

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

#### 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 proposed rules would incorporate the changes required by SB 2445.

The proposed rules would promote consistency with Clean Water Act, §312 and 40 Code of Federal Regulations (CFR) Part 140. Specifically, the current rules prohibit 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 proposed rules would 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 proposed rules would 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 current rules require all boats 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 proposed rules would 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, or 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 will be retained in the proposed rules. In addition, the proposed new rules would 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 proposed rules would eliminate conflicting state and federal requirements.

The proposed rules would expand the certification requirement for boats with MSDs installed. Specifically, §321.3 of the existing rules require 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 allow, but do not require, the certification requirement to be applied to all surface water in the state. The commission proposes to expand the certification requirement to 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 would 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 proposed rulemaking includes 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 proposed rules have added definitions for clarity of the requirements, other changes to correct references to statute, grammatical changes, and other non-substantive changes to add clarity to the proposed rule requirements.

The commission proposes to repeal all sections of the current subchapter and simultaneously proposes new sections that improve organization and readability. The proposed reorganization of this subchapter would remove redundancy in the requirements and place similar requirements in the same section. The

proposed rules would expand the commission's ability to protect the health and safety of aquatic and wildlife resources, as well as water quality. The proposed rules would promote consistency between federal and state rules.

#### SECTION BY SECTION DISCUSSION

The commission proposes the repeal of existing §§321.1 - 321.18. Portions of the existing rules would be moved and incorporated into the new §§321.1 - 321.11.

##### *§321.1, Applicability*

Proposed new §321.1 would establish the authority of this subchapter, TWC, Chapter 26, Water Quality Control.

##### *§321.2, Definitions*

Proposed new §321.2, Definitions, would incorporate portions of existing §321.1, Definitions, as well as new definitions. The definition for "boat" would be moved from existing §321.1(1) to proposed new §321.2(1), and changed to ensure that the commission's rules correspond to the definition in SB 2445. The definition for "boat pump-out station" would be added to proposed new §321.2(2) to ensure that the commission's rules correspond to the definition added in SB 2445. The definition for "Clear Lake" would be moved from existing §321.1(2) to proposed new §321.2(3). No substantive changes were made. The definition for "holding tank" would be moved from existing §321.1(4) to proposed new §321.2(4). No substantive changes were made. The definition for "houseboat" would be moved from existing §321.1(5) to proposed new §321.2(5), and changed to clarify the language. The proposed new definition is intended to include 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" would be moved from existing §321.1(6) to proposed new §321.2(6). The definition would be expanded to incorporate different types of marine sanitation devices by reference to the federal regulations (40 CFR Part 159). The definition for "no discharge zone" would be added to proposed new §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" would be moved from existing §321.1(8) to proposed new §321.2(8) and changed to clarify the language. The proposed new definition includes a description of the sources from which sewage is derived and incorporates language from the definition of "sewage" found in Chapter 26 of the Texas Water Code. The definition for "shoreside, mobile, or floating installation" would be added to proposed new §321.2(9) to ensure that the commission's rules correspond to the definition added in SB 2445. The definition for "surface water in the state" would be added to proposed new §321.2(10) to ensure that the commission's rules correspond to the definition added in SB 2445. The definition for "toilet" would be added to proposed new §321.2(11) to distinguish that a toilet is any sanitation device used on a boat which is designed to receive, retain, or dispose of sewage when connected to a marine sanitation device. The definitions for existing "designated lake," "pump-out facilities," and "waters in the state" would be repealed because they are not applicable in the proposed rules.

### *§321.3, Discharge Prohibited*

Proposed new §321.3, Discharge Prohibited, would incorporate existing §321.2, Discharge Prohibited, and would ensure consistency with federal regulations. The 25 NDZ lakes listed in the existing §321.2(a) are subsumed in §321.3(b)(3) in the proposed rules. Any subsequent state designated and federally approved NDZ will be covered under §321.3(b)(3) of the proposed rules.

Existing §321.2(b) would be moved to proposed new §321.3(a). The term "waters in the state" would be changed to "surface water in the state," as defined by SB 2445. The proposed rules would prohibit discharge of sewage that does not meet federal treatment standards from a boat into any surface water in the state.

Proposed new §321.3(b) would establish 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.

Proposed new §321.3(c) would be added to clarify those areas in which the discharge of treated sewage is allowed under the federal regulations. The proposed rules would 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*

To improve organization and readability, existing §321.3, Marine Sanitation Device Required, existing §321.4, Specifications for Approved Marine Sanitation Devices, and existing §321.8, Disposal of Boat Sewage, would be repealed and portions of the requirements contained in those sections would be moved to proposed new §321.4, Requirements for Marine Sanitation Devices.

Proposed new §321.4(a) would require any MSD that is installed on a boat to meet the U.S. Coast Guard

regulations specified in 33 CFR §159.7. This proposed change would allow for the use and certification of all three types of MSDs on any boat and would remove the existing requirement for all boats to have an attached holding tank while operating on an NDZ.

Proposed new §321.4(b) would require 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.

Existing §321.4(3) would be moved to proposed new §321.4(c) and would be amended to allow the use of a portable MSD that is designed to carry-off sewage for onshore disposal on any boat except a houseboat.

Existing §321.3(a)(3) would be moved to proposed new §321.4(d) and would be amended to require 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 proposed new rules would not prohibit flow-through devices on houseboats; however, the addition of a permanently installed Type III MSD would be required. The proposed rules would require that all MSDs be secured in a manner that would prevent the discharge of any sewage while the houseboat is located on an NDZ.

Existing §321.8, Disposal of Boat Sewage, would be moved to proposed new §321.4(e) for better organization of the subchapter. Existing §321.8 would be amended to clarify the approved methods of disposal and to update references to statutes.

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

To improve organization and readability, existing §321.9, Specifications for Pump-out Facilities, and existing §321.13, Disposal of Sewage from Pump-Out Facility, would be repealed and portions of the requirements contained in those sections would be moved to proposed new §321.5, Design Specifications and Operation Requirements for Boat Pump-Out Stations.

Existing §321.9 would be moved to proposed new §321.5(a) and reformatted for better readability. The proposed new §321.5(a) would define the criteria for boat pump-out station design. The last sentence of existing §321.9 would be moved to proposed new §321.5(b) and amended by deleting the word "of" in the phrase "intermediate transfer of facilities" for clarity. The proposed new §321.5(b) would require mobile or floating boat pump-out stations to be designed with the same criteria as land-based boat pump-out stations and would require adequate and spill-proof facilities for transfer of the collected sewage.

Existing §321.13, Disposal of Sewage from Pump-Out Facility, would be moved to proposed new §321.5(c) for better organization of the subchapter. Existing §321.13 would be amended to clarify the approved methods of disposal and to update references to statutes.

*§321.6, Applicability of Certifications*

A portion of existing §321.5(a) (the first sentence, which pertains to executive director authority) and existing §321.10(a) would be moved to proposed new §321.6(a) for better organization in the subchapter. The proposed new §321.6(a) would establish that the executive director is authorized to certify MSDs and boat pump-out stations as meeting the requirements of this subchapter.

Existing §321.5(c) would be moved to proposed new §321.6(b) and amended to require 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. Currently, boat owners operating on 24 of the 25 designated lakes are required to obtain a certification. The proposed rules would expand the certification requirement to surface water in the state beyond the current 24 designated lakes.

Existing §321.10(b) would be moved to proposed new §321.6(c) and amended to add a requirement for the boat pump-out station owner to maintain the certification decal.

Proposed new §321.6(d) would provide 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.

Proposed new §321.6(d)(1) would exempt 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. Existing §321.7 would be moved to proposed new §321.6(d)(2) and would exempt federal, state, and local governmental agencies from the MSD certification requirement.

Proposed new §321.6(d)(3) would exempt those boat owners who operate their boats only on a waterbody for which a local governmental entity has established local certification requirements, as described in existing §321.14(a), 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*

Existing §321.5(b) and existing §321.10(c) would be moved to proposed new §321.7(a) and proposed new §321.7(e). Proposed new §321.7(a) would be applicable to both MSDs and boat pump-out stations and would establish the requirements by which applications should be submitted to the executive director.

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

Proposed new §321.7(b) would establish the requirements for initial certification of MSDs and boat pump-out stations. The proposed rules would 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).

Proposed new §321.7(c) would establish 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 proposed rules would require that renewal applications be submitted no later than November 30th prior to the date of expiration of the existing decal.

Proposed 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 proposed new rules would require that applications be submitted through an electronic system at such point that one becomes available by the executive director. In addition, the proposed rules would require that until such time that an electronic system becomes available, payments for the certification fees would be required to be submitted electronically using the commission's approved on-line payment system. The proposed rules would allow an exception if electronic submission creates a hardship or is not feasible.

Existing §321.15(c) would be moved to proposed new §321.7(e) and the word "time" would be amended to "date" of expiration. The proposed new §321.7(e) would clarify the design of the decal.

Existing §321.15(a) would be moved to proposed new §321.7(f) and amended to change the renewal requirement of boat pump-out stations from annually to biennially, in accordance with the changes from SB 2445.

Existing §321.17(b) would be moved to proposed new §321.7(g). The proposed new §321.7(g) would establish that the certification decal is valid until expiration whether the boat is traded or sold.

Existing §321.17(a) would be moved to proposed new §321.7(h) and amended to clarify the conditions under which the executive director may cancel a decal. Proposed 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*

Portions of existing §321.7(a) and existing §321.15(d) (relating to fee amounts for MSDs) would be moved to proposed new §321.8(a) for better organization of the subchapter. Proposed new §321.8(a) sets a fee amount of \$15.00 for the initial and renewal certification of MSDs.

Portions of existing §321.12 and existing §321.15(e) (relating to fee amounts for boat pump-out stations) and existing §321.15(b) would be moved to proposed new §321.8(b) for better organization of the subchapter. Proposed new §321.8(b) sets a fee 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.

Existing §321.17(c) would be moved to proposed new §321.8(c) for better organization of the subchapter. Proposed new §321.8(c) establishes that a replacement decal can be obtained for a fee of \$2.00.

Existing §321.14(a) would be moved to proposed new §321.8(d) and would be amended to allow 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 jurisdiction of local regulation.

*§321.9, Evidence of Certifications*

Existing §321.6, Evidence of Certification of Marine Sanitation Devices, and existing §321.11, Evidence of Certification of Pump-Out Facilities, would be repealed and the requirements contained in those

sections would be moved to proposed new §321.9, Evidence of Certifications. The formatting would be modified to improve readability, but there would be no substantive changes.

*§321.10, Delegation to Local Governmental Entities*

A portion of existing §321.5(a) (pertaining to delegation of authority) would be moved to proposed new §321.10(a) and establish that the executive director may delegate the authority to administer the certification program to any local governmental entity. Local administration of the certification program would allow local governmental entities to tailor their outreach and enforcement programs to the needs of the local area, which would protect the health and safety of aquatic and wildlife resources as well as water quality.

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

Existing §321.14(b) would be moved to proposed new §321.10(d) and gives any delegated local governmental entity the authority to inspect boat pump-out stations.

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

*§321.11, Criminal Penalties*

Existing §321.18, Criminal Penalties would be moved to proposed new §321.11, Criminal Penalties. No substantive changes would be made.

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 rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. Other units of state or local government that own or operate boats with MSDs or who have been delegated authority by the commission to administer the boat sewage certification program will also be affected by the proposed rules. However, the fiscal impact of the proposed rules on state agencies and local governments is not expected to be significant.

The proposed rulemaking would repeal the existing Subchapter A rules and propose a new Subchapter A to: implement the provisions of SB 2445, 81st Legislature; ensure consistency with the Clean Water Act and 40 CFR Part 140; and ensure consistency with U.S. Coast Guard regulations regarding the use and certification of Types I, II, and III MSDs.

The proposed rules implement the provisions of SB 2445 by: redefining the term "boat", adding new definitions for "Boat pump-out station," "Shoreside, mobile, or floating installation," and "Surface water in the state," changing the frequency for renewal of certifications for pump-out stations from annual to biennial; and expanding the number of boat owners with MSDs upon whom fees can be imposed. The fee for each boat pump out station and MSD certification level will remain unchanged under the proposed

rules.

The proposed rules would ensure that state rules regarding NDZs are consistent with the Clean Water Act and 40 CFR Part 140. The existing rules designate 25 lakes where it is prohibited to discharge treated and untreated sewage from a boat into or adjacent to these waterbodies. The proposed rules would prohibit the discharge of treated and untreated boat sewage into all inland fresh waterbodies in the state, rivers that do not support interstate vessel traffic, and other waterbodies, such as coastal waters and estuaries, that are recognized as NDZs.

The proposed rules would also ensure that state rules regarding MSDs are consistent with U.S. Coast Guard regulations regarding the use and certification of Type I, II, and III MSDs. Boats regulated under the existing rules are required to install a Type III MSD, which is a holding tank designed to prevent overboard discharge of treated or untreated sewage. The proposed rules would allow for the use of all three types of MSDs on boats that are 65 feet or less and specify that boats longer than 65 feet use Type II or III MSDs only per U.S. Coast Guard regulations. Type I and II MSDs (those MSDs that are flow-through devices providing for maceration and disinfection of sewage) will be required to install a padlock or wire-tire to prevent automatic discharge of treated sewage in protected waters, and all MSDs will be required to use pump-out services to dispose of sewage while in those waters.

#### *Impact on Agency Resources*

The agency will use current resources to implement the proposed rules, including the establishment of a manual system to process certification applications. There are approximately 2,400 boats currently subject to MSD certification. The agency expects an estimated 30,000 more boats to become subject to

the initial certification requirements under the proposed rules in the second year of implementation. After the second year, an estimated 32,400 boats owners are expected to pay renewal certification fees on a biennial basis. It is expected that there will be new boats purchased or moving into the state and new pump-out stations built in the future. The volume of new boats and pump-out stations will depend on the economic conditions in the state. Since the number of new boats and pump-out stations requiring certification is expected to increase significantly, the agency will need to automate fee payment and certification in order to efficiently handle any increase in workload. The agency currently estimates that the development of an electronic database could cost as much as \$318,000 and that annual maintenance could cost \$12,000 per year, but the agency would have to request additional legislative appropriation authority to develop this type of system. SB 2445 designates officials from the Texas Parks and Wildlife Department and local governmental entities to enforce requirements for boat sewage certification.

#### *Impact on Agency Revenue*

Agency revenue is expected to increase as a result of the proposed rules, but the increase is not expected to be significant and any increase in revenue would be used to cover the costs of implementing the program, subject to legislative appropriation. The agency estimates that there are 2,400 boats and 88 pump-out stations that are certified under the existing rules

The commission may delegate authority for the boat sewage certification to other governmental entities. SB 2445 allows those governmental entities to collect certification fees. However, this analysis assumes that the agency will be the only certifying authority for MSDs and pump-out stations. In the second year of implementation, approximately 30,000 additional boats will be required to certify MSDs. There are currently 116 marinas known to have pump-out stations, but approximately 28 have uncertified pump-out

stations. The agency will encourage these 28 stations to obtain certification as quickly as possible. Since it is an individual business decision whether or not to install a pump-out station, the agency has no data regarding how many additional pump-out stations on other bodies of water will be installed.

MSD certification will cost boat owners \$15, and the initial certification for pump-out stations will cost \$35. The agency estimates that fee revenue in Account 153 - Water Resource Management Account could increase by \$450,980 the second year of implementation if all boat certifications are obtained and 28 uncertified pump-out stations obtain certification. After initial certification, the fees to recertify MSDs remain at \$15, but recertification of pump-out stations is \$25. Fees renew on a biennial basis, and the revenue increase for the fourth year is estimated to total \$450,700. Increased agency revenue over a five year period could total as much as \$901,680.

#### *Impact to State Agencies and Local Governments*

The proposed rules would exempt governmental entities from paying certification fees for MSDs. However, additional state agencies and local governments that operate boats would be required to comply with regulations regarding the installation and operation of MSDs and use of a pump-out service to dispose of boat sewage while located on protected waterbodies. Costs to comply with these provisions are expected to be minimal. One-time costs to purchase and install a lock or valve for Type I and II MSDs are estimated to be \$10 or less. The cost of pump-out service is estimated to be \$10 or less per pump-out. If a governmental entity owns a houseboat that does not have a Type III MSD, it will be required to install one to be in compliance with the proposed rules. This one-time cost could range from \$100 to \$1,000.

If a local government chooses to become a delegated authority for the proposed certification program, it would be allowed to collect the same fees as the agency under the proposed rules. The amount of revenue collected by a local government will depend on the number of boats subject to the rule requirements and the number of pump-out stations in the jurisdiction of the local government. However, revenues are not expected to substantially exceed the costs of maintaining a certification program.

#### PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be greater protection of the environment and public health and safety because of cleaner water, which will lead to improved water quality and aquatic life. The proposed rules also ensure that state rules are consistent with federal requirements.

In general, no significant fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rules. Individuals that own boats on waterbodies not covered under the existing rules may experience increased costs to comply with the proposed rules. Boat owners with MSDs that are not in compliance with the proposed rules could pay as much as \$10 to install a lock or valve for Types I and II MSDs. If the owner of a houseboat is required to install a Type III MSD, costs could range from \$100 to \$1,000. Pump-out services are estimated to cost \$10 per pump-out. Certification of MSDs will cost \$15 per certification period.

The effect of the proposed rules on businesses will vary depending on the business activity of each entity. Businesses likely to be affected by the proposed rules are expected to be small businesses, and the fiscal

impact of the proposed rules on businesses are discussed in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT section of this fiscal note.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses since any costs incurred to comply with the proposed rules are not expected to be significant and could be recovered with very little or no increase in costs for their customers. Businesses, such as party boat owners or those that rent boats, will incur the same certification and equipment costs as individuals: \$10 to install a lock or valve for Types I and II MSDs; \$100 to \$1,000 for a houseboat to install a Type III MSD; \$10 per pump out; and \$15 per certification period to certify a MSD. Businesses, such as marinas, that provide pump-out services are required to pay certification fees (\$35 for initial certification and \$25 for certification renewal) on a biennial basis. Businesses with pump out stations that are certified under the existing rules are expected to see their certification costs (\$25) decrease since they will no longer be required to certify every year. No business is required to install pump-out services, and a business is only expected to do so if it becomes advantageous to offer this service. Marinas or others providing pump-out services are expected to charge \$10 or less per pump-out.

#### 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 rules are required to protect the environment, implement state and federal regulations, and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### 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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are 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 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 proposed 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 proposed 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.

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 rules 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 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 proposed rules would 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 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 proposed 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 proposed rules are not subject to the Texas Coastal Management Program.

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 8, 2010, at 2:00 p.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 Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, 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 2009-043-321-CE. The comment period closes June 14, 2010.

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](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Lynley Doyen, Field Operations Support Division, (512) 239-1364.

### **Subchapter A: Boat Sewage Disposal**

#### **[§§321.1 - 321.18]**

#### **STATUTORY AUTHORITY**

The repeals are proposed 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, Regular Session, 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 proposed 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 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.

**§321.1. 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 waters in the state, whether or not capable of self-locomotion, including but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects.]

[(2) 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.]

[(3) Designated lake--Any of the waters listed in §321.2(a) of this title (relating to Discharge Prohibited). For on-channel impoundments, this includes the area of the lake at its normal conservation level.]

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

[(5) Houseboat--Any boat fitted for use as a dwelling or for leisurely cruising, including any barge.]

[(6) Marine sanitation device--Any sanitation device for use on any boat to receive, retain, or dispose of human body wastes.]

[(7) Pump-out facilities--Any pump and hose combination used for the transfer of sewage from boats to a tank or receptacle.]

[(8) Sewage--Human body wastes and the wastes from marine sanitation devices and pump-out facilities.]

[(9) Waters in the state--Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the bed 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.]

**[\§321.2. Discharge Prohibited.]**

[(a) The commission hereby finds and declares that the protection and enhancement of the quality of the following waters in the state require greater environmental protection than is provided by federal standards applicable to discharges from marine sanitation devices:

[(1) Lake Austin; ]

[(2) Lake Bridgeport; ]

[(3) Lake Brownwood;]

[(4) Lake Cedar Creek;]

[(5) Lake Conroe;]

[(6) Eagle Mountain Lake;]

[(7) Lake Granbury;]

[(8) Lake Grapevine;]

[(9) Lake Houston;]

[(10) Lake Lewisville;]

[(11) Lake Livingston;]

[(12) Lake Lyndon B. Johnson;]

[(13) Lake Meredith;]

[(14) Lake Palestine;]

[(15) Lake Possum Kingdom;]

[(16) Lake Ray Hubbard;]

[(17) Lake Sam Rayburn;]

[(18) Lake Somerville;]

[(19) Lake Tawakoni;]

[(20) Lake Texoma;]

[(21) Lake Toledo Bend;]

[(22) Lake Travis;]

[(23) Lake Waco;]

[(24) Lake Whitney;]

[(25) Clear Lake.]

[(b) The discharge of sewage which has not been treated in accordance with federal standards from a boat into waters in the state is prohibited.]

[(c) No person may discharge sewage, treated or untreated, from a boat into or adjacent to any designated lake.]

**[\$321.3. Marine Sanitation Device Required.]**

[(a) When operated on any inland freshwater lake designated in §321.2(a)(1)-(24) of this title (relating to Discharge Prohibited), the following boats shall be equipped with an approved marine sanitation device certified under §321.5 of this title (relating to Certification of Marine Sanitation Devices):

[(1) any boat which has a permanently installed marine sanitation device;]

[(2) any boat longer than 26 feet in length which has permanent sleeping quarters; and]

[(3) any houseboat, regardless of length.]

[(b) Permanent sleeping quarters as used in these sections means bunking facilities which are contained within an enclosed cabin or a cabin subject to being enclosed.]

**§321.4. Specifications for Approved Marine Sanitation Devices.]**

[Boats on all designated lakes meeting the dimensions and physical characteristics provided by §321.3 of this title (relating to Marine Sanitation Devices Required) shall have sewage disposal devices and equipment meeting the following requirements.]

[(1) Any marine sanitation device permanently installed on or within any boat on any designated lake shall have an attached holding tank which meets the following specifications.]

[(A) The holding tank shall be located inboard on the boat.]

[(B) The holding tank shall be constructed so as to prevent the discharge of sewage except by pumping. Pumping shall be in accordance with approved and authorized methods as referred to §321.8(a) of this title (relating to Disposal of Boat Sewage).]

[(C) The holding tank shall be installed so that it may be completely and efficiently emptied by pumping.]

[(D) The holding tank shall be constructed of corrosion-resistant material.]

[(E) The holding tank shall be so located and constructed as to minimize the possibility of rupture.]

[(F) Any overboard vents shall be located to minimize the inboard return of odors and shall be provided with means to prevent the intake of waters or spray. Vents shall be connected to the tank so as to prevent pressure buildup in the tank and clogging from the contents of the tank.]

[(G) Fittings intended for use in emptying holding tanks shall be designed to make a spill-proof connection with the pump-out facility. Such fittings shall assure a liquid-tight closure during normal operation of the boat, shall afford no obstruction to the flow of sewage, and shall be cleanable. They shall be constructed of corrosion-resistant material.]

[(H) Conformance with Coast Guard regulations applicable to "no discharge" devices shall be deemed to constitute compliance with this subsection.]

[(2) A boat operating on Clear Lake, but not on any other designated lake, may be equipped with a "Y"-valve or other device on the holding tank that allows for the direct discharge of untreated waste into waters beyond the state's three-mile territorial limit. The "Y"-valve or other device must be secured in the closed position by a padlock, non-releasable tie, removal of the handle or other physical barrier at all times while the boat is operating inside the three-mile territorial limit.]

[(3) A portable marine sanitation device that is designed to facilitate the carry-off of sewage for onshore disposal is acceptable on any boat (other than a houseboat) less than 26 feet in length and as an additional marine sanitation device on any boat.]

[(4) The executive director is authorized to allow the use of portable marine sanitation devices in certain cases where permanent facilities are now required by these sections.]

**[\§321.5. Certification of Marine Sanitation Devices.]**

[(a) The executive director is authorized to certify marine sanitation devices as meeting the requirements of these sections. The executive director may delegate this authority to any local government or state agency wishing to perform certification functions. The commissioners court of a county so delegated may designate any agency of the county to perform such certification.]

[(b) Application forms and certification decals will be furnished by the executive director.]

[(c) The owner of any boat referred to in §321.3 of this title (relating to Marine Sanitation Device Required) is required to obtain certification of facilities for that boat.]

[(d) All boats certified must have displayed evidence of certification in accordance with §321.6 of this title (relating to Evidence of Certification of Marine Sanitation Devices) when operated on any designated lake.]

[(e) Certification decals issued on or after December 31, 1981, will be valid for a period not to exceed two years. Decals will expire as provided in §321.15 of this title (relating to Renewal of Certification).]

**[\$321.6. Evidence of Certification of Marine Sanitation Devices.]**

[The executive director shall design and issue decals which will be evidence of certification of marine sanitation devices. On a boat registered by the Texas Parks and Wildlife Department under the Water Safety Act, the certification decal shall be prominently displayed three inches following the registration validation decal. On boats unregistered by the Texas Parks and Wildlife Department, the certification decal shall be prominently displayed on the exterior of the forward half of the boat.]

**[\$321.7. Certification Fees for Marine Sanitation Devices.]**

[A fee of \$15 is hereby levied for certification of marine sanitation devices. No charge is levied for certification of marine sanitation devices owned by a federal, state, or local government agency. Disposition of fees shall be in accordance with §321.16 of this title (relating to Disposition of Fees).]

**[§321.8. Disposal of Boat Sewage.]**

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

[(1) discharge into a sewage system operated under authority of a valid permit issued by the commission;]

[(2) discharge into a pump-out facility approved and certified under these sections;]

[(3) discharge into a private sewerage facility licensed in accordance with the Texas Water Code, §26.031, and the Texas Water Code, §26.032, where applicable, or constructed in accordance with Texas Department of Health regulations; or ]

[(4) discharge into a liquid-tight vacuum truck or other conveyance for disposal by any of the methods listed in paragraphs (1)-(3) of this section.]

**[§321.9. Specifications for Pump-Out Facilities.]**

[Pump-out facilities will be designed to provide spill-proof connection with shipboard holding tanks; will be provided with suction controls or vacuum breaker to limit suction to such levels as will avoid collapse of rigid holding tanks; will provide fresh water facilities for tank flushing; will be equipped with check valve and positive cut-off or other device to preclude spillage when breaking connection with vessel being serviced; and will provide adequate interim storage, if required, prior to transfer to approved treatment facilities. Any connection to a drinking water system must be provided with vacuum breakers or other device designed to insure against backflow or siphonage of sewage or contaminated water into the drinking water system. In addition to the foregoing, movable floating pump-out facilities will be provided with adequate and spill-proof facilities for transfer to shore-based treatment plants or intermediate transfer of facilities.]

**[§321.10. Certification of Pump-Out Facilities.]**

[(a) The commission hereby delegates to the executive director the authority to certify pump-out facilities as meeting the requirements of these sections.]

[(b) Owners of pump-out facilities operated on or adjacent to water in the state will be required to obtain certification of those facilities.]

[(c) Application forms and certification decals for this purpose will be prescribed and furnished

by the executive director.]

[(d) Inspections may be required of pump-out facilities prior to certification.]

[(e) Certification decals issued under this section will be valid for a period not to exceed one year. Decals will expire as provided in §321.15 of this title (relating to Renewal of Certification).]

**[§321.11. Evidence of Certification of Pump Out Facilities.]**

[Each pump-out facility must have affixed thereon a certification decal which shall clearly indicate the date of expiration.]

**[§321.12. Fees for Certification of Pump-Out Facilities.]**

[A fee of \$35 for initial certification of each pump-out facility is hereby levied, payable to the entity performing the inspection. Disposition of fees shall be in accordance with §321.16 of this title (relating to Disposition of Fees).]

**[§321.13. Disposal of Sewage From Pump-Out Facility.]**

[Sewage from a pump-out facility may be disposed of only by the following methods:]

[(1) discharge to a sewage treatment plant operated under a valid permit issued by the commission;]

[(2) discharge to a private sewage facility licensed in accordance with the Texas Water Code, §26.031, or the Texas Water Code, §26.032, where applicable, or constructed in accordance with Texas Department of Health regulations; or]

[(3) discharge to a liquid-tight vacuum truck or other conveyance for disposal by any of the methods listed in this section.]

**§321.14. Exclusions.]**

[(a) Certain local governments in this state have the authority to issue local regulations for the control of sewage discharges from boats. Compliance with such local regulations is deemed to be in compliance with applicable provisions of these sections if local regulations are as restrictive in prohibiting the discharge of sewage from boats as these sections. On furnishing proof of local certification 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 operate on designated lakes outside the jurisdiction of the local regulation.]

[(b) Any local government which has been delegated licensing authority pursuant to the Texas Water Code, §26.031, is hereby authorized to inspect pump-out facilities in its designated area. The local government shall collect and keep for its use in this program the inspection fees provided for in §321.12 of this title (relating to Fees for Certification of Pump-Out Facilities).]

**§321.15. Renewal of Certification.]**

[(a) Any certification of marine sanitation devices or renewal thereof issued on or after December 31, 1980, will expire December 31, 1983, and every two years thereafter. Any certification of pump-out facilities or renewal thereof issued on or after December 31, 1980, will expire December 31, 1982, and every year thereafter.]

[(b) Inspections of pump-out facilities may be required prior to renewal of certification.]

[(c) The renewal certification decal shall clearly indicate time of expiration.]

[(d) A fee of \$15 is hereby levied for renewing a certification of a marine sanitation device. Disposition of fees shall be in accordance with §321.16 of this title (relating to Disposition of Fees).]

[(e) A renewal fee of \$25 is hereby levied for renewing certification on all pump-out facilities. Disposition of fees shall be in accordance with §321.16 of this title (relating to Disposition of Fees).]

**[\$321.16. Disposition of Fees.]**

[All fees collected by the executive director or any state agency under the provisions of this subchapter shall be deposited in a special fund for use in administering and performing the certification functions provided for under this subchapter. All funds deposited in the fund will be subject to audit annually by the commission. Any fees collected by a designated local government may be retained by the local government.]

**[\$321.17. Cancellation of Certification, Replacement, or Transfer.]**

[(a) A certification issued under the provisions of this subchapter is subject to cancellation by the executive director prior to the date of expiration if information supplied by an applicant for certification is false or fraudulent.]

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

[(c) If a certification decal becomes illegible or is destroyed, a replacement decal can be obtained from the executive director for \$2.00.]

**[\$321.18. Criminal Penalties.]**

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

### **Subchapter A: Boat Sewage Disposal**

#### **§§321.1 - 321.11**

#### **STATUTORY AUTHORITY**

The new sections are proposed 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 proposed 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 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 30 TAC 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 §321.7(d)(1) or (2) of this title (relating to Obtaining Certifications) 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 delegated authority to administer and perform the certification functions contained in this subchapter within its jurisdiction. 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.