

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §317.1, relating to the General Provisions of the Design Criteria for Sewerage Systems. Section §317.1 is adopted with changes to the proposed text as published in the November 8, 1996, issue of the *Texas Register* (21 TexReg 10961).

EXPLANATION OF ADOPTED RULE

The purpose of the amendments is to greatly reduce the volume of plans and specifications that are required to be submitted to the executive director and to eliminate notification procedures for municipalities which qualify as plans and specifications review authorities. These changes are necessary to allow limited staff resources to focus on those plans and specifications which need staff review because of: a proposed innovative technology; a history of compliance problems; special considerations associated with the stream segments which will receive the effluent discharge; and where no qualified municipalities exist to review plans and specifications pursuant to House Bill 1826 (74th Legislative Session).

Additionally, the rules provide that those persons subject to the submittal requirements specified in the Texas Water Code, §26.034, will initially only be required to submit a summary to the executive director, which includes information regarding proposed wastewater collection, treatment, or disposal projects. This summary submittal requirement will eliminate the burdens associated with sending in detailed technical information and blueprints to the agency when no agency review will be performed. The actual plans and specifications, and engineering report will remain on file with the project

originators and be available for TNRCC inspection. These amendments also more clearly recognize qualified municipalities as review authorities for wastewater collection system plans and specifications. As with the existing rules, such projects reviewed and approved by municipalities will not be subject to any submittal or review by the executive director.

Written public comments on the amendments were received from four separate entities. Their comments and the commission's responses to these comments are included in a separate part of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to ease the burden on the commission and those regulated by the rule by not requiring completed plans and specifications and engineering reports for all wastewater projects to be submitted to the commission for approval. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules.

COMMENTERS

The commission received no requests for a public comment hearing and no public hearing was held. The public comment period closed on December 9, 1996. The commission received 4 written

comments on the proposal from the following cities: Amarillo, Fort Worth, Lubbock, and Wichita Falls.

COMMENTS ON GENERAL PROVISIONS

The City of Wichita Falls stated that the proposed §317.1(a)(3)(A) includes submittal requirements which are more burdensome than the requirements in the existing §317.1(a)(5)(G) that give the city review authority for its own designed capital improvement projects.

The commission disagrees with this statement. Section §317.1(a)(5)(G) of the existing rule requires municipalities which perform reviews of their own fully or partially funded capital improvement projects to submit a complete set of plans and specifications to the commission for these projects. The commission, then, can choose to perform reviews of these plans and specifications. In the new rule, the submittal requirements are reduced to simply require a summary transmittal letter for these projects, thereby eliminating the need for a complete plans and specifications submittal.

The Cities of Wichita Falls, Amarillo and Lubbock questioned why they should be required to provide any materials to the commission for projects that the municipalities' qualified Professional Engineers have designed, as required in §317.1(a)(3)(A).

The commission responds that the rule will allow cities to review their own work; however, Texas Water Code §26.034(d) restricts municipality authority over reviews to projects prepared by persons separate from the review authority, such as contracted professional engineer consultants. Requiring municipalities to submit summary letters for projects which they both design and review is not overly burdensome and provides the commission the opportunity to review these projects, if deemed necessary by the executive director, to alleviate situations where conflict of interest, either real or perceived, may arise.

The City of Wichita Falls stated that the language in §317.1(a)(3)(C) was “unclear as to the definition of other wastewater projects.”

The commission agrees and has modified the language to further define the projects for which a summary transmittal letter must be submitted to the commission.

The City of Fort Worth expressed concern about the proposed requirements in §317.1(a)(3)(C), which requires municipalities to submit a summary transmittal letter to the commission for all projects designed by the municipalities. The city recommended that smaller system extensions be excluded from submittal requirements, as proposed in prior rule revisions.

The commission agrees that, for a certain subset of smaller projects, cities should not be required to submit a summary transmittal letter. The language has been modified accordingly.

The City of Amarillo suggested that the language in §317.1(a)(4)(A) be changed to read, "...Plans and specifications found to substantially comply with all applicable..." in order to allow for deviations from established criteria when warranted by the best professional judgement of the design engineer.

The commission disagrees with this comment. The word "substantially" is not necessary because the proposed rule allows variances to the requirements of Chapter 317, if technically justified. Additionally, municipalities are free to grant variances to specific requirements to this chapter, as long as the project designer provides technical justification for the variance. Under this structure, a project should be able to fully comply with this chapter.

The City of Amarillo suggested that the language in §317.1(a)(5)(A) be modified to read: "...process shall require a professional engineer registered in the State of Texas who designs a project in 3(A) of this subsection to ensure that the design is in substantial..." thus having the design engineer share in the liability and responsibility for the project's compliance.

The commission disagrees with this comment. Any design engineer is required to comply with Chapter 317; however, it is the responsibility of the municipalities to ensure that their review programs include sufficient oversights and safeguards to protect against improperly designed projects.

STATEMENT OF AUTHORITY

The amendments are proposed under the Texas Water Code, §26.034, which provides the commission with the authority to make rules setting standards for approval of disposal system plans. The sections are also proposed under the Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state.

There are no other codes, statutes, or rules that will be affected by this proposal.

§317.1. General Provisions.

(a) Purpose. These design criteria are minimum guidelines to be used for the comprehensive consideration of domestic sewage collection, treatment, or disposal systems and establish the minimum design criteria pursuant to existing state statutes pertaining to effluent quality necessary to meet state water quality standards. These criteria are intended to promote the design of facilities in accordance with good public health and water quality engineering practices. These criteria include the minimum requirements for a preliminary engineering report which provides the general engineering concepts underlying the proposed project as well as the final engineering report detailing the fully developed project along with related plans and specifications.

(1) - (2) (No change.)

(3) Submittal requirements.

(A) "Sanitary sewer collection system projects," which will be constructed within the jurisdiction of a municipality which performs technical reviews of sanitary sewer collection system projects under the Texas Water Code, §26.034, and which are not prepared by the staff of a municipality, need not be submitted to the agency for review.

(B) "Sanitary sewer collection system projects," which are prepared by the staff of a municipality, which will be constructed within the jurisdiction of a municipality which performs technical reviews of sanitary sewer collection system projects under the Texas Water Code, §26.034, and where the entire project falls into one or more of the categories outlined in items (i) through (iii) of this subparagraph, need not be submitted to the agency for review.

(i) Any conventional gravity sewer collection system lines less than 1,500 linear feet in length which are extensions to existing systems where the existing system has been completed and in operation at least six months;

(ii) Any duplex lift stations which have a firm pumping capacity of less than 100 gallons per minute;

(iii) Any conventional gravity sewer piping less than 12 inches in diameter.

(C) "Domestic wastewater projects" which receive a technical review and approval from a state agency other than the commission need not be submitted to the agency for review, if:

(i) the review is performed under the supervision of a professional engineer registered in the State of Texas, the review ensures that the project complies with this chapter, and the state agency has requested that the commission not perform technical reviews of a wastewater project or category of projects; or

(ii) the state agency has been granted review authority in lieu of the commission under state law.

(D) A summary transmittal letter shall be submitted, by certified mail, to the Wastewater Permits Section, and to the appropriate commission regional office, for all wastewater projects constructed in the State of Texas, which are not exempted from the commission's submittal requirements as detailed in subparagraphs (A), (B), or (C) of this paragraph. If the executive director does not notify the person who submitted the summary that a review will occur, under subparagraph (E) of this paragraph, the project is deemed approved. The information in the summary shall be signed, dated, and sealed by a professional engineer registered in the State of Texas. All summaries shall include, at a minimum:

(i) the name and address of the design firm;

(ii) the name, phone number and facsimile number of the design engineer;

(iii) the county(s) in which the project will be located with an identifying name for the project;

(iv) the name of the entity which proposes to own, operate, and maintain the project through its design life;

(v) the permit name and permit number of the relevant wastewater treatment facility;

(vi) a statement verifying that the plans and specifications are in substantial compliance with all the requirements of this chapter and which states that any deviations from the requirements are based on the best professional judgement of the registered professional engineer who prepared the project plans and specifications and final engineering design report; and

(vii) a brief description of the project scope which includes the specifics of the project, a description of deviations from the requirements of this chapter, including the use of non-conforming or innovative technology, and an explanation of the reasons for such deviations.

(E) Any project, for which a summary is submitted, is subject to review by the executive director. Factors to be used to determine whether a review will be performed include, but are not limited to, whether or not a nonconforming or innovative technology is being proposed, the stream segment in which the project is located, and the applicant's compliance record. If the executive director chooses to review a project, the design engineer will be notified in writing or by facsimile of the executive director's intent to review the project, within ten days of receipt of the summary. Upon receipt of the notification of intent to review, the design engineer shall submit to the executive director a complete set of plans and specifications and a complete final engineering design report. These submitted materials shall be sufficient to satisfy the executive director that the project is in compliance with this chapter. If the executive director reviews a project, any approval may be granted under paragraph (4) of this subsection. Construction may not commence until approval has been obtained.

(F) A complete set of plans and specifications, the final version of such plans and specifications with engineer's certification, a complete engineering design report, all change orders and test results, a copy of the written summary submitted to the executive director, and any written approvals granted by the executive director, a municipality, or another state agency, shall be maintained and kept by the permittee, or for collection system projects, person(s) responsible for management of the collection system, for at least three years from the date the engineer certifies to the executive director that the project is complete. These materials shall be submitted to the executive director, another state agency, or municipality upon request. Such materials must be readily available for inspection by the executive director's staff upon request during regular business hours.

(4) Types of approval. Regardless of the type of approval, constructed facilities when in operation are required to produce the quality of effluent specified in their discharge permit(s). The types of approvals described in subparagraphs (A) through (C) of this paragraph will be utilized by the commission or any other review authority.

(A) - (C) (No change.)

(5) Municipalities performing technical reviews of sanitary sewer collection systems under Texas Water Code, §26.034, within 90 days of the effective date of this rule and/or within 90 days of a boundaries change, shall submit maps to the agency's Wastewater Permits Section detailing the boundaries of the review authority. If a municipality decides to perform technical reviews of sanitary sewer collection systems after the effective date of this rule, the municipality shall submit maps detailing the boundaries of the review authority, within the thirty days before starting these reviews. If at any time a municipality, which has chosen to implement this review authority, decides to cease review of sanitary sewer collection system plans and specifications, the municipality shall notify the executive director within thirty days of the date on which the final plans and specifications review is expected to be performed. In order to meet the standards specified in the Texas Water Code, §26.034, municipalities shall incorporate the items detailed in subparagraphs (A) through (E) of this paragraph into their review programs:

(A) The municipality's review and approval process shall ensure compliance with the rules of this chapter.

(B) All reviews performed by an employee of the municipality shall be conducted by a professional engineer, registered in the State of Texas, or the employee conducting the review shall be under the direct supervision of a professional engineer, registered in the State of Texas, who is ultimately responsible for the review and approval of each collection system submitted and installed in the municipality's jurisdiction.

(C) The responsible review engineer shall be either an employee of the reviewing municipality, or a consultant to the municipality, separate from the private consulting firm charged with the design work under review. For purposes of this section, the term "separate" means that the responsible review engineer is not employed by and does not receive compensation from the private consulting firm and from any of its parent companies, subsidiaries or affiliates charged with the design. The municipality shall provide on request documentation of its agreements with private consultants sufficient to allow the agency to audit its compliance with this subsection.

(D) A participating municipality may review and approve engineering reports, plans and specifications only for projects which transport primarily domestic waste within the boundaries of jurisdiction of that municipality. For each project approved for construction, the municipality shall issue an approval letter or other indication of the approval which clearly details the project being approved.

(E) The municipality shall maintain complete files of all review and approval activities carried out under its authority and shall make any existing project files available to the

commission upon request and/or during audits performed in accordance with paragraph (6) of this subsection.

(6) The executive director may perform periodic audits of the review and approval process of municipalities which perform technical reviews of sanitary sewer collection systems in lieu of the commission, to ensure that the projects approved by the municipalities are in compliance with this chapter. If the executive director decides to perform an audit of a municipality's review and approval process, the executive director will provide the municipality with a minimum of five working days advance notice of the pending audit. The executive director may, for auditing purposes only, review specific projects which have previously been approved by the review authority. The municipality shall provide to the executive director, on request, documentation of all agreements between the private consultants and the municipality, which relate to the wastewater collection system review program. If the executive director finds through reviews of specific projects or through audits of the municipality's review and approval process that a municipality's review and approval process does not provide for compliance with the minimum design and installation requirements detailed in this chapter, the review and approval authority shall address these findings within a time established by the executive director. If compliance cannot be achieved, the review authority shall be voided for that municipality. If such authority is voided for a municipality, the executive director shall notify the municipality in writing and shall include the justification for voiding the authority of the municipality. If the authority of a municipality is voided, all new projects proposed to be constructed within that municipality's jurisdiction shall be submitted to the executive director in accordance with paragraph (3)(D) of this subsection.

(b) - (f) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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