

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Chapter 321, Subchapter G, §§321.101-321.107, concerning the authorization by rule of hydrostatic test discharges.

#### EXPLANATION OF THE PROPOSED RULE

On September 14, 1998, the commission received authority from the United States Environmental Protection Agency (EPA) to administer the Texas Pollutant Discharge Elimination System (TPDES). A provision of the agreement reached between the two agencies in the transfer of this authority requires the commission to either repeal or replace this rule, or amend it to meet the requirements of the Clean Water Act (CWA). Until the rule is amended to include all necessary requirements under the National Pollutant Discharge Elimination System (NPDES), the commission has agreed not to authorize TPDES discharges into waters of the United States under the rules in Chapter 321.

The purpose of this subchapter is to streamline the permitting process by authorizing by rule certain activities, thereby eliminating the need for individually issued commission permits for a subset of specific wastewater discharges. In order for the rule to meet the requirements of the CWA, the commission is proposing to amend the rule to limit registrations to periods no longer than five years, with an opportunity for renewal. By amending the rule, coverage of the rule will be expanded to include authority under the CWA. Facilities currently or potentially authorized under this rule will have the opportunity to continue discharging without being required to obtain an individual permit, and will need to obtain only one authorization for both state and federal coverage.

If the rule is not amended, the parties currently registered under the rule would have to seek coverage under a TPDES individual permit for their discharges under the CWA. New facilities would have to obtain a TPDES individual permit for coverage under the CWA and Texas Water Code (TWC).

Proposed changes to §321.101, Definitions, adds definitions for the terms “authorization by rule” and “registration” for clarification purposes. The definition for “water in the state” is being amended to reflect the definition that took effect following Texas’s assumption of the NPDES program.

Proposed changes to §321.103, New Facilities, would require registration for discharges with a duration of more than 365 days. Currently, discharges meeting the conditions for discharging without registration are perpetually authorized. Those discharges occurring over 365 days are incompatible with the five-year limit on registrations also being proposed. Most hydrostatic test discharges are of a very limited duration. Therefore, it was determined that if a discharge occurs over 365 days, it signals a situation warranting notice of the discharge to the commission through the filing of a registration form.

Proposed changes to §321.105, Registration, are being made to establish the process for obtaining a registration, specifying a five-year term limit for registrations, and specifying the process for renewing an existing registration. These changes are being made to meet the requirements of the CWA. A \$100 application fee is also proposed to meet the requirements of TWC, §5.235.

Other changes to the rule are minor clarification, and to change any references to the Texas Water Commission to the commission.

#### FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Division, has determined that for the first five-year period these proposed amendments are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the proposed sections. The proposed amendments will allow hydrostatic test discharges to continue to be authorized by rule, thereby eliminating the need for individually issued commission permits for these facilities. For purposes of this fiscal note, facilities refers to pipelines, tanks, and other vessels used in pipeline transportation, storage, or otherwise containment of raw materials or products. The proposed amendments would also allow the commission to fulfill the requirements of TPDES and administer one permit program that satisfies both state and federal permit regulations. The proposed amendments will make Chapter 321, Subchapter G of the commission's rules consistent with EPA general permit requirements in the CWA. It is estimated that the commission's wastewater permit workload and the wastewater enforcement workload will be reduced slightly by the proposed amendments. The proposed amendments specify a new registration fee of \$100 for a registration period of five years. It is estimated that revenues deposited to the Water Resources Management Account will increase approximately \$5,000 per year due to this new registration fee. It is anticipated that the cost to applicants will be offset by elimination of the requirement to prepare a TPDES individual permit application which could cost businesses from \$5,000 to \$25,000.

## PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated from enforcement of and compliance with these amendments will be improved processes and procedures related to wastewater discharge authorization, increased consistency between federal and state wastewater regulations, a decrease in costs of compliance and enforcement of hydrostatic test water regulations, and more cost-effective implementation and enforcement of wastewater standards. The proposed amendments to the rules would authorize discharging hydrostatic test water by rule and eliminate the requirement to obtain an individual permit. The economic impact to persons or small businesses required to comply with the amendments as proposed is discussed in the following section, Small Business Analysis.

## SMALL BUSINESS ANALYSIS

The amendments to Chapter 321 will allow businesses to discharge hydrostatic test water and comply with the requirements of the TPDES with a single permit by rule. If not amended, new discharging facilities would have to obtain a TPDES individual permit for coverage under the CWA and TWC. The proposed amendments to the rules would authorize discharging hydrostatic test water by rule and eliminate the requirement to obtain an individual permit. The proposed amendments specify a registration fee of \$100 for a registration period of five years. It is anticipated that this cost will be offset by elimination of the requirement to prepare a TPDES application which could cost businesses from \$5,000 to \$25,000. In addition, if dischargers were required to obtain an individual TPDES permit, they would have to suspend operations until their TPDES permit could be issued. This could potentially result in loss of revenues for businesses.

#### DRAFT REGULATORY IMPACT ASSESSMENT

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

Specifically, the proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not establish any new requirements beyond those already established by federal law. In addition, the amendments are proposed pursuant to a Memo of Agreement, between the commission and EPA, whereby the commission implements the NPDES requirements of the CWA. The proposed amendments will continue to protect the environment and reduce risk to human health while lessening the regulatory burden on dischargers of hydrostatic test water in Texas. The proposed amendments will not affect the environment or public health and safety because the amendments do not affect existing discharge water limits. In order for the rule to satisfy the requirements of the CWA, the commission is proposing to amend the rules to limit registrations to periods no longer than five years, with an opportunity for renewal.

The proposed amendments are anticipated to have a positive economic impact by allowing the commission to fulfill the requirements of the TPDES assumption and eliminate the requirement to obtain separate federal and state authorization for discharging hydrostatic test water in Texas.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to the Code, §2007.043. The following is a summary of that assessment.

The specific purpose of the Chapter 321, Subchapter G rule amendment is to allow the commission to fully implement the NPDES hydrostatic test water discharge program in Texas by making the existing Subchapter G rules consistent with the EPA general permit requirements in the CWA. The rule changes will also allow the commission to fulfill the requirements of TPDES assumption and to administer one permitting program for both NPDES and state permits. In order for the rule to meet the requirements of the CWA, the commission is proposing to amend the rule to limit registrations to periods no longer than five years, with an opportunity for renewal, as required by 40 Code of Federal Regulations §122.46. The rule will also require registration for discharges with a duration of more than 365 days. In addition, the rule amendment adds a \$100 registration fee, authorized by TWC, §5.235(c).

In general, the rule streamlines the permitting process by authorizing by rule the discharge of hydrostatic test water, thereby eliminating the need for individually issued commission permits for hydrostatic test water discharges. Dischargers currently or potentially authorized under this

rule will have the opportunity to continue discharging without being required to obtain an individual permit, and will need to obtain only one authorization for both state and federal coverage.

This action will not burden private real property that is the subject of the regulation because the amended rules will enable the commission to fully implement the NPDES program for hydrostatic test discharges in Texas. The rule amendment incorporates the five-year registration term limit from the CWA, adds a \$100 registration fee, and requires registration for discharges of longer than 365 days. The amendments which are proposed to this rule would not impose any substantive requirements on private landowners in the way they may enjoy their property. Rather, the proposed amendments eliminate the need to obtain separate federal and state authorization for hydrostatic test discharges. Because dischargers will need to obtain only one authorization for both state and federal coverage, the burden on private real property will be lessened.

Therefore, the five-year registration term and the \$100 fee do not concern private real property, and the effect of the rule amendment will be to lessen the burden on the regulated community by allowing it to obtain only one authorization for both state and federal coverage. The rule amendment does not create a burden on private real property.

#### COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and

Rules Subject to the Coastal Management Program (CMP), or will affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the proposed rule include the protection, restoration, and enhancement of the diversity, quality, quantity, functions, and values of Coastal Natural Resource Areas (CNRA) and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule include the following: 1) discharges in the coastal zone shall comply with water-quality-based effluent limits; 2) discharges in the coastal zone that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development; and 3) to the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rules will result in more efficient and cost-effective use of public resources regulating wastewater facilities. Protection of the quality of the surface water resources of the state will be maintained because the rule subjects all discharges of hydrostatic test water to effluent limitations and other requirements set to protect water quality.

The commission invites public comment on the consistency of the proposed rule.

#### SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log No. 98075-321-WT and may be submitted to Lisa Martin, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-1966; or faxed to (512) 239-5687. Written comments must be received by 5:00 p.m., May 10, 1999. For further information concerning this proposal, please contact Jim Bateman, Environmental Law Division, (512) 239-3426.

#### STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, which provides the commission with general powers to carry out duties under the TWC, and §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state, and to establish and approve all general policies of the commission. Additionally, the amendments are proposed under TWC, §26.040, which provides the commission with authority to amend rules adopted under §26.040 prior to its amendment by House Bill 1542 in 1997.

No other rules, statutes, or codes are affected by these proposed amendments.

**SUBCHAPTER G : HYDROSTATIC TEST DISCHARGES**

**§§321.101 - 321.109**

**§321.101. Definitions.**

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

**(1) Authorization by rule** - An authorization to discharge to surface water in the state under rules issued by the agency.

**(2) Clean-up wastes** - Liquid and solid wastes generated during initial clean-up of used facilities. This includes facility draining, flushing, purging, and chemical and mechanical cleaning wastes.

**(3) Discharge** - Deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

**(4) Facilities** - Pipelines, tanks, and other vessels used in pipeline transportation, storage, or otherwise containment of liquid or gaseous raw materials or products.

**(5) Grab sample** - An individual sample collected in less than 15 minutes.

**(6) Hydrostatic test discharge [discharges]** - Discharge into or adjacent to any water in the

state of test water that is made following pressure testing of facilities.

**(7) New facilities** - Facilities that [which] have not previously contained raw materials or products.

[TWC - Texas Water Commission]

**(8) Registration** - Authorization by rule to discharge under the terms and requirements of this subchapter.

**(9) Used facilities** - Facilities that [which] have been used to store, transport, or otherwise contain a liquid or gaseous raw material or product.

**(10) Water in the state** - Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses [water courses] and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

**§321.102. Purpose and Applicability.**

(a) (No change.)

(b) This subchapter does not apply to [and other permitting requirements are not applicable to]:

(1) discharges that [which] are not into or adjacent to water in the state; and

(2) discharges [discharge] into or adjacent to water in the state of hydrostatic test water from natural gas and crude oil facilities, which are regulated by the Railroad Commission of Texas.

(c) This subchapter does not authorize the use of surface water for conducting the hydrostatic test. A separate application for temporary water use shall be submitted, as necessary, to the commission [Commission].

(d) For discharges into or adjacent to water in the state located in or within ten [10] stream miles upstream of the Edwards Aquifer recharge zone as defined in Chapter 213 [313] of this title (relating to Edwards Aquifer), separate authorization may be required.

**§321.103. New Facilities.**

(a) Registration not required.

(1) The test waters may be discharged into or adjacent to water in the state from new facilities without registration provided the following conditions are met:

(A) water used for the hydrostatic test meets the effluent limitations in [as a

minimum is of dischargeable quality as defined by] §321.107(c)[(3)] of this title (relating to Effluent Limitations);

(B) (No change.)

(C) the discharge is controlled at a rate to prevent flooding [and/]or erosion of the discharge area; [and]

(D) the discharge does not cause any nuisance conditions to adjacent land owners along the discharge route; and [.]

(E) the duration of discharges from hydrostatic tests at individual sites is less than 365 days.

(2) Individual hydrostatic test discharge registration is not required for new facilities if test waters are disposed of according to [in accordance with] §321.104(a) of this title (relating to Used [used] Facilities).

(b) Registration required. Individual hydrostatic test discharge registration is required for new facilities that do not meet the conditions of subsection (a) of this section. [and] Discharges shall be regulated under [by the requirements in] §§321.105-321.107 of this title (relating to Registration; General Requirements for Discharges; and Specific Requirements for Discharges).

**§321.104. Used Facilities.**

(a) Registration not required. Individual hydrostatic test discharge registration for used facilities is not required under the following conditions [provisions]:

(1) hydrostatic test water is collected [and/]or transported to a wastewater treatment system that is permitted by the commission [Texas Water Commission]. The hydrostatic test water must be similar to other wastes treated in the treatment system and not likely to cause a permit violation;

(2) hydrostatic test water is collected [and/]or transported to a publicly owned treatment works permitted by the commission [Texas Water Commission];

(3) hydrostatic test water is collected [and/]or transported to a disposal well that is permitted by the commission [Texas Water Commission] to receive such wastes; or

(4) hydrostatic test water [which] is discharged from facilities that [which] formerly contained only elemental gases (e.g., hydrogen, oxygen, nitrogen, etc.) provided the discharge meets the requirements of §321.103(a)(1)(A- (E)[(D)] of this title (relating to New Facilities).

(b) Registration required. Individual [Unless exempted by subsection (a) of this section, individual] hydrostatic test registration is required for all discharges from used facilities, unless exempted by subsection (a) of this section. [and] Discharges shall be regulated under [by the requirements in] §§321.105-321.107 of this title (relating to Registration; [,] General Requirements for Discharges; and Specific Requirements for Discharges).

**§321.105. Registration.**

(a) A [Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), a] registration form [as] provided by the executive director must be submitted to the agency's central [TWC Austin] office before [prior to] a discharge into or adjacent to water in the state, unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities). Submittal of the registration form is sufficient notice to initiate discharge under [in accordance with] this subchapter. The registration form must be sent to: Wastewater Permits Section, Water Quality Division, MC 148, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711. The executive director will send an acknowledgment of the registration form to the discharger.

(b) In the event of an emergency repair[/] or replacement, a registration form may be submitted within five days after discharge.

(c) A registration shall be valid for a period not to exceed five years. In order to renew a registration, a new registration form must be filed with the executive director at least ten days before the registration expiration date. Submittal of a registration form is sufficient notice to renew a registration and to authorize continued discharging under this subchapter. The executive director will send an acknowledgment of the registration form to the discharger.

(d) If renewal procedures have been initiated before the registration expiration date, the existing

registration will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(e) A registration form submitted to the executive director shall include an application fee of \$100.

**§321.106. General Requirements for Discharges.**

The [Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), the] following general requirements apply unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities).

(1) The discharger shall notify the appropriate agency regional [TWC district] office by telephone at least two days before [prior to] discharge. For emergency facility repair or replacement, the discharger shall notify the appropriate agency regional [TWC district] office by telephone as soon as possible.

(2) The discharge shall not cause any nuisance conditions to adjacent landowners along the discharge route.

(3) The discharger shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the agency's regional office [supervisor of the TWC District Office] that the discharge is presenting a hazard to the uses of the receiving water, the discharger shall terminate such discharge. The discharge shall cease immediately whenever

problems associated with the discharge may endanger human health or safety, or the environment, and the problems shall be reported to the agency's central [TWC Austin] and appropriate regional [district] offices as soon as possible, but no later than 24 hours following their discovery. A written report shall be submitted to the agency's central [TWC Austin] and regional [district] offices within five working days.

The report shall contain:

(A) a description of the location;

(B) the exact date and time the problem was first identified;

(C) the potential danger to human health or safety, or the environment;

(D) the immediate steps that were taken to correct the problem;

(E) steps planned and[/or] taken to mitigate any adverse effects; and

(F) plans to prevent the reoccurrence of similar problems during other hydrostatic

test discharges. The discharge of hydrostatic test water shall not be acutely toxic to aquatic life.

(4) Concentration of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.

(5) Any earthen pits or surface impoundments used in conjunction with the disposal of hydrostatic test water shall be properly designed and constructed to prevent percolation and to protect groundwater in the state.

(6) Solid [disposal of solid] wastes, including cleanup wastes, shall be disposed of under [in accordance with] the Solid Waste Disposal Act, Article 4477-7.

**§321.107. Specific Requirements for Discharges.**

Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), the following specific requirements apply.

(1) Point of discharge.

(A) The discharge shall be to a splash pad to aerate the hydrostatic test water.

(B) All hydrostatic test water shall be discharged through a filter media, such as hay bales, for filtering of suspended solids. The filter media shall be properly located and anchored to prevent bypassing.

(C) The rate of discharge shall be controlled to prevent flooding and erosion.

(2) Monitoring.

(A) The discharger shall maintain authorized personnel at the site at all times to monitor and sample the discharge.

(B) Grab samples shall be collected in wide mouth, clear jars every two hours during the discharge and inspected for the appearance of oil and grease or the detection of a chemical odor. The discharge shall cease immediately if contamination is evident and the appropriate agency regional [TWC district] office shall be notified within 24 hours. The remaining test water shall be evaluated for additional treatment or alternate means of disposal.

(C) At least two grab samples for analysis shall be collected during the discharge. The initial grab sample shall be collected within the first hour of discharge, and the final grab sample shall be collected during the last hour of discharge. Individual samples shall be analyzed for chemical oxygen demand or total organic carbon, and the maximum concentration reported as required in paragraph (4) of this section. The sampling point shall be downstream of the filter media, or following any other treatment unit that is used [may be utilized].

(D) Grab samples for oil and grease analysis shall be collected during the first and last hours of the discharge. Each sample shall be analyzed separately and the maximum oil and grease concentration reported as required in paragraph (4) of this section. The sampling point shall be downstream of the filter media, or following any other treatment unit that is used [may be utilized].

(E) Grab samples for pH analysis shall be collected once each day of discharge

and reported as required in paragraph (4) of this section. The sample point shall be downstream of the filter, or following any other treatment unit that is used [may be utilized].

(F) All sample collection shall be conducted according to recommendations found in the latest edition of "Standard Methods for the Examination of Water and Wastewater" (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or Environmental Protection Agency, "Methods for Chemical Analysis of Water and Wastes" (1979), or Environmental Protection Agency, "Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents" (1973).

(G) Sample containers, holding times, preservation methods, and the physical, chemical, and microbiological analyses of effluents shall meet the requirements [specified in regulations published] in 40 Code of Federal Regulations (CFR) Part 136, as amended. [pursuant to the Federal Water Pollution Control Act, §304(g), and] All analyses shall be conducted according to 40 CFR Part 136, as amended, [this federal regulation] or the latest edition of "Standard Methods for the Examination of Water and Wastewater."

(3) Effluent limitations.

(A) The following daily maximum effluent limitations apply to all discharges of hydrostatic test water: Figure: 30 TAC §321.107(3)(A)

Daily Maximum

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>
Chemical Oxygen Demand*	250 mg/l	Grab
Total Organic Carbon*	85 mg/l	Grab
Oil and Grease	15 mg/l	Grab

\* Analyze and report either Chemical Oxygen Demand or Total Organic Carbon

(B) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units; and

(C) There shall be no discharge of floating solids or visible foam other than in trace amounts, and no discharge of visible oil.

(4) Reporting. All analytical results shall be reported to the agency's central [TWC Austin] office on the "Hydrostatic Test Report" form provided by the executive director. All violations of effluent limitations shall be noted on the form and plans discussed to prevent similar violations during other hydrostatic test discharges. Results shall be submitted to the commission within 25 days after termination of the discharge.