

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 16, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2014-0617-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 305, Consolidated Permits
Construction Stormwater Effluent Limitation Guideline Revisions
Rule Project No. 2014-020-305-OW

Introduction and reason(s) for the rulemaking:

The United States Environmental Protection Agency (EPA) promulgated effluent limitation guidelines and standards for the Construction and Development Point Source Category (40 Code of Federal Regulations (CFR) Part 450) in December 2009. Several parties filed petitions for review of the final rule. On January 4, 2011, EPA stayed the numeric turbidity effluent limitation and monitoring requirements due to problems with the data used to develop the limitation. In December 2012, EPA entered into a settlement agreement with petitioners to resolve the litigation.

On March 6, 2014, EPA adopted revisions to the 2009 Final Rule that satisfy EPA's agreements with petitioners (79 FedReg 12661 - 12667). The final rule became effective May 5, 2014. The revisions include:

- defining "infeasible";
- clarifying the applicability of requirements to control erosion caused by discharges;
- providing additional details on areas where buffers are required;
- clarifying requirements for soil stabilization, preservation of topsoil and pollution prevention measures; and
- withdrawing the numeric turbidity effluent limitation and associated monitoring requirements.

Scope of the proposed rule:

The rulemaking is not required by state or federal statute, but is necessary to keep commission rules synchronized with EPA's rules as required by the Memorandum of Agreement (MOA) with EPA regarding National Pollutant Discharge Elimination System (NPDES) authority.

Statutory authority:

Texas Water Code, (TWC) §5.102, General Powers
TWC, §5.103, Rules
TWC, §5.105, General Policy
TWC, §5.120, Conservation and Quality of Environment

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Effect on the:

A) Regulated community: It is anticipated that the revised federal regulations will be beneficial to the regulated community by adding clarity to certain requirements in the regulations. Withdrawing the numeric turbidity effluent limitation will not affect the regulated community, since this limitation and associated monitoring requirements were specifically not incorporated into the Construction General Permit when it was renewed in 2013.

B) Public: No effect on the public is anticipated.

C) Agency programs: The clarifications in the federal regulations will be beneficial to TCEQ staff by improving understanding which will result in consistent implementation of the regulations. Withdrawing the numeric turbidity effluent limitation will not affect TCEQ programs since this limitation and associated monitoring were not incorporated into the Construction General Permit when it was renewed in 2013. The clarifications added to the federal regulations will be incorporated into the Construction General Permit at the time it is renewed in 2018.

Stakeholder meetings:

There were no stakeholder meetings since the requirements have been established in federal regulations. However, stakeholders were notified of, and updated quarterly about, this rulemaking during the Water Quality Advisory Workgroup meetings.

Public comment:

This rule's comment period began on September 26, 2014. A public hearing was held on October 23, 2014. Mr. Ned Munoz, representing the Texas Association of Builders, provided comments in support of this rulemaking, specifically as they relate to withdrawing the numeric turbidity effluent limitation. The comment period closed on October 27, 2014.

Significant changes from proposal:

There were no changes from proposal to adoption.

Potential controversial concerns and legislative interest:

No controversial concerns or legislative interest is anticipated.

Will this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The TCEQ could be considered out of compliance with the MOA requirement that the TCEQ "ensure new federal NPDES regulations are incorporated into state regulations

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within one year of federal promulgation or within two (2) years if a state statute must first be enacted." There is no alternative to this rulemaking.

Key points in the proposal rulemaking schedule:

***Texas Register* proposal publication date:** September 26, 2014

Anticipated *Texas Register* adoption publication date: February 20, 2015

Anticipated effective date: February 26, 2015

Six-month *Texas Register* filing deadline: March 26, 2015

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Attachments

40 CFR Part 450

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