

The Texas Commission on Environmental Quality (TCEQ, commission or agency) adopts the repeal of §§321.1 - 321.18 and new §§321.1 - 321.11.

The repeal of §§321.1 - 321.18 and new §§321.1 - 321.11 are adopted *without changes* as published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3786) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2009, the 81st Legislature passed Senate Bill (SB) 2445, relating to the disposal of sewage by certain boats. SB 2445 amended Texas Water Code (TWC), §26.044 and §26.045 by revising the definition for the term "Boat;" adding definitions for "Boat pump-out station," "Shoreside, mobile, or floating installation," and "Surface water in the state;" and by changing the frequency for renewal of certifications for pump-out stations from annual to biennial. The adopted rules incorporate the changes required by SB 2445.

The adopted rules promote consistency with Clean Water Act, §312 and 40 Code of Federal Regulations (CFR) Part 140. Specifically, the repealed rules prohibited the discharge of treated and untreated sewage from a boat into or adjacent to 25 designated lakes. However, 40 CFR §140.3 prohibits the discharge of treated and untreated sewage from a boat into all freshwater lakes, freshwater reservoirs, or other freshwater impoundments whose entrance points and exit points are as such to prevent the ingress and egress by vessel traffic subject to the regulation, rivers that do not support interstate vessel traffic, and any other waterbody that is designated as a no discharge zone (NDZ). An NDZ is an area of a waterbody or an entire waterbody into which the discharge of treated and untreated sewage from all boats is completely prohibited. The United States Environmental Protection Agency (EPA) has established a procedure that

allows states to designate other waterbodies, such as coastal waters and estuaries, as NDZs by receiving approval from the EPA through a petition process. In February 1995, Clear Lake was designated by the state and the EPA as an NDZ and the rules adopted on March 15, 1996, added Clear Lake to the list of waterbodies designated as NDZs. The adopted rules eliminate conflicting state and federal requirements, and allow for the flexibility of the state and EPA to designate future NDZs without requiring a corresponding change to the rules.

The adopted rules promote consistency with 33 United States Code (USC), §1322. Specifically, 33 USC, §1322 prohibits any state or political subdivision thereof from regulating the design, manufacture, or installation of any marine sanitation device (MSD) on boats other than houseboats. The repealed rules required all boats with MSDs located on any of the designated lakes to install a Type III MSD. As defined by 33 CFR §159.3, Types I and II MSDs are flow-through devices which provide for maceration and disinfection of sewage and a Type III MSD is a holding tank designed to prevent the overboard discharge of treated or untreated sewage. The United States Coast Guard (U.S. Coast Guard) regulations (33 CFR §159.7) allow for all three types of MSDs on any boat 65 feet or less in length and for Types II and III on boats more than 65 feet in length. The adopted rules allow for the use and certification of all three types of MSDs, in accordance with U.S. Coast Guard regulations. A state is allowed by 33 USC, §1322(f)(1)(B) to adopt and enforce a statute or regulation with respect to the design, manufacture, installation or use of any MSD on a houseboat, if such statute or regulation is more stringent than the federal standards and regulations. "Houseboat" is defined in 33 USC, §1322(f)(1)(B) as a "vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation." The more stringent requirement for houseboats to be equipped with a Type III MSD was retained in the adopted rules. In addition, the adopted rules require that Type I

and Type II MSDs be secured in a manner, as required by 33 CFR §159.7, that prevents the discharge of treated and untreated sewage while the boat is located on an NDZ. The adopted rules eliminate conflicting state and federal requirements.

The adopted rules expand the certification requirement for boats with MSDs installed. Specifically, §321.3 of the repealed rules required that boats operating on any inland freshwater lake designated in §321.2 be equipped with an MSD that is certified under this subchapter. The changes resulting from SB 2445 allowed, but did not require, the certification requirement to be applied to all surface water in the state. The commission adopted an expansion of the certification requirement to include boats with MSDs installed that are located on all surface water in the state consistent with 33 USC, §1322(f) and 40 CFR Part 140 to promote state-wide consistency and better education of the rule requirements that will improve water quality. A stakeholder meeting was held on November 16, 2009, with approximately ten individuals representing marina associations, marine plumbing businesses, educational and outreach organizations, and state agencies. The stakeholders supported the proposed certification expansion.

The adopted rules include a new section that defines the process by which local governmental entities can obtain authorization for the administration and performance of the functions required by the rules.

The adopted rules have added definitions for clarity of the requirements, corrected references to statutes, made grammatical changes and other non-substantive changes to clarify the adopted rule requirements.

The commission adopts the repeal of all sections of the current subchapter and simultaneously adopts new sections that improve organization and readability. The adopted reorganization of this subchapter removes

redundancy in the requirements and places similar requirements in the same section. The adopted rules expand the commission's ability to protect the health and safety of aquatic and wildlife resources, as well as water quality. The adopted rules promote consistency between federal and state rules.

SECTION BY SECTION DISCUSSION

§321.1, Authority

The commission adopts new §321.1, which establishes the authority of this subchapter, TWC, Chapter 26, Water Quality Control.

§321.2, Definitions

The commission adopts new §321.2 to incorporate portions of repealed §321.1, Definitions, as well as new definitions. The definition for "Boat" is adopted as §321.2(1), and corresponds to the definition in SB 2445. The definition for "Boat pump-out station" is adopted as §321.2(2) and corresponds to the definition in SB 2445. The definition for "Clear Lake" is adopted as §321.2(3) with no changes from the repealed rules. The definition for "Holding tank" is adopted as §321.2(4) with no changes from the repealed rules. The definition for "Houseboat" is adopted as §321.2(5) and includes those boats that are capable of being used as a stationary and/or mobile residence, as these boats may pose a greater risk to water quality due to the amount of time they may be occupied and the volume of waste that may be generated. The definition for "Marine sanitation device" is adopted as §321.2(6) and incorporates different types of MSDs by reference to the federal regulations (40 CFR Part 159). The definition for "No discharge zone" is adopted as §321.2(7) to clearly define this term that is unique to boat sewage disposal for clarity of its use in this subchapter. The definition for "Sewage" is adopted as §321.2(8) and includes a description of the sources from which sewage is derived and incorporates language from the definition of

"Sewage" found in TWC, Chapter 26. The definition for "Shoreside, mobile, or floating installation" is adopted as §321.2(9) and corresponds to the definition added in SB 2445. The definition for "Surface water in the state" is adopted as §321.2(10) and corresponds to the definition added in SB 2445. The definition for "Toilet" is adopted as §321.2(11) and distinguishes that a toilet is any sanitation device used on a boat which is designed to receive, retain, or dispose of sewage when connected to an MSD. The definitions for "Designated lake," "Pump-out facilities," and "Waters in the state" were repealed because they are not applicable in the adopted rules.

§321.3, Discharge Prohibited

The commission adopts §321.3, which establishes the requirements for the discharge of treated boat sewage into surface water in the state and ensures consistency with federal regulations.

Adopted new §321.3(a) addresses "surface water in the state," as defined by SB 2445. The adopted rules prohibit discharge of sewage that does not meet federal treatment standards from a boat into any surface water in the state.

Adopted new §321.3(b) establishes a requirement that no sewage, treated or untreated, from a boat may be discharged into: any inland freshwater lake, reservoir, or other impoundment; any river that is not capable of navigation by interstate vessel traffic; or any state designated and federally recognized NDZ. The 25 NDZ lakes listed in repealed §321.2(a) are subsumed in §321.3(b)(3) in the adopted rules. Any subsequent state designated and federally approved NDZ will be covered under §321.3(b)(3) of the adopted rules.

Adopted new §321.3(c) clarifies those areas in which the discharge of treated sewage is allowed under the federal regulations. The adopted rules restrict the discharge of treated boat sewage to certain areas, including coastal waters that begin from any shore of the state moving seaward to a point three nautical miles into the Gulf of Mexico and into certain rivers that support interstate vessel traffic.

§321.4, Requirements for Marine Sanitation Devices

The commission adopts new §321.4, which describes the requirements for installation and operation of MSDs.

Adopted new §321.4(a) requires any MSD that is installed on a boat to meet the U.S. Coast Guard regulations specified in 33 CFR §159.7. This change allows for the use and certification of all three types of MSDs on any boat and removes the requirement for all boats to have an attached holding tank while operating on an NDZ.

Adopted new §321.4(b) requires that a Type I or Type II MSD be secured in a manner required by the U.S. Coast Guard regulations (33 CFR §159.7) to prevent the discharge of sewage while the boat is located on an NDZ.

Adopted new §321.4(c) allows the use of a portable MSD that is designed to carry off sewage for onshore disposal on any boat except a houseboat.

Adopted new §321.4(d) requires any houseboat, regardless of length, to be equipped with at least one permanently installed toilet that is properly connected to a Type III MSD. Some houseboats may be

equipped with a Type I or Type II MSD; therefore, the adopted rules do not prohibit flow-through devices on houseboats; however, the addition of a permanently installed Type III MSD is required. The adopted rules require that all MSDs be secured in a manner that prevents the discharge of any sewage while the houseboat is located on an NDZ.

Adopted new §321.4(e) clarifies the approved methods of disposal of boat sewage and updates references to statutes.

§321.5, Design Specifications and Operation Requirements for Boat Pump-Out Stations

The commission adopts new §321.5, which describes the requirements for design and operation of boat pump-out stations.

Adopted new §321.5(a) defines the criteria for boat pump-out station design.

Adopted new §321.5(b) requires mobile or floating boat pump-out stations to be designed with the same criteria as land-based boat pump-out stations and requires adequate and spill-proof facilities for transfer of the collected sewage.

Adopted new §321.5(c) clarifies the approved methods of disposal for boat pump-out stations and updates references to statutes.

§321.6, Applicability of Certifications

The commission adopts new §321.6, which describes the applicability requirements for certification of

boat pump-out stations and MSDs.

Adopted new §321.6(a) establishes that the executive director is authorized to certify MSDs and boat pump-out stations as meeting the requirements of this subchapter.

Adopted new §321.6(b) requires the owner of any boat with a permanently installed MSD that will be located on surface water in the state to obtain and maintain a certification for the MSD. Prior to adoption, boat owners operating on 24 of the 25 designated lakes were required to obtain a certification. The adopted rules expand the certification requirement to surface water in the state beyond these 24 designated lakes.

Adopted new §321.6(c) requires boat pump-out station owners to obtain and maintain a certification decal for their boat pump-out station.

Adopted new §321.6(d) provides exceptions to the certification requirement. During the stakeholder meeting, stakeholders expressed a desire for transient boats or those boats that will be permanently relocating to the state to be allowed a grace period before being required to obtain the certification of the MSD.

Adopted new §321.6(d)(1) exempts boats that are registered in another state or country from the requirement to obtain the certification when they are located on surface water in the state for less than 30 days during any 12-month period.

Adopted new §321.6(d)(2) exempts federal, state, and local governmental agencies from the MSD certification requirement.

Adopted new §321.6(d)(3) exempts those boat owners who operate their boats only on a waterbody for which a local governmental entity has established local certification requirements from paying excessive fees for an additional certification. If the boat is located on surface water outside the jurisdiction for which the local certification is valid, the boat owner would then be required to obtain a certification required by this subchapter at a lesser fee.

§321.7, Obtaining Certifications

The commission adopts new §321.7, which describes the requirements for obtaining certifications.

Adopted new §321.7(a) is applicable to both MSDs and boat pump-out stations and establishes the requirements by which applications should be submitted to the executive director.

Adopted new §321.7(b) establishes the requirements for initial certification of MSDs and boat pump-out stations. The adopted rules require that boat pump-out stations apply for a certification prior to operation and that boat owners submit an application within 45 days of obtaining a boat number under the Texas Water Safety Act (or within 45 days of making the determination that a boat number under the Texas Water Safety Act is not required for the boat).

Adopted new §321.7(c) establishes the requirements for renewal certification of MSDs and boat pump-out stations. The commission anticipates a substantial increase in the number of renewal applications that

will need to be processed each odd-numbered calendar year. To ensure that renewal applications are processed and certification decals are issued in a timely manner, the adopted rules require that renewal applications be submitted no later than November 30th prior to the date of expiration of the existing decal.

Adopted new §321.7(d) establishes the requirements for electronic submission of applications for certifications. The commission anticipates a substantial increase in the number of initial and renewal applications that will need to be processed. To ensure that applications are processed and certification decals are issued in a timely manner, the adopted rules require that applications be submitted through an electronic system at such point that one becomes available by the executive director. In addition, the adopted rules require that until such time that an electronic system becomes available, payments for the certification fees are required to be submitted electronically using the commission's approved on-line payment system. The adopted rules allow an exception if electronic submission creates a hardship or is not feasible.

Adopted new §321.7(e) establishes the requirements by which the certification decals will be designed and issued by the executive director.

Adopted new §321.7(f) changes the renewal requirement frequency for boat pump-out stations from annually to biennially, in accordance with the changes from SB 2445.

Adopted new §321.7(g) establishes that the certification decal is valid until expiration whether the boat is traded or sold.

Adopted new §321.7(h) establishes that the executive director may cancel a decal if the applicant misrepresents material facts in an application, or provides false or fraudulent information used for certification.

§321.8, Certification Fees

The commission adopts new §321.8, which describes the fee requirements for certifications.

Adopted new §321.8(a) sets a fee amount of \$15.00 for the initial and renewal certification of MSDs.

Adopted new §321.8(b) sets a fee amount of \$35.00 for the initial certification and \$25.00 for the renewal certification of a boat pump-out station and allows for inspections of boat pump-out stations prior to certification.

Adopted new §321.8(c) establishes that a replacement decal can be obtained for a fee of \$2.00.

Adopted new §321.8(d) allows the payment of a \$2.00 fee to the commission for a boat that has complied with a local program, at least as stringent as the state program, to obtain a certificate to operate on any surface water in the state outside the jurisdictional boundaries of local regulation.

§321.9, Evidence of Certifications

The commission adopts new §321.9, which establishes the requirements by which certifications must be displayed on boats and boat pump-out stations.

§321.10, Delegation to Local Governmental Entities

The commission adopts new §321.10, which clarifies the process by which local governmental entities may obtain delegation of the certification program.

Adopted new §321.10(a) establishes that the executive director may delegate the authority to administer the certification program to any local governmental entity. Local administration of the certification program allows local governmental entities to tailor their outreach and enforcement programs to the needs of the local area, which protects the health and safety of aquatic and wildlife resources as well as water quality.

Adopted new §321.10(b) and (c) establishes requirements for local governmental entities wishing to seek delegation authority to administer the certification program. The adopted rule require a local governmental entity to submit such a request in writing to the executive director and that the executive director notify the local governmental entity in writing to provide for the terms and conditions of program assumption when the request is approved.

Adopted new §321.10(d) gives any delegated local governmental entity the authority to inspect boat pump-out stations.

Adopted new §321.10(e) establishes the conditions under which the executive director may modify or rescind any powers and functions delegated to any local governmental entity.

§321.11, Criminal Penalties

The commission adopts new §321.11, which establishes that any person who violates the provisions of this subchapter is subject to criminal penalties under the Texas Parks and Wildlife Code.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of “a major environmental rule.” Under Texas Government Code, §2001.0225, “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. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. The specific intent of the adopted rulemaking is to incorporate the changes required by SB 2445 into the TCEQ rules and promote consistency with Clean Water Act, §312 and 40 CFR Part 140. SB 2445 amended TWC, §26.044 and §26.045 by revising the definition for the term "Boat," adding new definitions for "Boat pump-out station," "Shoreside, mobile, or floating installation," and "Surface water in the state," and by changing the frequency for certifications for pump-out stations from annual to biennial. Because the

adopted rules will not 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 rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules are specifically required by state law and do not result in any new environmental requirements.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to incorporate the changes required by SB 2445 into the TCEQ rules and promote consistency with Clean Water Act, §312 and 40 CFR Part 140. Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property. Specifically, the adopted 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 and reduce any property's 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 adopted rules 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 Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission held a public hearing in Austin, Texas on June 8, 2010. The comment period closed on June 14, 2010. The commission received comments from Galveston Bay Foundation (GBF), Saltmasters Texas LLC (Saltmasters), and Texas A&M University - Texas Sea Grant College Program (TSG). The comments were generally supportive of the rules.

RESPONSE TO COMMENTS

GBF commented that it supports the current proposal for extended coverage beyond current regulation and for improved consistency with U.S. Coast Guard policies. GBF sees the proposed rules as a positive step towards the protection of the state waterways and Galveston Bay. GBF is encouraged that boats operating on Clear Lake will be required to obtain and maintain certifications for on-board MSDs and must display evidence of this by a clearly visible certification decal.

The commission appreciates the support and agrees that expanding the certification requirement and improving consistency with federal regulations will help improve water quality for the protection of human health, as well as health and safety of aquatic and wildlife resources. No changes were made in response to this comment.

GBF and TSG commented that education and more active enforcement is a key to the success of the new rules. TSG commented that the efforts of the Clean Marina Program and the Clean Boater Program have been directed at trying to improve the performance of boaters by educating them on appropriate disposal methods of boat sewage. TSG looks forward to TCEQ and other agencies who are involved in this program to take a more active role in education and enforcement. GBF commented that there needs to be

stepped-up enforcement, either by local jurisdictions, or potentially, by the Texas Parks and Wildlife Department to let boaters know that illegal discharge of boat sewage is a significant issue that needs to be addressed. GBF commented that anything the agency can do to bring more attention to the issue of boat sewage disposal, especially on the Coast, would be very much appreciated.

The commission agrees that boater education is a key to the effectiveness of improving water quality, especially in areas with high boater activity. The agency has initiated meetings with the Texas Parks and Wildlife Department to discuss the development of a state-wide education and outreach program as well as how to strengthen enforcement of the rules. No changes were made in response to these comments.

Saltmasters commented that most of the sewage discharges in the Lower Laguna Madre are from commercial tour boats with tanks of 300 to 400 gallons. Saltmasters suggested that the commercial boats be required to have a certification sticker, so as to allow a marine safety enforcement officer reasonable cause to board the boat for inspection.

The definition of "Boat," as amended by SB 2445, excludes vessels that are subject to inspection under 46 USC, §3301. The inspection of commercial tour boats is a function delegated to the U.S. Coast Guard under 46 USC, §3301. No changes were made in response to this comment.

Saltmasters suggested that SB 2445 be amended to require any dock that accommodates boats over 26 feet and sells fuel to be required to have either a pump-out facility and/or a sewage receiving facility for commercial boats with pumping systems already on board. Saltmasters also suggested that SB 2445 be

amended to require county, city, and navigation districts to have rules or ordinances to reflect the suggested changes for dock requirements.

Texas Government Code, Chapter 566, prohibits state agencies from lobbying the legislature in an attempt to influence the passage or defeat of a legislative matter. State agencies may provide public information or respond to a request. No changes were made in response to this comment.

GBF thanked the commission for the time and effort spent on the proposed rules.

The commission appreciates the comment.

SUBCHAPTER A: BOAT SEWAGE DISPOSAL

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, authorizing the commission to perform any acts authorized by TWC or other laws which are necessary and convenient to the exercise of its jurisdiction and powers under TWC or other laws; §5.103, authorizing the commission to adopt rules necessary to carry out its powers and duties under TWC; §26.011, authorizing the commission to control the quality of water in the state; §26.121, prohibiting the discharge of waste into surface water in the state except as authorized by the commission; and §26.044 (as amended by Senate Bill 2445, 81st Legislature, 2009)), authorizing the commission to issue rules concerning the disposal of sewage from boats located or operated on surface water in the state. These repeals are also adopted under the Texas Water Quality Control Act, which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034 as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

SUBCHAPTER A: BOAT SEWAGE DISPOSAL

§§321.1 - 321.11

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code (TWC), §5.102, authorizing the commission to perform any acts authorized by TWC or other laws which are necessary and convenient to the exercise of its jurisdiction and powers under TWC or other laws; §5.103, authorizing the commission to adopt rules necessary to carry out its powers and duties under TWC; §26.011, authorizing the commission to control the quality of water in the state; §26.121, prohibiting the discharge of waste into surface water in the state except as authorized by the commission; and §26.044 (as amended by Senate Bill 2445, 81st Legislature, 2009)), authorizing the commission to issue rules concerning the disposal of sewage from boats located or operated on surface water in the state. These new sections are also adopted under the Texas Water Quality Control Act, which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034 as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

The adopted new sections implement TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

§321.1. Authority.

The provisions in this subchapter are issued under the authority of Texas Water Code, Chapter

26, Water Quality Control.

§321.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Boat**--Any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on surface water in the state, whether or not capable of self-locomotion, including but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects. The term does not include a vessel subject to inspection under 46 United States Code, §3301.

(2) **Boat pump-out station**--Any private or public shoreside, mobile, or floating installation either independent of or in addition to an organized waste collection, treatment, and disposal system used to receive boat sewage.

(3) **Clear Lake**--That body of water located in Harris and Galveston Counties and commonly referred to as "Clear Lake" and its immediate tributaries including: Clear Creek east of Interstate Highway 45; Cow Bayou south of NASA Road 1; Horsepen and Armand Bayous south of Bay Area Boulevard; Taylor Lake south of Red Bluff Road; and to the confluence with Galveston Bay at the navigation light in Kemah.

(4) **Holding tank**--Any tank or receptacle used for retaining sewage.

(5) **Houseboat**--Any boat or floating structure on surface water in the state, capable of being used as a stationary and/or mobile residence that usually, but not necessarily, contains plumbing fixtures.

(6) **Marine sanitation device**--Any sanitation device for use on any boat, which is designed to receive, retain, treat or dispose of sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 Code of Federal Regulations Part 159.

(7) **No discharge zone**--Any surface water in the state where the discharge of boat sewage is prohibited.

(8) **Sewage**--Human body wastes and wastes derived from domestic activities, such as washing, bathing, and food preparation, discharged into marine sanitation devices and boat pump-out stations.

(9) **Shoreside, mobile, or floating installation**--Marinas and other installations servicing boats on surface water in the state.

(10) **Surface water in the state**--All lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico out three nautical miles into the Gulf, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are

wholly or partially inside or bordering the state or inside the jurisdiction of the state, except waters beyond three nautical miles of any shore in the state.

(11) **Toilet**--Any sanitation device used on a boat which is designed to receive, retain, or dispose of sewage when connected to a marine sanitation device.

§321.3. Discharge Prohibited.

(a) The discharge of sewage which has not been treated in accordance with federal standards specified in 40 Code of Federal Regulations (CFR) Part 140 is prohibited into any surface water in the state.

(b) No person may discharge sewage, treated or untreated, from a boat into:

(1) any inland freshwater lake, freshwater reservoir, or other freshwater impoundment whose inlets or outlets are as such to prevent the entry or exit of vessel traffic;

(2) any river not capable of navigation by interstate vessel traffic; or

(3) Clear Lake or any other state designated and federally recognized no discharge zone.

(c) With the exception of those waterbodies identified in subsection (b) of this section, a person may discharge sewage that has been treated in accordance with federal standards specified in 40 CFR Part 140 from a boat into the following areas:

(1) coastal waters that begin from any shore of the state moving seaward to a point three nautical miles into the Gulf of Mexico; and

(2) any river that is accessible from the Gulf of Mexico starting from the mouth of the river moving inland up to the point where navigation by the boat is no longer capable.

§321.4. Requirements for Marine Sanitation Devices.

(a) Any marine sanitation device installed on a boat shall meet the requirements specified in 33 Code of Federal Regulations (CFR) Part 159.

(b) If a Type I or Type II marine sanitation device is installed on any boat, the operator shall secure the device using an acceptable method described in 33 CFR Part 159 to prevent the discharge of treated or untreated sewage while located on a no discharge zone.

(c) A portable marine sanitation device that is designed to facilitate the carry-off of sewage for onshore disposal is acceptable as an additional marine sanitation device on any boat other than a houseboat.

(d) All houseboats, regardless of length, shall be equipped with at least one permanently installed toilet which shall be properly connected to a Type III marine sanitation device. The toilet may be simultaneously connected to both a Type III marine sanitation device and to another approved marine

sanitation device only if the valve or other mechanism between the two devices are set to direct all sewage to the Type III marine sanitation device and shall be locked or otherwise secured by the boat operator in a manner that will prevent the discharge of treated or untreated sewage while the vessel is located on a no discharge zone.

(e) Contents of a holding tank, whether permanently installed or portable, may be disposed of only by the following methods:

(1) discharge into a boat pump-out station approved and certified under this subchapter;

(2) discharge into an adequately-sized on-site sewage facility permitted to receive boat sewage in accordance with Texas Health and Safety Code, Chapter 366 and Chapter 285 of this title (relating to On-Site Sewage Facilities); or

(3) pick up and discharge by a transporter registered under Chapter 312, Subchapter G of this title (relating to Transporters and Temporary Storage Provisions), for disposal at a facility permitted or authorized by the commission to receive boat sewage.

§321.5. Design Specifications and Operation Requirements for Boat Pump-Out Stations.

(a) Boat pump-out stations shall be designed:

(1) to provide a spill-proof connection with shipboard holding tanks;

(2) with suction controls or vacuum breaker to limit suction to such levels as will avoid collapse of rigid holding tanks;

(3) to provide fresh water facilities for tank flushing;

(4) with a check valve and positive cut-off or other device to preclude spillage when breaking connection with a vessel being serviced;

(5) to provide adequate interim storage, if required, prior to transfer to an approved sewage system for disposal; and

(6) to ensure that any connection to a drinking water system is provided with vacuum breakers or other device designed to insure against backflow or siphonage of sewage or contaminated water into the drinking water system.

(b) Mobile or floating boat pump-out stations shall be provided with adequate and spill-proof facilities for transfer to shore-based sewage systems or intermediate transfer facilities.

(c) Sewage from a boat pump-out station may be disposed of only by the following methods:

(1) after obtaining permission from the owner or operator of the sewage system, discharge into a sewage system operated under authority of a valid permit issued by the commission;

(2) discharge into an adequately-sized on-site sewage facility permitted to receive boat sewage in accordance with Texas Health and Safety Code, Chapter 366 and Chapter 285 of this title (relating to On-Site Sewage Facilities); or

(3) pick up and discharge by a transporter registered under Chapter 312, Subchapter G of this title (relating to Transporters and Temporary Storage Provisions), for disposal at a facility permitted or authorized by the commission to receive boat sewage.

§321.6. Applicability of Certifications.

(a) The executive director is authorized to certify marine sanitation devices and boat pump-out stations as meeting the requirements of this subchapter.

(b) The owner of any boat with a permanently installed marine sanitation device located on surface water in the state must obtain and maintain certification of facilities for that boat in accordance with the provisions of this subchapter, except as described in subsection (d) of this section.

(c) The owner of a boat pump-out station operated on or adjacent to surface water in the state must obtain and maintain certification of those facilities in accordance with the provisions of this subchapter.

(d) The certification requirement for marine sanitation devices is not required for:

(1) those boats that are registered in another state or country, which will be located on surface water in the state for less than 30 consecutive days during a 12-month period; provided they have a marine sanitation device meeting the requirements of this subchapter;

(2) any marine sanitation device owned by a federal, state, or local governmental agency;

or

(3) those boats which are certified with an authorized local government, as described in §321.8(d) of this title (relating to Certification Fees).

§321.7. Obtaining Certifications.

(a) Applications for certifications shall be made on a standard form provided by the executive director. The application must be submitted to the executive director with the appropriate fee, as described in §321.8 of this title (relating to Certification Fees).

(b) Initial certifications. Certification application forms must be submitted to the executive director for:

(1) marine sanitation devices within 45 days of obtaining a boat number or of

determining that a boat number is not required to be obtained under the Texas Water Safety Act, Texas Parks and Wildlife Code, Title 4, Chapter 31; and

(2) a boat pump-out station prior to its operation.

(c) Renewal applications. Certification renewal application forms must be submitted no later than November 30th of each odd-numbered year to obtain valid certifications for the next biennium.

(d) Electronic application for certification.

(1) When the executive director announces on the commission's public Web site that electronic application forms are available, applications for certifications required by this section shall be submitted electronically using the electronic forms provided by the executive director.

(2) Until such time when the electronic application forms become available, payments associated with the certification fees shall be made electronically on the commission's public Web site through the electronic payment system approved by the executive director.

(3) Persons unable to comply with paragraphs (1) or (2) of this subsection may request from the executive director a waiver from the requirement to file or pay electronically. In evaluating a request for a waiver, the executive director may require the applicant to provide documentation to support a claim of hardship.

(e) Certification decals for this purpose will be designed and issued by the executive director. The certification decal shall clearly indicate date of expiration.

(f) Any certification of marine sanitation devices and boat pump-out stations or renewals thereof issued on or after December 31, 2009, will expire December 31 of each odd-numbered year thereafter.

(g) A certification decal issued under this subchapter remains valid for the life of the decal whether the boat is traded or sold.

(h) A certification issued under this subchapter is subject to cancellation by the executive director prior to the date of expiration if the applicant misrepresents any material fact in the application or provides information for certification which is false or fraudulent.

§321.8. Certification Fees.

(a) The commission shall charge a fee of \$15 for the initial certification and each renewal certification of marine sanitation devices.

(b) The commission shall charge a fee of \$35 for the initial certification and \$25 for the renewal certification of a boat pump-out station. Inspections of boat pump-out stations may be required prior to certification.

(c) If a certification decal becomes illegible or is destroyed, a replacement decal can be obtained

from the executive director for a fee of \$2.00.

(d) The commission may delegate the administration and performance of the certification function to another governmental entity in the state. When such delegation occurs, the governmental entity shall have the authority to administer and perform the certification functions contained in this subchapter within its jurisdictional boundaries. Compliance with the certification requirements of the delegated governmental entity is deemed to be in compliance with applicable provisions of this subchapter if such requirements are as restrictive in prohibiting the discharge of sewage from boats as the provisions in this subchapter. On furnishing proof of certification by a delegated governmental entity, a copy of the certification requirements that governs the discharge of sewage from boats inside the jurisdiction of the governmental entity, and a \$2.00 fee payable to the commission for issuance of decals, the boat owner will obtain a certification decal from the executive director in order to locate the boat on surface water in the state outside the jurisdiction of the governmental entity.

§321.9. Evidence of Certifications.

(a) Evidence of the certification, which must clearly indicate the date of expiration, shall be displayed on a boat as follows:

(1) On a boat registered by the Texas Parks and Wildlife Department under the Water Safety Act, the certification decal must be clearly visible and be placed within three inches of the registration validation decal; or

(2) On boats unregistered by the Texas Parks and Wildlife Department, the certification decal must be clearly visible on the exterior of the boat.

(b) A boat pump-out station must have the certification decal prominently displayed, which must clearly indicate the date of expiration.

§321.10. Delegation to Local Governmental Entities.

(a) The executive director may delegate the administration and performance of the functions required by this subchapter to any local governmental entity wishing to perform the certification functions. The commissioners' court of a county so delegated may designate any agency of the county to perform such certification.

(b) Any local governmental entity seeking to obtain delegation to administer and perform the certification functions pursuant to this subchapter shall submit a request to the executive director. The request shall be submitted on a form approved by the executive director.

(c) Upon approval of a request to obtain delegation under this section, the executive director shall notify the local governmental entity in writing to provide for the terms and conditions of program assumption, including the executive director's oversight.

(d) Any local governmental entity which has been delegated authority pursuant to Texas Water

Code, §26.044, is hereby authorized to inspect boat pump-out stations in its designated area.

(e) The executive director reserves the right to modify or rescind any powers and functions delegated to any local governmental entity and shall notify immediately the local governmental entity when it modifies or rescinds any such delegation.

§321.11. Criminal Penalties.

Any person who violates or fails to comply with the provisions of this subchapter concerning the disposal of sewage from boats is subject to criminal penalties pursuant to the Texas Parks and Wildlife Code, §31.129.