

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 30, 2015

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

From: Ramiro Garcia, Jr., Deputy Director
Office of Compliance and Enforcement

Docket No.: 2015-1076-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 305, Consolidated Permits
Chapter 327, Spill Prevention and Control
SB 912: Volume Based Exemptions for Certain Accidental Discharges
Rule Project No. 2015-024-305-CE

Background and reason(s) for the rulemaking:

Senate Bill (SB) 912, 84th Texas Legislature, 2015, authored by Senator Kevin Eltife, provides for volume-based exemptions from reporting requirements for certain accidental discharges or spills from wastewater treatment facilities or collection systems. SB 912 amends Texas Water Code (TWC) §26.039(b) and (e) and adds TWC §26.039(g) - (j).

The bill provides that single, accidental discharges or spills at wastewater treatment facilities or collection systems can be reported monthly instead of within 24 hours under certain conditions. Specifically, any single, accidental discharge or spill of treated or untreated domestic wastewater that occurs at a wastewater treatment or collection system owned or operated by a local government will be reported as a summary of spills to the Texas Commission on Environmental Quality (TCEQ) on a monthly basis when the following conditions are met:

1. the spill volume is 1,000 gallons or less;
2. it is not associated with another accidental discharge or spill;
3. it is controlled or removed before entering water in the state;
4. it does not adversely affect a public or private source of drinking water;
5. it will not endanger human health or safety or the environment; and
6. it is not otherwise subject to local regulatory control and reporting requirements.

The bill requires the TCEQ to establish standard method(s) for calculating the volume of an accidental discharge or spill, consider the compliance history of the individual, and establish procedures for formatting and submitting a summary. The summary shall include the location, volume, and content of each accidental discharge or spill that occurred during the preceding month.

The bill also requires the owner or operator of the facility to use the established standard method(s) for calculating the volume of an accidental discharge or spill.

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Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking will amend 30 Texas Administrative Code (TAC) Chapters 305 and 327 to implement SB 912. The proposed rules are amended to allow single, accidental discharges or spills of treated or untreated domestic wastewater that occur at a wastewater treatment or collection system owned or operated by a local government to be reported as a summary of spills to the TCEQ on a monthly basis when the following conditions are met:

1. the spill volume is 1,000 gallons or less;
2. it is not associated with another accidental discharge or spill;
3. it is controlled or removed before entering water in the state;
4. it does not adversely affect a public or private source of drinking water;
5. it will not endanger human health or safety or the environment; and
6. it is not otherwise subject to local regulatory control and reporting requirements.

The proposed rules also establish standard methods for calculating the volume of an accidental discharge or spill and require the owner or operator of the facility or collection system to use the standard methods in the proposed rules.

The proposed rules identify the minimum data that must be submitted on the summary, consistent with SB 912.

B.) Scope required by federal regulations or state statutes:

This rulemaking is required to implement the provisions of SB 912.

C.) Additional staff recommendations that are not required by federal rule or state statute:

There are no additional staff recommendations that are not required by federal rule or state statute.

Statutory authority:

TWC §§5.013; 5.103; 5.105; 5.102; 26.039; and 26.121.

Effect on the:

A.) Regulated community:

The proposed rulemaking is applicable to wastewater treatment facilities and collection systems owned and operated by local governments. Currently any accidental discharge or spill is required to be reported to the agency within 24 hours verbally and a written report is required within five days. The proposed rulemaking will allow owners or operators of wastewater treatment facilities or collection systems to report applicable accidental

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discharges or spills once a month. If a local government has numerous spills to report, there may be minor cost savings from the consolidation of notifications.

B.) Public:

There is no effect to the public.

C.) Agency programs:

Updates will need to be made to the boilerplate language for Municipal Wastewater Permits. A new noncompliance notification form will need to be created to include the data summary which includes the method for spill estimation. A new Regulatory Guidance will be created (or existing RG-395, Unauthorized Discharges and Sanitary Sewer Overflows, will be amended) to explain the methods for determining accidental discharge and spill estimates.

Stakeholder meetings:

A stakeholder meeting was conducted in Austin on September 15, 2015. Approximately 50 people were in attendance. The majority in attendance were with local governments and utilities. Some consulting firms and environmental groups were also in attendance. Inquiries were made about the information that the commission will be collecting on the monthly notification form. The utilities also provided information on current practices for determining standard volumes of spills. These standards were incorporated into the proposed rulemaking.

Potential controversial concerns and legislative interest:

Some groups that opposed the legislation have cited that reduced reporting will lead to an increase in *E. coli* in water bodies that are already impaired. They stated that they would like to see reporting of accidental discharges as currently required. A concern was also brought up in the stakeholder meeting that the rulemaking will allow this change in notice at not only the treatment facility but also to the collection system.

Will this rulemaking affect any current policies or require development of new policies?

This rulemaking does not affect any current policies or require development of new policies.

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

Without approval, Chapters 305 and 327 will be inconsistent with state statutes. There are no alternatives to rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: January 20, 2016

Anticipated *Texas Register* publication date: February 5, 2016

Anticipated public hearing date (if any): March 1, 2016

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Anticipated public comment period: February 5, 2016 - March 7, 2016
Anticipated adoption date: May 11, 2016

Agency contacts:

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Attachments

SB 912

cc: Chief Clerk, 2 copies
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