

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.502, Definitions and Abbreviations and §305.503, Fee Assessment. These amendments are proposed to Chapter 305, Consolidated Permits, Subchapter M, Waste Treatment Inspection Fee Program.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed amendments is to incorporate recent legislative changes impacting fees for aquaculture production facilities. Senate Bill (SB) 873, 76th Legislature, 1999, added §26.0292 to the Texas Water Code (TWC) which directs that combined fees for the waste treatment inspection program and the Clean Rivers Program may not total more than \$5,000 in any year. Currently, annual waste treatment inspection fees for industrial dischargers, including aquaculture facilities, are established with a cap not to exceed \$25,000.

The commission is proposing amendments to §305.503 to include a provision capping the waste treatment inspection fee for aquaculture production facilities at \$5,000. Currently, no fee is assessed for aquaculture facilities for the Clean Rivers Program, under 30 TAC §220.21(d). The commission has determined that because the number of aquaculture facilities with active individual wastewater discharge permits is relatively small, the amount of funds that would be collected by the Clean Rivers Program through a redistribution of the fees for aquaculture production facilities is insignificant. Therefore, the Clean Rivers Program fee for aquaculture facilities will remain at zero, and the waste treatment inspection fee will be set so as not to exceed \$5,000 annually.

SB 873 also directs that the commission by rule provide that fees charged among aquaculture facilities be reasonably assessed according to the pollutant load of the facility. The current fee rate schedule is based in part upon the assignment of “points” as a measure of pollutant potential, flow volume, contamination, and pollutant parameters (e.g. ammonia, suspended solids, oxygen demand, etc.). Under the revised rules, fees for aquaculture facilities will continue to be assessed according to this point system. A separate fee rate schedule is not proposed for aquaculture facilities because pollutant loadings and pollutant potential from these facilities were not determined to be significantly different than those from many other industries for which fees are calculated. In order to distribute the waste treatment inspection fee more proportionately among aquaculture facilities, the commission will allow these facilities to apply for an annual average flow in their individual permits to replace the current daily average flow limit. This change will lower the waste treatment inspection fee for those facilities that only discharge a limited number of days per year, which is typical for certain types of aquaculture production facilities. The change to annual average flows will be made as the permits for these facilities come up for renewal, or as a result of a permit amendment.

#### SECTION BY SECTION DISCUSSION

Proposed §305.502 will add a definition for aquaculture production facilities, correct typographical errors, incorporate minor style changes for consistency with the *Texas Register* format, and improve readability.

Proposed §305.503 will be revised to include a cap on the annual fee for aquaculture production facilities at \$5,000. In addition, the amendment will include minor style changes for consistency with the *Texas Register* format and improve readability.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 305, Consolidated Permits, are in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments would implement certain provisions contained in SB 873, an act relating to the regulation of aquaculture. The act directs the commission to set wastewater treatment inspection fees and the Clean Rivers Program fees for aquaculture facilities at a rate not to exceed a total of \$5,000 based upon the pollutant load of the facility. Aquaculture facilities are those facilities engaged in the propagation and/or rearing of aquatic species which utilize ponds, lakes, fabricated tanks and raceways, or similar structures.

Currently, the maximum annual wastewater treatment inspection fee for all wastewater permit holders, including aquaculture facilities, is \$25,000. The proposed rules continue the current practice of assigning points as a measure of pollutant potential, flow volume, contamination, and pollutant parameters. The commission would allow these types of facilities to use a rate schedule which allows facilities to be assigned an average annual flow in their permits rather than the current practice of

determining the fee based on daily average flow. This change is anticipated to lower the waste treatment inspection fee for those facilities, such as aquaculture production facilities, that discharge wastewater infrequently.

#### PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the proposed amendments to Chapter 305 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be lower operating costs for certain aquaculture businesses that pay wastewater treatment inspection fees.

The commission anticipates that limiting wastewater treatment inspection fees and Clean Rivers Program fees for aquaculture facilities to a maximum of \$5,000 will reduce revenues to the state by approximately \$40,000 per year. Currently, there are ten aquaculture facilities paying wastewater treatment inspection fees. As a result of the proposed rules, one facility will realize a \$20,000 decrease in wastewater treatment inspection fees, four facilities will realize a decrease of between \$1,800 to \$7,500, and the other five (including two facilities operated by the Texas Parks and Wildlife Department) will experience no change in their wastewater treatment inspection fees. Setting fees based on average annual flow is anticipated to also lower the wastewater treatment inspection fee further for those facilities that discharge wastewater infrequently.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

Some of the aquaculture production facilities that will receive savings in fees paid to the commission are small businesses and micro-businesses. Currently, there are ten aquaculture facilities paying wastewater treatment inspection fees. As a result of the proposed rules, one facility will realize a \$20,000 decrease in fees, four facilities will realize a decrease of between \$1,800 to \$7,500, and the other five (including two facilities operated by the Texas Parks and Wildlife Department) will experience no change in their wastewater treatment inspection fees.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of “major environmental rule.” The specific intent of this rulemaking is to designate the maximum amount of waste treatment inspection fees that may be charged to aquaculture production facilities. The specific purpose of the fee is to help pay the expenses of the commission in inspecting waste treatment facilities and enforcing the laws of the state and rules of the commission governing waste discharges and waste treatment facilities. The proposed rules will have only a minimal impact so that there will be no material effect on the items listed in the definition. In addition, the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a), in that the waste treatment inspection fees are specifically required by TWC, §26.0292; the proposed amendments do not exceed any express requirements of state law; and the proposed amendments do not involve any delegation agreements or contracts.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement provisions of legislation, SB 873, that place a cap on fees that may be assessed on aquaculture production facilities. The legislation directs the commission to limit fees charged to aquaculture production facilities for the waste treatment inspection program and Clean Rivers Program to no more than \$5,000 total in any one year. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because most aquaculture facilities will realize a cost savings as a result of the proposed amendments.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that the proposal is a rulemaking subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this proposed rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). 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 this proposal will be consistent with the applicable CMP goals and policies because the rule amendments will require that the combined total of waste treatment inspection fees and Clean Rivers fees charged to aquaculture facilities cannot exceed \$5,000. These amendments would not adversely affect the applicable CMP goals which are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, because the amendments are not substantive in nature but rather only affect the amount of fees charged aquaculture production facilities. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rules.

#### SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-036-305-WT. Comments must be received by 5:00 p.m., May 8, 2000. For further information, please contact Yvonna Pierce, Office of Permitting, Remediation, and Registration, (512) 239-4618.

#### STATUTORY AUTHORITY

The amendments are proposed under the 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 the 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, these amendments are proposed under the TWC, §26.0291 and §26.0292, which provides the commission with the authority to impose an annual waste treatment inspection fee on permittees and to cap fees for aquaculture facilities at \$5,000 per year.

No other codes or statutes will be affected by these proposed amendments.

**SUBCHAPTER M: WASTE TREATMENT INSPECTION FEE PROGRAM**

**§305.502. Definitions and Abbreviations.**

(a) Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) **Annual waste treatment fee** - A fee charged to each permittee holding a permit or otherwise authorized to treat or discharge wastewater under the Texas Water Code, Chapter 26.

(2) **Aquaculture production facility** - An establishment engaged in the propagation and/or rearing of aquatic species which utilizes ponds, lakes, fabricated tanks and raceways, or other similar structures.

(3) [(2)] **Biomonitoring** - The determination of total (whole-effluent) toxicity of permitted discharges as required by and consistent with the provisions of §307.1(d) of this title (relating to General Policy Statement).

(4) [(3)] **Commission** - The Texas Natural Resource Conservation Commission.

(5) [(4)] **Flow limit** - The maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow, a daily maximum flow, an annual average, or an annual maximum.

(6) [(5)] **Flow** - The total by volume of all wastewater discharges authorized under a permit 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 is based on 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 is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(7) [(6)] **Flow volume** -

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

(B) **Type II** - 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.

(8) [(7)] **Fund** - The water quality fund.

(9) [(8)] **Heat load parameter** - The temperature limitation specified in a permit. For purposes of assessing the waste treatment fee, points are assigned according to the existence of a temperature limitation within a waste discharge permit.

(10) [(9)] **Inactive permit** - A permit which authorizes a waste treatment facility, but where the facility itself is not yet operational or where operation has been suspended.

(11) [(10)] **Land application/evaporation permit** - A permit which does not authorize the discharge of wastewaters into surface waters in the state. These permits include, but are not limited to, permits for evaporation ponds and irrigation systems.

(12) [(11)] **Major permit** - A permit designated as a major permit, in conformance with applicable EPA [Environmental Protection Agency (EPA)] guidance documents, by either EPA or the commission and subject to provisions of National Pollutant Discharge Elimination System (NPDES) [NPDES] or Texas Pollutant Discharge Elimination Systems (TPDES) [TPDES] permit authority, respectively.

(13) [(12)] **Parameter** - A variable which defines a set of physical properties whose values determine the characteristics of a waste discharge. Those parameters to be considered under the waste treatment facility fee are:

(A) pollutant potential;

(B) flow volume;

(C) biochemical oxygen demand (BOD)/chemical oxygen demand (COD)/total organic carbon (TOC) value;

(D) total suspended solids (TSS) value;

(E) ammonia value;

(F) heat load; and

(G) major/minor designation.

(14) [(13)] **Payment** - Receipt by the commission of the full amount of the annual waste treatment fee.

(15) [(14)] **Permit** - Any permit issued by the Texas Natural Resource Conservation 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 subchapter, the term "permit" shall include any other authorization for the treatment or discharge of wastewater, including permits by rule.

(16) [(15)] **Pollutant potential** - A rating assigned to a permit based on:

(A) for industrial permits, the source(s) of wastewater, the Standard Industrial Classification of the facility and the specific type of operation; or

(B) for domestic permits, an authorized flow of greater than 1.0 million gallons per day (mgd) [mgd] and/or the existence of biomonitoring requirements or toxic numerical discharge limits.

(17) [(16)] **Report only permit** - A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported but without any limitation on the volume of discharge.

(18) [(17)] **Stormwater outfall or permit** - A permit or outfall(s) which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specific limitation on the volume of discharge.

(19) [(18)] **Toxicant numerical limit** - A permit discharge limit established for any toxicant identified or otherwise defined in accordance with the provisions of §307.6 of this title (relating to Toxic Materials).

(20) [(19)] **Traditional pollutants** - The wastewater parameters typically found in wastewater discharge permits, specifically BOD/COD/TOC, TSS, and ammonia. For purposes of

assessing the waste treatment fee, points are assigned to these parameters if they are included in a permit.

(b) Abbreviations. The following abbreviations apply to these sections.

(1) - (3) (No change.)

(4) Mg/l (milligrams per liter) - All limits measured in mg/l are converted to pounds per day (lb/day) using the following conversion: mg/l multiplied by the flow volume in mgd [MGD] multiplied by 8.34 equals lb/day.

(5) - (8) (No change.)

**§305.503. Fee Assessment.**

(a) (No change.)

(b) In assessing a fee, the commission may consider the following parameters for each permit:

(1) - (6) (No change.)

(7) the costs of obtaining and administering the TPDES [Texas pollutant discharge elimination system] program, upon delegation by the EPA [Environmental Protection Agency (EPA)].

(c) (No change.)

(d) For the purpose of fee calculation, chemical oxygen demand (COD) [COD] and total organic carbon (TOC) [TOC] are converted to biochemical oxygen demand (BOD) [BOD] values and the higher value is assessed points. The conversion for TOC is[:] three pounds of TOC is equal to one pound of BOD (3:1). The conversion for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(e) For the purpose of fee calculation, a permit which authorizes a secondary treatment system consisting of ponds or lagoons at limits of 30 milligrams per liter (mg/l) [mg/l] BOD and 90 mg/l total suspended solids (TSS) [TSS] shall be assumed to be equivalent to 20 mg/l BOD and 20 mg/l TSS. This equivalency is based on treatment provided by different types of secondary treatment systems.

(f) Fee rate schedule. Except as provided in subsection (g) of this section, each permit shall be assessed a fee based on the specific parameters assigned to the permit and determined by the following schedule. Each permit shall be reviewed to determine the individual values for the parameters covered by this schedule.

(1) - (3) (No change.)

(4) Heat load\_ [:] If heat loading parameter is not present = 0 points; if [If] heat loading parameter is present = 10 points. Heat Load Points = \_\_\_\_\_.

(5) (No change.)

(g) Set point permits. The following fees are assessed for permits to which the parameters under subsection (f) of this section are not applicable.

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

(3) Aquaculture production facility discharge permits. The annual fee for aquaculture production facilities shall not exceed \$5,000.

(h) - (j) (No change.)