement a state and

federal program. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections which are cited in the STATUTORY AUTHORITY section of this preamble.

Based upon the foregoing, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invites public comment on the 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 rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The commission determined that the proposed rulemaking does not constitute a taking. The specific purpose of the proposed rulemaking is to provide the commission with the additional revenue necessary to operate its water program activities in a manner that is consistent with the statutory requirements set forth in the TWC.

This rulemaking substantially advances this stated purpose by adjusting the factors by which the fees are calculated to provide funding at a level that is sufficient to support a portion of the commission's water program.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulation does not affect a landowner's rights in private real property because the rulemaking does not burden, restrict, or limit the owner's right to real property, and does not reduce the market value of real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rulemaking will not burden private real property because it amends fee rules which relate to funding for the commission's water program activities.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). 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 April 7, 2009, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral 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.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Duron, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, 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 submitted through the eComments system. All comments should reference Rule Project Number 2009-007-021-PR. The comment period closes April 13, 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 Kathleen Ramirez, Water Supply Division, (512) 239-6757.

§21.3

STATUTORY AUTHORITY

The amendment is proposed 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, including water programs; §5.102, concerning general powers of the commission; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §5.701, which provides statutory direction regarding the use of fees collected for deposit to the water resource management account; §26.011, which requires the commission to control water quality in the state; §26.0135, which directs the commission to apportion, assess, and recover reasonable costs of administering the water quality management program under that section; §26.0291, which establishes a water quality fee and water use fee for wastewater permit holders and water rights holders; and, §26.0292, which addresses the manner in which the commission assesses fees for aquaculture facilities.

The proposed amendment implements TWC, §§26.011, 26.0135, 26.0291, and 26.0292.

§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, including an aquaculture permit, is the amount, if any, set forth in Texas Water Code, Chapter 26 [\$75,000, except that the maximum for an aquaculture permit is \$5,000]. The minimum fee for an active permit is \$1,250 [\$800]. The minimum fee for an inactive permit is \$620 [\$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, an amount up to a maximum of \$1,090 [\$700] per million gallons per day (mgd);

(B) uncontaminated flow, an amount up to a maximum of \$18 [\$10] per mgd;

(C) traditional pollutants, an amount up to a maximum of \$23 [\$15] per pound per day;

(D) toxic rating for industrial discharges:

(i) Group I, an amount up to a maximum of \$310 [\$200];

(ii) Group II, an amount up to a maximum of \$1,090 [\$700];

(iii) Group III, an amount up to a maximum of \$1,640 [\$1,050];

(iv) Group IV, an amount up to a maximum of \$2,460 [\$1,575];

(v) Group V, an amount up to a maximum of \$4,910 [\$3,150]; and

(vi) Group VI, an amount up to a maximum of \$9,830 [\$6,300];

(E) major permit designation, an amount up to a maximum of \$3,120 [\$2,000];

and

(F) storm water authorization, an amount up to a maximum of \$780 [\$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 \$1,250 [\$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 \$620 [\$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 an amount up to a maximum of \$780 [\$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 is the amount, if any, set forth in TWC, Chapter 26 [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. The multiplier will be an amount up to a maximum of 1.75. As part of the approval of the annual operating budget, the executive director shall report to the commission the multiplier that will be applied for the upcoming fiscal year.
[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 (5) [(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 \$.385 [\$.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) The fee for water rights for non-consumptive use, including hydropower purposes, shall be \$.021 per acre-foot. The 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.

[(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.]

(6) [(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.