

The Texas Natural Resource Conservation Commission (commission) proposes new §§220.1 - 220.7 and §§220.21- 220.22 concerning the monitoring and assessment of water quality (Clean Rivers Program).

#### EXPLANATION OF PROPOSED RULE

Proposed new §§220.1- 220.7 represent changes made to the program through legislation passed by the 75th Texas Legislature in 1997. Proposed new §§220.21- 220.22 represents a move of these sections from Chapter 320 to proposed new Chapter 220 and the updating of references to be consistent with the new proposed rulemaking, and contain no program changes. The proposed new Chapter 220 will achieve consistency in the renumbering system for all water related rules to be contained in the 200 series under Title 30 of the Texas Administrative Code.

Legislation passed in 1991 by the 72nd Texas Legislature established the State of Texas Clean Rivers Program as authorized in the Texas Water Code §26.0135. The Texas Clean Rivers Program is administered by the commission and is implemented through contracts and cooperative agreements with river authorities and designated local governments. Changes to the fee schedule were developed in 1994 to reflect changes adopted by the 73rd Texas Legislature in 1993. This proposal addresses changes in legislation adopted by the 75th Texas Legislature in 1997. Adjustments to the program were developed by a diverse stakeholder group.

A stakeholder's group representing a diversity of interests affected by the Texas Clean Rivers Program was organized in 1996 and was requested to provide information to the commission regarding problems with the Clean Rivers Program and to make recommendations for changes to address those problems. Two subcommittees were established, one to work on the development of program changes and the other to investigate alternative funding mechanisms for the program. The legislation adopted by the 75th Texas Legislature was developed by consensus of this ad hoc stakeholder group. The proposed rule establishes the responsibilities of the commission, river authorities, designated local governments, and watershed and river basin steering committees for implementation of the program.

Proposed new §220.1, Purpose and Scope, describes or addresses the purpose and scope of the rule and its relationship to the implementation of the Clean Rivers Program. It generally describes the fees authorized to recover costs of implementation and the allocation of this revenue to the contracting planning agencies.

Proposed §220.2, Definitions and Abbreviations, includes definitions and abbreviations that apply to this chapter and are not included in 30 TAC, Chapter 3.

Proposed §220.3, Responsibilities of the Commission, describes the responsibilities of the commission to administer the program, including oversight, fee assessment, use of water quality data in development of agency policies and procedures, and reporting requirements.

Proposed §220.4, Responsibilities of River Authorities and Designated Local Governments, outlines the responsibilities of river authorities and designated local governments, including organization of steering committees, water quality monitoring and assessment, and reporting requirements.

Proposed §220.5, Responsibilities of Steering Committees, addresses responsibilities of the steering committees in the development and implementation of the program.

Proposed §220.6, Reporting Requirements, establishes the reporting requirements of the contracting planning agencies and the TNRCC.

Proposed §220.7, Leveraging of Funds To Support Federal and State Grant, encourages the use of funds authorized under this program to be used to leverage other state and federal program funds.

Proposed §220.21, Water Quality Assessment Fees, explains the methodology for assessing the Water Quality Fees.

Proposed §220.22, Allocation of Water Quality Assessment Fee Revenue, addresses the allocation of the Water Quality Assessment Fee revenue.

#### FISCAL NOTE

Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these proposed sections are in effect, there will be fiscal implications as a result of enforcement

and administration of the sections. The effect on state government will be a reauthorization of an existing program and will require no additional staff. The costs to affected Wastewater permit holders and Water Use permit holders, including local governments, will remain at the current level as a result of the reauthorization of the existing program. Fees will range from \$300 to as much as \$40,000 depending on the volume of discharge and/or use by the permit holder.

#### PUBLIC BENEFIT

Mr. Minick also has determined that for the first five years these proposed sections are in effect, the public benefit anticipated as a result of enforcement of and compliance with these sections will be improvements in the regulation of permitted wastewater discharges and the quality of surface water resources of the state, and increased protection of public drinking water supplies and aquatic life resources.

#### REGULATORY IMPACT ANALYSIS

Mr. Minick has determined that a regulatory impact analysis is not required because the rule is not a major environmental rule and will not have an adverse affect in a material way the economy, environment or public health and safety of any sector of the state.

#### 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 provide regulatory guidelines for the administration and implementation of the

State of Texas Clean Rivers Program authorized in the Texas Water Code, §26.0135. The rules will substantially advance this specific purpose by establishing responsibilities of the TNRCC, participating river authorities and designated local governments, and basin steering committees. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules.

#### COASTAL MANAGEMENT PROGRAM (CMP)

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

#### PUBLIC HEARING

A public hearing on the proposal will be held Monday, November 17, 1997 at 10:00 a.m. in Room 3201A of the commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements, when called upon, in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97137-320-WT and may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512)239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they are faxed. Written comments must be received by 5:00 p.m. 31 days after the date of publication of this proposal in the *Texas Register*. Such comments will not receive individual responses, but will be addressed in the preamble of the adopted rules and published in the *Texas Register*. For further information, please contact Chuck Dvorsky, Water Quality Division, (512) 239-4594.

#### STATUTORY AUTHORITY

The new sections are proposed under the Texas Water Code, §5.103 and §26.011 which provides the commission authority to adopt rules necessary to carry out its powers and duties and under the provisions of the Texas Water Code and §26.0135 which provides the TNRCC with authority to establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

**PROGRAM FOR MONITORING AND ASSESSMENT OF WATER QUALITY BY  
WATERSHED AND RIVER BASIN**

**§§220.1-220.7**

**§220.1. Purpose and Scope.**

(a) The purpose of this chapter is to establish procedures for the implementation of the Texas Clean Rivers Program pursuant to Texas Water Code, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in Texas Water Code, §26.001 (5)). The commission has the responsibility of ensuring that regional monitoring and assessments of water quality by watershed and river basin shall be conducted by the river authorities and designated local governments that have entered into cooperative agreements with the commission, or by the commission where a river authority does not exist or is unwilling to participate. Whenever feasible the monitoring and assessment will be the result of a cooperative partnership between river authorities, designated local governments, other political subdivisions, other state agencies and the commission to provide the commission and other state agencies, river authorities and local governments with sufficient information to take appropriate corrective action necessary to meet the goals of the act. The regional water quality monitoring and assessment program shall be designed to allow citizens and private organizations opportunities for involvement in protecting the state's water resources. The monitoring program shall provide data to identify significant, long-term water quality trends, characterize water quality conditions, support the wastewater discharge permitting process including support for the total

maximum daily load process as necessary, and classify unclassified streams. The assessments must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.

(b) Fees collected under this chapter are intended to recover no more than \$5,000,000 annually and shall be used only to accomplish the purposes of the Clean Rivers Program. Program funds shall be equitably apportioned among basins and shall only be used to recover actual costs for administering this program. The commission may not apply more than 10 percent of the costs recovered annually toward the commission's overhead costs for administration of this program. The commission shall ensure that water users and wastewater dischargers do not pay excessive amounts; and that no municipality shall be assessed fees for any efforts that duplicate water quality management activities carried out pursuant to Texas Water Code, §26.177 or rules implementing that section.

(c) A river authority or designated local government shall be eligible for reimbursement of the actual costs of administration of the Clean Rivers Program and implementation of the provisions of this chapter. The schedule and amount of any reimbursement shall be based on an equitable apportionment among basins. The allocation procedure shall be reviewed periodically and may be adjusted to reflect results of contractor evaluations, to address emerging issues or to focus on problem areas identified in the water quality assessments.

**§220.2. Definitions and Abbreviations.**

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings. Unless specifically defined for this chapter, definitions for other words and terms may be found in 30 TAC, Chapter 3.

(1) Assessment report - A comprehensive record of historical, existing and projected water quality conditions of a watershed.

(2) Designated local government - A local government that has been designated through cooperative agreement or contract with the commission to perform a regional assessment pursuant to this chapter.

(3) Nonpoint source pollution - Generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Any source of pollution that is not subject to regulation as a “point source”.

(4) Pollution - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(5) Quality Assurance Project Plan - The formal document which describes in comprehensive detail the necessary quality assurance/quality control activities that must be implemented to ensure that results of work performed will satisfy stated performance criteria.

(6) River authority (for purposes of this chapter only) - Any district or authority created by the legislature under Texas Water Code, §30.003, which contains an area within its boundaries of ten or more counties and any other river authority or special district created under Article III, Section 52, Subsection (b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution that is designated by rule of the commission to comply with this chapter.

(7) River basins and coastal basins - The river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Water Development Board, including but not limited to the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes and portions of them, as well as the lands drained by them.

(8) Total Maximum Daily Load - Water quality-based process used to establish pollution control limits for waters not meeting water quality standards. The process is established under the federal Clean Water Act to establish control limits where technology-based controls are not adequate and should include determination of loading capacity, allocations of wasteload and loading from other pollutant sources, and an appropriate margin of safety.

(9) Wastewater permit - A permit issued by the commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26 and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this section, a permit shall include any authorization under Texas Water Code, Chapter 26 to treat or discharge wastewater, including a registration or permit by rule.

(10) Unclassified waters - Those waters for which no classification has been assigned and which have not been identified in Appendix A of 30 TAC, §307.10.

(11) Work plan - A document outlining the proposed scope of work, including a time schedule and cost expenditures, from a river authority or designated local government to perform a service and/or provide a comprehensive regional assessment of the watershed.

(b) Abbreviations. The following abbreviations apply to this chapter:

(1) Code - Texas Water Code.

(2) Commission - Texas Natural Resource Conservation Commission.

(3) CWA - Clean Water Act.

(4) EPA - Environmental Protection Agency.

(5) MGD - Million gallons per day.

(6) QAPP - Quality Assurance Project Plan.

(7) TAC - Texas Administrative Code.

(8) TMDL - Total Maximum Daily Load.

**§220.3. Responsibilities of the Commission.**

(a) The commission shall establish a program to provide oversight and evaluation of the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

(b) Subject to available funding described in §220.21 of this title (relating to Water Quality Assessment Fees), the commission shall develop cooperative agreements and contracts with river authorities and designated local governments to implement the Clean Rivers Program. These contracts and cooperative agreements will be administered by the commission staff in accordance with the most recent State of Texas Uniform Grants and Contract Management Standards for State Agencies (Texas Government Code, Chapter 783) and any specific requirements of the applicable State General Appropriation Act.

(c) As part of the administration of this program the commission will develop Quality Control/Quality Assurance procedures to insure that water quality data collected under this chapter will maintain statewide consistency and will become part of the statewide data-base to be used in establishing water quality management permitting decisions.

(1) The commission will establish a schedule for review and approval of quality assurance plans and updates which describe procedures to be implemented by contracting agencies. The quality assurance plans will assure that water quality monitoring data are collected consistent with state-wide objectives.

(2) The commission program staff will conduct periodic program audits of contractors and subcontractors using a risk-based procedure to insure adherence to the quality assurance procedures.

(d) The commission has primary responsibility for implementation of water quality management functions and will implement these functions on a watershed basis in consideration of priorities established by river authorities and basin steering committees. Data collected in accordance with an approved quality assurance plan will be added to the state-wide water quality data base and used for the development and implementation of water quality management functions of the commission including review and revision of surface water quality standards and wastewater discharge permits.

(e) The commission will utilize water quality assessments developed in this program, along with other water quality assessments and studies in determining the need for cities with populations of 10,000 or more to develop water pollution control and abatement programs to reduce water pollution from non-permitted sources.

(f) The commission will assess and collect fees from wastewater and water use permit holders as described in §220.21 of this title and will apportion these funds equitably among the basins.

(1) The commission may consolidate fees assessed to wastewater permit holders under this chapter with assessment of the wastewater inspection fee authorized under Texas Water Code, §26.0291.

(2) Revenues collected from wastewater permit holders under this chapter shall be allocated to meet the purposes of this chapter and fees collected under 30 TAC, Chapter 305 shall be allocated to meet purposes of that chapter.

(g) The commission, with information provided by each river authority and designated local government, shall file a written report accounting for the costs expended for this program with the governor, lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year.

**§220.4. Responsibilities of River Authorities and Designated Local Governments.**

(a) Each river authority and designated local government that has entered into an agreement with the commission to perform duties under this chapter shall:

(1) Organize and lead a basin-wide steering committee to assist with the development of water quality objectives and priorities for the basin and to fulfill responsibilities described in §220.5 of this title (relating Responsibilities of Steering Committees). Membership of the committee will reflect a diversity of interests in the basin and will include persons paying fees described under §220.21 of this title (relating Water Quality Assessment Fees), the Texas State Soil and Water Conservation Board and other appropriate state agencies (for example, Texas Parks and Wildlife Department, Texas Water Development Board, Texas General Land Office, Texas Department of Health, Texas Department of Agriculture, Texas Railroad Commission, Texas Department of Transportation) private citizens, representatives from political subdivisions, and other persons with an interest in water quality matters in the watershed or river basin.

(2) Develop and maintain a basin-wide water quality monitoring program that eliminates duplicative monitoring, facilitates the assessment process to identify problem areas and support long-term trend analyses, and targets monitoring to support the wastewater discharge permitting and standards process.

(A) A Quality Assurance Project Plan must be developed and approved to support all data collection activities. Data collected by subcontractors and others under this program must conform to the approved quality assurance project plans.

(B) The water quality monitoring program shall address collection of baseline water quality data to support trend analyses and development of the statewide water quality inventory required under §305(b) of the Federal Clean Water Act.

(C) The water quality monitoring program shall include site specific data collection to support the wastewater discharge permitting process for fee payers in the basin. Data collection efforts for this aspect of the program should be coordinated with the permitting cycle developed in accordance with Texas Water Code, §26.0285 related to permitting by basin.

(D) The water quality monitoring program shall include watershed specific data collection to address priority water quality problem areas identified by river authority trends analyses or steering committee input.

(3) Establish and maintain a watershed and river basin water quality database and/or clearinghouse composed of quality assured data, river authority programs, wastewater discharge permit holders, state and federal agencies, and other relevant data sources. This data shall be submitted to the commission for inclusion in the State of Texas Surface Water Quality Monitoring database and shall be made available to any interested person.

(A) Each river authority and designated local government shall establish and maintain the technology to aid in the electronic dissemination of water quality data and information for their basin. Water quality data for the basin shall be submitted to the commission at a minimum of once every six months in an agreed format for inclusion in the statewide water quality database.

(B) River authorities and designated local governments shall participate in task force meetings to establish, review and update data management procedures to reflect changes in information management technology.

(4) Identify water quality problems and known pollution sources and set priorities for taking appropriate actions to eliminate those problems and sources.

(A) Each river authority shall utilize the commission's procedures for data evaluation and analyses to the maximum extent possible. If alternative evaluation processes are necessary, the procedure must be presented in writing to the commission for approval by the executive director prior to its application.

(B) In order to assure inclusion in the development of the statewide water quality inventory, the analytical procedures shall be comparable to those used by the commission.

(C) Steering committees shall be provided the opportunity to actively participate in the identification of priority problem areas and the development of appropriate actions to

address the problems and pollutant sources. Steering committees shall have the opportunity to determine the priority of maintaining or protecting watersheds with existing good quality water.

(5) Develop a process for public participation that includes the basin steering committee and that provides for meaningful review and comments by private citizens and organizations in the local watersheds.

(6) Recommend water quality management strategies for correcting identified water quality problems and pollution sources.

(7) Develop work plans which include priorities of the state and regional water quality management program. Upon agreement between the commission, the river authority, and/or designated local government the provisions of the work plan become the scope of work of the program contract or cooperative agreement.

(b) Each local government or other agency that collects water quality data within the watershed shall cooperate with the river authority or designated local government in developing the basin monitoring plan and assessment by providing to the river authority all of the information available to that organization about water quality within its jurisdiction, including the extraterritorial jurisdiction of a municipality. Data collected by local governments must be consistent with an approved quality assurance plan to be included for wastewater discharge permitting and standards decisions.

(c) Monitoring and assessment is a continuing duty and shall be revised periodically with appropriate amendments and updates to the quality assurance plans to reflect changes in procedures and factors subject to the assessment.

**§220.5. Responsibilities of Steering Committees.**

(a) The steering committee's role is advisory in nature and will involve assistance with the review of local issues and creation of priorities by watershed for the basin. Committee members should also assist with the review and development of work plans, reports, basin monitoring plans and basin action plans for the basin.

(b) A steering committee established by the commission and contractor to implement this program in areas without a river authority or other designated local government willing to carry out the program is not subject to Article 6252-33 Revised Statutes related to agency advisory committees.

(c) Steering committees should serve as the focus of public input to assist the river authorities and other agencies to develop water quality objectives and priorities by watershed and by basin that are achievable considering available technology and economic impact.

**§220.6. Reporting Requirements.**

(a) Summary Reports. In the appropriate year of the permitting cycle developed in accordance with Texas Water Code, §26.0285 (30 TAC, §305.71) relating to Basin Permitting, each river authority will submit a written summary report to the commission, the State Soil and Water Conservation Board, and Parks and Wildlife Department on the water quality of the watershed or river basin.

(1) The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source or use impairment, and recommended actions that may be taken to address those concerns.

(2) The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process.

(3) Prior to submittal to the agencies listed in subsection (a) of this section, the river authority will present the report to the basin steering committee for approval and will also make the report available to water use and wastewater permit holders for review and comment.

(4) All comments regarding satisfaction with or suggestions for modification of the report for the watershed, the operation and/or effectiveness of the monitoring and assessment program,

and the use of funds shall be considered, summarized and submitted, along with the approved summary report, to the governor, the lieutenant governor, and the speaker of the house of representatives not later than 90 days after submission to the commission and other agencies listed in paragraphs (1) - (3) of this subsection.

(b) Basin highlight reports. Each river authority and designated local government will develop a Basin Highlight Report annually to be provided to each member of the basin steering committee and all fee payers within the basin. This report should summarize Clean Rivers Program activities conducted in the basin. Procedures for electronic distribution should be developed to ensure most efficient availability to the public.

(c) Financial report. The commission shall file a written report on or before December 1 of each even numbered year accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives. Each river authority and designated local government shall have input and assist with the development of this report.

**§220.7 Leveraging of funds to support federal and state grant programs.**

The commission, river authorities and designated local governments may use funding from this chapter to leverage other state and federal program funds to support the overall water quality monitoring and assessment goals of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on

## **PROGRAM FOR WATER QUALITY ASSESSMENT FEES**

### **§220.21. Water Quality Assessment Fees.**

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) BOD - Five-day biochemical oxygen demand.

(2) COD - Chemical oxygen demand.

(3) Consumptive use - The use of water for domestic and municipal, industrial, irrigation or mining purposes, consistent with the meaning of these uses for which water may be appropriated under the Texas Water Code, §11.023 and §11.024.

(4) Final flow limit - The maximum amount of wastewater discharge authorized by a permit issued in accordance with the Texas Water Code, Chapter 26 expressed as a daily average flow, a daily maximum flow, an annual average or an annual maximum. For the purpose of this section, a final flow limit is expressed in millions of gallons per day of discharge (MGD).

(5) Flow - The total by volume of all wastewater discharges authorized under a permit issued in accordance with the Texas Water Code, Chapter 26, expressed as an average flow per day, a

maximum flow per day, an annual average or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow amount used to calculate fees is the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(6) Flow type.

(A) Contaminated - These wastewaters include sanitary wastewater, process wastewater flows or any mixed wastewaters containing more than 10% process wastewaters;

(B) Uncontaminated - These wastewaters include non-contact cooling water or mixed flows which contain at least 90% non-contact cooling water and not more than one million gallons per day of process wastewater.

(7) Hydropower use - The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(8) Inactive permit - A permit which authorizes a waste treatment facility, where the facility itself is not yet operational or where operation has been suspended.

(9) Industrial use - The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric.

(10) Irrigation use - The use of water for the irrigation of crops, trees, and pasture land, including but not limited to golf courses and parks which do not receive water through a municipal distribution system.

(11) MGD - Million gallons per day.

(12) Mining use - The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(13) Municipal use - The use of treated water within or without a municipality and its environs whether supplied by a person, privately-owned utility, political subdivision, or other entity as well as the use of municipal sewage effluent for certain purposes specified as follows. It includes the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes including public and private swimming pools, the use of treated water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens. Municipal use also includes the application of municipal sewage effluent upon land sites, pursuant to a Texas Water Code, Chapter 26, permit, where:

(A) the primary purpose of the application is the treatment and/or necessary disposal of such effluent; or

(B) the application site is a park, parkway, golf course, or other landscaped area owned by the owner of the permitted sewerage system; or

(C) the effluent applied to such site is generated within an area for which the commission has adopted a no-discharge to surface water rule.

(14) Navigation use - A recognized use that is not currently included in any water rights.

(15) Non-consumptive use - The use of water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under the Water Code, §11.023 and §11.024.

(16) Other use - Any beneficial use not otherwise defined herein.

(17) Recreational use - The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of

water recreation, including aesthetic land enhancement of a subdivision, golf course or similar development.

(18) Recharge use - The use of surface water to either increase the amount of natural recharge to an underground aquifer or the injection of water into an aquifer.

(19) TOC - Total organic carbon.

(20) Traditional pollutants - the wastewater parameters typically found in wastewater [discharge] permits, specifically oxygen demand (BOD/COD/TOC), total suspended solids (TSS) and ammonia. For the purpose of this section, COD and TOC are converted to BOD values, and the higher value is used in fee calculations. COD and TOC are expressed in terms of BOD at the rate of three pounds of TOC equal to one pound of BOD (3:1) or eight pounds of COD equal to one pound of BOD (8:1).

(21) TSS - Total suspended solids.

(22) Wastewater permit - A permit issued by the commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26 and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this section, a permit shall include any authorization under Water Code Chapter 26 to treat or discharge wastewater, including a registration or permit by rule.

(23) Water right - A right acquired under the laws of the state and the rules of the commission to impound, divert, or use state water.

(24) Aquaculture - The commercial propagation of aquatic species utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(b) For the purpose of recovery of the costs of development of regional water quality assessments and administration of the provisions of this chapter, a fee is assessed against water right holders and wastewater permit holders in each watershed of the state in proportion to their right to use water from, or to discharge wastewater into, the watershed. The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year. All fee calculations are to be based on the parameters specified in the permit or water right without regard to the actual amount or quality of effluent discharged or the actual amount of water used. Fees do not apply to those domestic and livestock water use applications which are exempt from the need for authorization from the commission.

(c) Wastewater permit holders shall be assessed a fee based on the authority of a permittee to dispose of or discharge wastewater under a permit or other authorization issued pursuant to the Texas Water Code, Chapter 26. The fee shall be assessed on the basis of permitted flow and traditional pollutant limits and determined as the sum of factors in paragraphs (1) - (3) of this subsection. When calculating the charge based on flow, this amount shall be calculated based on the daily average flow

limit in the permit. For permits that do not have a daily average flow limit, the charge shall be based on 50% of the daily maximum flow limit:

(1) for contaminated discharges, \$375 per MGD;

(2) for uncontaminated discharges, \$1.75 per MGD;

(3) for each traditional pollutant, \$3.00 per pound per day.

(d) The annual fee assessed for each wastewater discharge permit shall be a minimum of \$300 and shall not exceed \$40,000. The fee for a permit which does not authorize the discharge of wastewater, including evaporation and land disposal permits, shall be \$200. The fee for an inactive permit shall be \$150. No fee will be assessed for aquaculture wastewater permits.

(e) For municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (c) or (d) of this section, and for all other types of water rights except irrigation, each water right holder shall pay a fee based on the authorization to impound, divert or use state water. The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use, other than for irrigation, shall be \$.22 per acre-foot up to 20,000 acre-feet, and \$.08 per acre-foot thereafter. An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the nonconsumptive rate described below. Except for water rights for use for hydroelectric generation,

the fee shall be \$.021 per acre-foot for water rights for non-consumptive use above 2500 acre-feet per year up to 50,000 acre-feet, and \$.0007 per acre-foot thereafter. The fee for water rights for use for hydroelectric generation shall be \$.04 per acre-foot per year up to 100,000 acre-feet and \$.004 per acre-foot thereafter.

(f) Water which is authorized in a water right for consumptive use, but which is designated by a provision in the water right as unavailable for use may be exempted from the assessment of a fee under subsection (e) of this section.

(g) A retail public utility as defined by Texas Water Code, §13.002, which is subject to a water quality assessment fee under this chapter may collect from each customer a charge to recover the amount of the fee assessed. The total amount recovered by a retail public utility shall not exceed the amount assessed under this chapter plus any reasonable costs of collection. Any pass-through mechanism for the fees shall be fair and equitable for all customers and may be subject to review by the commission.

(h) The portion of a water quality assessment fee recovered from a customer of a retail public utility may be listed on the customer's bill as a separate item and may be collected in addition to other regulatory assessments or charges for utility services.

(i) The portion of a water quality assessment fee recovered from a customer by a retail public utility is not part of the rates of that utility. This provision shall apply to a retail public utility providing water and/or wastewater service.

(j) Water quality assessment fees are due within 30 days of the billing date each year. Fees shall be paid by check, either personal or certified, or by money order payable to the commission. A person failing to make payment of the fees imposed under this section when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(k) New wastewater permits and water rights granted after September 1 will be billed at the next regular billing date. Any change in authorization will not affect any fee already billed for the year in which the authorization change is made. Cancellation or revocation, whether by voluntary action on the part of the permittee or water right holder or as a result of proceedings initiated by the commission, will not constitute grounds for a refund of any water quality assessment fee previously paid.

(l) The commission shall monitor both the collection of fees under this section and the allocation of fee revenues under §220.22 of this title (relating to Allocation of Water Quality Assessment Fee Revenue) for the river basins of the state. The commission shall adjust the fee rates established under this section to the extent necessary to ensure the adequate support of the programs undertaken to implement this chapter and the equitable assessment of fees within each watershed and region of the state. If the fees collected for this program in any fiscal year should exceed \$5 million by

more than one percent, the commission shall make a proportional downward adjustment of the fee rates for the next fiscal year to attempt to limit the collection to \$5 million per year.

**§220.22. Allocation of Water Quality Assessment Fee Revenue.**

(a) A river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

(b) The schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan as required under §220.4 of this title (relating to Responsibilities of River Authorities and Designated Local Governments).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on

## **CHAPTER 320**

### **REGIONAL ASSESSMENTS OF WATER QUALITY (CLEAN RIVERS PROGRAM)**

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§320.1-320.9 and §§320.21-320.22 concerning Regional Assessments of Water Quality (Clean Rivers Program).

#### **EXPLANATION OF PROPOSED RULE**

The proposed repeal of Chapter 320 enables a numbering change that implements a reorganization of commission rules by moving this chapter to the area of the Texas Administrative Code that is being reserved for rules related to water programs in Chapters 200-299.

#### **FISCAL NOTE**

Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these proposed repeals are in effect, there will be fiscal implications as a result of enforcement and administration of the sections since these sections will be re-adopted under a new chapter. The effect on state government will be a reauthorization of an existing program and will require no additional staff. The costs to affected Wastewater permit holders and Water Use permit holders, including local governments, will remain at the current level as a result of the reauthorization of the existing program. Fees will range from \$300 to as much as \$40,000 depending on the volume of discharge and/or use by the permit holder.

#### PUBLIC BENEFIT

Mr. Minick also has determined that for the first five years these proposed repeals are in effect, the public benefit anticipated as a result of enforcement of and compliance with these sections will be improvements in the regulation of permitted wastewater discharges and the quality of surface water resources of the state, and increased protection of public drinking water supplies and aquatic life resources.

#### REGULATORY IMPACT ANALYSIS

Mr. Minick has determined that a regulatory impact analysis is not required because the repeal is not a major environmental rule and will not have an adverse affect in a material way the economy, environment or public health and safety of any sector of the state.

#### TAKINGS IMPACT STATEMENT

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 provide regulatory guidelines for the administration and implementation of the State of Texas Clean Rivers Program authorized in the Texas Water Code, §26.0135. The rules will substantially advance this specific purpose by establishing responsibilities of the TNRCC, participating river authorities and designated local governments, and basin steering committees. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules.

#### COASTAL MANAGEMENT PROGRAM (CMP)

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

#### PUBLIC HEARING

A public hearing on the proposal will be held \_\_\_\_\_ at \_\_\_\_\_ in Room \_\_\_\_ of the commission Building \_\_\_\_, located at 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements, when called upon, in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have a special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97137-320-WT and may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory

Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they are faxed. Written comments must be received by 5:00 p.m. 30 days after the date of publication of this proposal in the *Texas Register*. Such comments will not receive individual responses, but will be addressed in the preamble of the adopted rules and published in the *Texas Register*. For further information, please contact Chuck Dvorsky, Water Quality Division, (512) 239-4594.

#### STATUTORY AUTHORITY

The repeal sections are proposed for repeal under the Texas Water Code, §5.103 which provides the commission authority to adopt rules necessary to carry out its powers and duties under the provisions of the Texas Water Code.

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

**PROGRAM FOR ASSESSMENT OF WATER QUALITY  
BY WATERSHED AND RIVER BASIN**

§320.1. Purpose.

§320.2. Applicability.

§320.3. Definitions and Abbreviations.

§320.4. Overview.

§320.5. Assessment Reports and Work Plans.

§320.6. Elements of Assessment Reports.

§320.7. Responsibilities of River Authorities and Designated Local Governments.

§320.8. Local Government Responsibilities.

§320.9. Basin-wide Steering Committee Members Responsibilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on

**PROGRAM FOR WATER QUALITY ASSESSMENT BY WATERSHED**

§320.21. Water Quality Assessment Fees

§320.22. Allocation of Water Quality Assessment Fee Revenue.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on