

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to 30 TAC §50.15, concerning Scope of Proceedings. The section is adopted with changes to the proposed text as published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9433).

Chapter 50, Subchapter B was adopted May 8, 1996, and effective June 6, 1996, replacing 30 TAC §305.98. These amendments will attain consistency with federal permitting requirements, which is required before EPA may approve the assumption by Texas of the federal National Pollutant Discharge Elimination System (NPDES) program for permitting discharges into waters in the state.

EXPLANATION OF ADOPTED RULE

The amendment to §50.15 will attain consistency with NPDES, Resource Conservation and Recovery Act (RCRA) and Underground Injection Control (UIC) program requirements. Specifically, 40 Code of Federal Regulations (CFR) §122.46 provides that NPDES permits shall be effective for a fixed term not to exceed five years and upon expiration must be reissued in their entirety. RCRA and UIC permits, pursuant to 40 CFR §270.50 and §144.36 respectively, are treated similarly except the fixed term may not exceed ten years. At expiration of an NPDES, RCRA, or UIC permit, the holder seeking reissuance must submit an application that is subject to technical evaluation, as well as public participation in the decision to issue or deny the application. Before this amendment, §50.15 provided that the commission could elect to limit consideration in permit renewal, amendment, or modification proceedings to only those portions of a permit for which the application requests action. The amended rule deletes the term “renewal,” the term in state permit procedure that describes the same process as

“reissuance” does under federal rules, so that every permit renewal will in effect be a new permit and all portions of a permit will have a fixed duration not to exceed either five or ten years, consistent with federal requirements.

The rule change further specifies that the commission may continue to limit consideration in renewals of preconstruction permits consistent with §382.055 of the Texas Health & Safety Code, which limits the commission’s authority to impose new requirements in such permits renewals. The rule was amended to state that terms, conditions and provisions of existing permits will remain in effect until the commission acts on the application.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to facilitate compliance with the federal requirement that, upon expiration of the permit, the holder must submit an application for a permit that is subject to technical review and public participation in the agency’s decision to grant or deny the application. The rule will advance this specific purpose by removing the existing authority to limit the scope of consideration in renewals of permits in applicable program areas. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because this rulemaking, which sets forth requirements applicable to all permitted facilities, does not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. Further, the following exception

to the application of Chapter 2007 of the Texas Government Code, set forth at Texas Government Code Annotated §2007.003(b), applies to these rules: the rulemaking is an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking is consistent with the applicable CMP goals and policies.

HEARINGS AND COMMENTERS

A public hearing was held on the rule in Austin, Texas on October 7, 1997. The public comment period closed on October 20, 1997. No oral or written testimony was submitted at the hearing or before the close of the comment period.

In order to make all the provisions in the section consistent, the commission has made an additional minor modification to the rule. The rule stated that a permittee shall comply with an existing permit “until a new, amended or modified permit is issued.” That clause has been deleted and replaced with “until the commission acts on the application” to clarify that the existing permit remains in full force and effect until the commission takes action on the application.

In addition, a change has been made to the Takings Impact Assessment to include a explanation of an exemption of takings law that applies to this rule. This change does not affect the conclusion of the assessment that no takings has occurred; instead it more fully explains the reasons for the commission's actions.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law.

SUBCHAPTER B : ACTION BY THE COMMISSION

§50.15

§50.15. Scope of Proceedings.

The commission may limit consideration in permit amendment or modification proceedings to only those portions of a permit for which the application requests action. The commission may limit consideration in the review of preconstruction permit renewals consistent with the requirements set forth in §382.055 of the Texas Health and Safety Code. All terms, conditions, and provisions of an existing permit remain in full force and effect during such proceedings, and the permittee shall comply with an existing permit until the commission acts on the application.

The 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.

Issued in Austin, Texas, on November 10, 1997.

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§305.2, 305.22, 305.23, 305.25, 305.533, and 305.535, concerning Consolidated Permits. Sections 305.22, 305.23, 305.25, 305.533 and 305.535 are adopted with changes to the proposed text as published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9434). Section 305.2 is adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULE

The amendments to Chapter 305 are intended to make commission rules consistent with federal requirements of the National Pollutant Discharge Elimination System (NPDES) program. These changes will facilitate assumption of the NPDES program by the state of Texas from the U.S. Environmental Protection Agency (EPA). Existing §305.2 defines “severe property damage” as substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. The change to §305.2 is intended to clarify that “severe property damage” does not mean economic loss caused by delays in production, consistent with 40 Code of Federal Regulations (CFR) §122.41(m)(1)(ii) governing authorized bypasses.

Existing §§305.22, 305.23, and 305.25 provide the procedures by which a temporary or emergency order or executive director authorization may be issued. Sections 305.22 and 305.23 provide that a person seeking to obtain a temporary or emergency order to discharge waste or pollutants into or adjacent to water in the state shall submit a sworn application to the commission containing information

that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production), or to make necessary and unforeseen repairs to a facility. The amended rules delete the parenthetical text relating to economic loss caused by delays in production. The amended §305.22(b) addresses the procedures governing discharges adjacent to waters in the state. Further, amendments to §§305.22, 305.23 and 305.25 provide that, once Texas has been authorized to administer the NPDES program, neither temporary or emergency orders nor executive director authorizations may be issued for discharges into waters in the state by TPDES permitted facilities on the ground of economic loss, as set forth in the proposed rule, or making necessary and unforeseen repairs to a facility. The deletion of these grounds complies with federal requirements, which authorize bypasses of partially or untreated wastewater to occur only if the discharge is unavoidable to prevent loss of life, personal injury or severe property damage.

The amendments to §305.533 (relating to Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs) clarifies the transfer of jurisdiction of federally-issued NPDES permits to the commission.

Additionally, the commission has amended §305.535 (relating to Bypasses from TPDES Permitted Facilities) to clarify that the section pertains only to TPDES permits issued by the commission after assumption of the NPDES program from the EPA. The amendments also specify that neither “severe economic loss” nor “necessary and unforeseen repairs” can be a basis to authorize a bypass, consistent

with 40 CFR §122.41(m). Additionally, the section is being amended to attain consistency with NPDES requirements by adding a new subsection (d) which would establish secondary treatment standards for publicly owned treatment works required to have TPDES permits. The amendment establishes minimum standards for the percentage of the removal of certain pollutants, including biochemical oxygen demand, total suspended solids, and pH. The subsection also specifies certain exceptions to these standards consistent with federal requirements contained in 40 CFR §§123.25(a)(15), 123.25(a)(36), and 133.102.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to attain consistency with federal NPDES program requirements and meet federal requirements governing the process of delegation of the NPDES program to the state of Texas. The rules will substantially advance this specific purpose by removing “severe economic loss” and “necessary and unforeseen repairs” as a basis for TPDES permit holders to obtain temporary and emergency orders and executive director authorizations to discharge pollutants into waters in the state, clarifying jurisdictional issues after delegation, and establishing treatment requirements for domestic wastewater dischargers. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because this rulemaking is not the producing cause of a reduction in the market value of the affected private real property. Further, the following exception to the application of Chapter 2007 of the Texas Government Code, set forth at Texas Government Code

Annotated §2007.003(b), applies to these rules: the rulemaking is an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking is consistent with the applicable CMP goals and policies.

HEARINGS AND COMMENTERS

A public hearing was held in Austin, Texas on October 7, 1997. The public comment period closed on October 20, 1997. No oral or written comments were received during the public hearing.

One written comment was received from Texas Utilities Services, Inc., on behalf of Texas Utilities Electric Company, Texas Utilities Fuel Company, Texas Utilities Mining Company, and ENSERCH, generally in support of the proposed rule.

GENERAL COMMENTS

Texas Utilities Services, Inc. indicated its support for the rulemaking. The commenter stressed the importance of authorizing emergency or temporary orders for wastewater discharges in cases where the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss. The commenter additionally indicated this is a significant issue in times of drought

when water temperatures may be elevated, presumably in cooling water reservoirs used by the utility.

The commenter also noted that the commission would be conducting a separate rulemaking in the near future to implement Senate Bill (SB) 1876, effective on September 1, 1997, which governs the issuance of emergency and temporary orders.

The commission responds and concurs with the commenter that these authorizations are important. The amended rule as it was proposed was devised to maximize the ability of the commission to authorize temporary or emergency discharges and only limits certain discharges which would occur directly into waters in the state. There has been no change in the rule to restrict temporary or emergency discharges which might be authorized adjacent to waters in the state. The commission notes that a finding of severe property damage, which could form the basis for authorizing a temporary or emergency discharge, is maintained in the rule.

The commission also responds that the rulemaking for SB 1876 will commence at the end of 1997 or early 1998, and will set forth the commission's new authorities to grant emergency and temporary orders. The changes made in this rulemaking, which apply only to facilities required to have TPDES permits, are consistent with the provisions of SB 1876.

The amendments in §§305.22, 305.23, and 305.25 have been revised for clarity, and to replace language referring to NPDES program delegation with language that more accurately portrays the

action the commission is seeking from the EPA. Section 305.533 has been amended for clarification purposes.

The amendment of §305.535, which proposed the addition of a new subparagraph (5)(C), included a reference to a federal regulation, 40 CFR §35.2005(b)(16). Instead of referring to the federal regulation, the commission is adopting the amendment to actually specify in the rule the definitions and criteria from the federal regulation. This revision does not in any way change the rule's requirement and only makes the requirements more clear.

Sections 305.22 and 305.23 have also been amended to delete the parenthetical text that excluded economic loss caused by delays in production as a basis for an emergency or temporary order in non-TPDES situations. This parenthetical language was originally designed to comply with federal requirements necessary for Texas's assumption of NPDES permitting authority. Because the removal of "severe economic loss" from the list of grounds for which discharges from facilities subject to TPDES permit requirements may be authorized satisfies the federal NPDES requirements, the parenthetical language is no longer needed.

After the rules were proposed, the commission determined that Sections 305.22(a), 305.23(a), 305.25(a) and 305.535(c)(1)(a) remained inconsistent with federal standards regarding authorized bypasses although the commission's stated purpose in changing these rules was to incorporate such standards as provided in 40 CFR §122.41(m). Accordingly, those sections have been further changed

to delete the ground of “necessary and unforeseen repairs” as a basis for allowing a discharge of partially treated or untreated wastewater into water in the state by facilities subject to TPDES permits, as required by 40 CFR §122.41(m). With this revision, bypasses by TPDES facilities for necessary maintenance purposes will be allowed only under the circumstances described in §305.535(a), which allows bypasses to occur if necessary for essential maintenance to assure efficient operation but only if the effluent limitations are not exceeded. The deletion of “necessary and unforeseen repairs” eliminates inconsistency with the existing requirement that effluent limitations not be exceeded when necessary maintenance purposes is the ground for allowing the bypass.

In addition, a change has been made to the Takings Impact Assessment to include an explanation of an exemption of takings law that applies to this rule. This change does not affect the conclusion of the assessment that no taking has occurred; instead it more fully explains the reasons for the commission’s actions.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other state law. The basis for the amendments is also contained in §26.121, which authorizes the commission to prohibit unauthorized discharges into and adjacent to waters in the state, and §5.509, which describes the circumstances under which the commission may issue an emergency or temporary order for the discharge of waste or pollutants into waters in the state.

SUBCHAPTER A : GENERAL PROVISIONS

§305.2

§305.2. Definitions.

The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Severe property damage - Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

The 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.

Issued in Austin, Texas, on November 10, 1997.

**SUBCHAPTER B : EMERGENCY ORDERS, TEMPORARY ORDERS, AND
EXECUTIVE DIRECTOR AUTHORIZATIONS**

§§305.22, 305.23, 305.25

§305.22. Application for Orders or Authorizations to Discharge.

(a) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into water in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or, if the state of Texas is not authorized to administer the NPDES program, severe economic loss or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, for unreasonable economic loss to persons other than the applicant;

(2) - (8) (No Change.)

(b) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, adjacent to waters in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, severe economic loss or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the area of or surrounding the discharge;

(3) an estimate of the dates on which the proposed discharge will begin and end;

(4) a statement of the volume and quality of the proposed discharge;

(5) an explanation of measures proposed to minimize the volume and duration of the discharge;

(6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use;

(7) for temporary orders, a list of potentially affected persons in accordance with §305.48(1) of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits); and

(8) payment of appropriate application fees in accordance with §305.27 of this title (relating to Application Fees).

(c) If the applicant is other than an individual, the application must be sworn to by someone authorized to do so for the applicant, as provided for in §305.44 of this title (relating to Signatories To Applications).

(d) If the executive director issues an authorization to discharge as provided in §305.25 of this title (relating to Executive Director Authorizations To Discharge), the applicant must submit the sworn application as required in subsections (a) or (b) of this section before the date of the commission's public hearing to consider the authorization.

(e) This section does not apply to unpermitted facilities subject to TPDES regulation.

§305.23. Emergency Orders.

(a) The commission may issue emergency orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the following to be true:

(1) for discharges into water in the state, that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or, if the state of Texas is not authorized to administer the NPDES program, severe economic loss or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) for discharges adjacent to any water in the state, that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, severe economic loss or to make necessary and unforeseen repairs to a facility; that there are no feasible alternatives to the proposed discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(3) that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(4) that the estimate of the dates on which the proposed discharge will begin and end and the estimate of the volume and quality of the proposed discharge submitted by the applicant are reasonable and are attainable; and

(5) that the measures proposed by the applicant to minimize the volume and duration of the discharge, and to maximize the waste treatment efficiency of treatment units not taken out of service or treatment facilities to be provided for interim use are reasonable.

(b) - (c) (No Change.)

§305.25. Executive Director Authorizations to Discharge.

(a) If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or, if the state of Texas is not authorized to administer the NPDES program, severe economic loss or to make necessary and unforeseen repairs to the facility; that there are no feasible alternatives to

the discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant.

(b) If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility adjacent to waters in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility; that there are no feasible alternatives to the discharge; and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant.

(c) If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable but in no event later than 10 days after issuance of the authorization, to affirm, modify or set aside the authorization. This section does not enable the executive director to authorize the discharge of hazardous waste.

The 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.

Texas Natural Resource Conservation Commission
Chapter 50 - Action on Applications
Chapter 305 - Consolidated Permits
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SUBCHAPTER O : ADDITIONAL CONDITIONS AND PROCEDURES
FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS
§305.533 and §305.535

§305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs.

On the date of TNRCC assumption of the administration of the Texas Pollutant Discharge Elimination System (TPDES) permit program, after the Environmental Protection Agency (EPA) approves the TPDES permit program, and the issuance of national pollutant discharge elimination system (NPDES) permits is delegated from the EPA to the state, the state adopts all EPA permits and pretreatment programs, except that EPA shall retain jurisdiction over certain EPA-issued or proposed permits until their expiration which it has issued as may be specified in a state/federal Memorandum of Agreement. This provision does not affect the right of the EPA to issue NPDES permits for facilities which expired in the twelve months preceding the date of program assumption or to modify NPDES permits under Clean Water Act, §304(l). If the requirements of a state permit and an EPA permit issued to the same permittee or for the same facility are not of equal stringency, any requirements of the state-issued permit that are more stringent shall apply above and beyond those requirements contained in the corresponding EPA permit.

§305.535. Bypasses From TPDES Permitted Facilities; Minimum Requirements for TPDES

Permitted Facilities.

(a) Authorized bypass. The permittee may allow any bypass to occur from a TPDES permitted facility which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (b) and (c) of this section.

(b) Notice.

(1) Anticipated bypass. In accordance with the procedures described in §§305.21, 305.22 and 305.23 of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) if the permittee knows in advance of the need for a bypass, it shall submit prior notice.

(2) (No change.)

(c) Prohibition of Bypass.

(1) Bypass of untreated or partially treated wastewater is prohibited from a TPDES permitted facility, and the commission may take enforcement action against the permittee for bypass, unless all of the following conditions are met:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance;

(C) (No change.)

(2) The commission may approve an anticipated bypass in accordance with the procedures described in §§305.21, 305.22 and 305.23 of this title (relating to Emergency Orders, Temporary Orders, Application for Orders or Authorizations To Discharge and Executive Director Authorizations) after considering its adverse effects, if the executive director determines that it will meet the three conditions listed in paragraph (1) of this subsection.

(d) Establishing Limitations, Standards, and Other Conditions in TPDES Permits.

(1) Permits for POTWs shall contain technology-based treatment requirements based upon secondary treatment and “best practical waste treatment technology.”

(2) This paragraph describes the minimum level of effluent quality attainable by POTWs in terms of the parameters of five-day biochemical oxygen demand (BOD₅), total suspended solids (TSS), and pH. All requirements shall be achieved except as provided for in this subsection.

(A) For BOD₅, the 30-day average shall not exceed 30 mg/l and the 7-day average shall not exceed 45 mg/l. The 30-day average percent removal shall not be less than 85%. At the option of the commission, in lieu of the BOD₅ parameter, the parameter five-day carbonaceous biochemical oxygen demand (CBOD₅) may be substituted. For CBOD₅, the 30-day average shall not exceed 25 mg/l and the 7-day average shall not exceed 40 mg/l. The 30-day average percent removal shall not be less than 85%.

(B) For TSS, the 30-day average shall not exceed 30 mg/l and the 7-day average shall not exceed 45 mg/l. The 30-day average percent removal shall not be less than 85%.

(C) For pH, the effluent values for pH shall be maintained within the limits of 6.0 and 9.0 unless the POTW demonstrates that inorganic chemicals are not added to the waste stream as part of the treatment process and contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

(3) Treatment works shall be eligible for consideration of effluent limitations described for treatment equivalent to secondary treatment, as described in 40 CFR §133.105, if the BOD₅ and TSS

effluent concentrations consistently achievable through proper maintenance and operation of the treatment works exceed the minimum level of the effluent quality set forth in paragraph (2) (A) and (2)(B) of this subsection, a trickling filter or waste stabilization pond is used as the principal process, and the treatment works provide significant biological treatment of municipal wastewater.

(4) The minimum TSS effluent quality concentration achievable with waste stabilization ponds may be adjusted in accordance with 40 CFR §133.103(c).

(5) The commission is authorized to substitute either a lower percent removal requirement or a mass loading limit for a percent removal requirement set forth in this subsection provided the permittee satisfactorily demonstrates that:

(A) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent effluent removal requirements cannot be met due to a less concentrated influent wastewater;

(B) To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards (where the term “significantly more stringent limitations” means BOD₅ and TSS limitations necessary to meet the percent removal requirements of at least 5 mg/l more

stringent than the otherwise applicable concentration-based limitations of this subsection, if such limits would, by themselves, force significant construction or other significant capital expenditure); and

(C) The less concentrated influent wastewater is not the result of excessive inflow or infiltration (I/I). The determination of whether the less concentrated wastewater is not the result of excessive I/I will be based upon the following definitions and criteria:

(i) Excessive infiltration/inflow is the quantity of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

(ii) Nonexcessive infiltration is the quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

(iii) Nonexcessive inflow is the maximum total flow rate during storm events which does not result in chronic operational problems related to hydraulic overloading of the treatment works or which does not result in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

The 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.

Issued in Austin, Texas, on November 10, 1997.