

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §327.1 and proposes new §327.32.

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 912, passed by the 84th Texas Legislature, 2015, amends Texas Water Code (TWC), §26.039 to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. SB 912 also requires the commission to establish standard methods for calculating the volume of accidental discharges or spills of treated or untreated wastewater related to this section; to consider compliance history of the individual; and to establish procedures for formatting and submitting a monthly summary. Additionally, SB 912 requires TCEQ to adopt rules necessary to implement TWC, §26.039 no later than June 1, 2016. This rulemaking proposes to amend §327.1 and proposes new §327.32 in order to implement the requirements of SB 912 for unpermitted wastewater treatment facilities and collection systems.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 305, Consolidated Permits.

Section by Section Discussion

§327.1, Applicability

The commission proposes to amend §327.1(b)(7) to replace the phrase, "discharges not so authorized" with "unauthorized discharges" in order to improve readability and clarity.

The commission proposes §327.1(a)(10), which states that Chapter 327 is not applicable to accidental discharges or spills of treated or untreated wastewater that are reported in accordance with 30 TAC §305.132.

§327.32, Reporting Requirements for Certain Accidental Discharges or Spills of Treated or Untreated Wastewater at Wastewater Treatment Facilities or Collection Systems

The commission proposes new §327.32(a) to define terms used in the section.

The commission proposes new §327.32(a)(1) to provide a definition of a collection system to mean pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility. This definition is consistent with the definition in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

The commission proposes new §327.32(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting of accidental discharges or spills of treated or untreated wastewater.

The commission proposes new §327.32(a)(3) to provide a definition of local government to mean an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution. This definition is consistent with the definition in TWC, Chapter 26.

The commission proposes new §327.32(a)(4) to provide a definition of wastewater treatment facility to mean all contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area. This definition is consistent with the definition in Chapter 217.

The commission proposes new §327.32(b) that states that unless the conditions in §327.32(c) exists, all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours from the time of occurrence. A written submission shall be provided to the executive director within five days of occurrence. The written submission shall contain a description of the accidental discharge or spill and its cause; the potential danger to human health or safety, or the environment; the duration of the

accidental discharge or spill, including exact dates and times; the length of time that the accidental discharge or spill is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent recurrence of the accidental discharge or spill, as well as efforts made to mitigate its adverse effects.

The commission proposes new §327.32(c) to allow an accidental discharge or spill of treated or untreated wastewater that occurs at wastewater treatment facilities or collection systems owned or operated by a local government, and that does not endanger human health or safety or the environment, to be reported to the executive director as a monthly summary.

The commission proposes new §327.32(c)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission proposes new §327.32(c)(2) which specifies that the accidental discharge or spill must not be associated with another simultaneous accidental discharge or spill of treated or untreated wastewater.

The commission proposes new §327.32(c)(3) which specifies that the accidental discharge or spill must be controlled or removed before it enters water in the state or adversely affects a public or private source of drinking water.

The commission proposes new §327.32(c)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission proposes new §327.32(d) which specifies that the summary must be reported to the executive director by the 20th day of the month for spills of treated or untreated wastewater that have occurred during the previous month. This date is consistent with the reporting requirements for permitted facilities. This clause also specifies that the summary must include the location; volume; content; description of the accidental discharge or spill and its cause, including exact dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

The commission proposes new §327.32(e) to provide three standard methods for determining spill volumes.

The commission proposes new §327.32(e)(1). This paragraph describes visual estimates as the first of three standard methods. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50

gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 50 to obtain the number of gallons discharged or spilled.

The commission proposes new §327.32(e)(2). This paragraph describes volume as the second of three standard methods. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

The commission proposes new §327.32(e)(3). This paragraph describes duration and flow rate as the third standard method. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

The commission proposes new §327.32(f) which specifies that the responsible person must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §327.32. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period is consistent with recordkeeping requirements for permitted facilities.

The commission proposes new §327.32(g) which specifies that the executive director

may require more frequent reporting based on the responsible person's history of noncompliance.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules implement SB 912, which amended the TWC to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government.

Currently, all accidental discharges or spills of treated or untreated wastewater are required to be reported to the TCEQ within 24 hours verbally and by written report within five days. SB 912 language allows for the responsible person of a wastewater treatment facility or collection system owned or operated by a local government to report accidental discharges or spills of treated or untreated wastewater on a monthly basis in the form of a summary if certain conditions are met. The conditions are: 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.

There are an estimated 5,147 local governments that may be affected by the proposed rules. A noncompliance form is used to notify the agency of a discharge or spill. The noncompliance form is submitted to the agency by hard copy and by email. The proposed language will allow a responsible person to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. If a local government has numerous spills of treated or untreated wastewater to report, there may be minor cost savings from the consolidation of notifications. Otherwise, no significant fiscal implications are anticipated for local governments that own or operate wastewater treatment facilities or collection systems as a result of the administration or enforcement of the proposed rules.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the only public benefit anticipated from the changes seen in the proposed rules will be consistency with state law.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals. The exception to 24-hour verbal and five-day written reporting of accidental discharges or spills of treated or untreated wastewater only applies to wastewater treatment facilities or collection systems owned or operated by a local government.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. The proposed rules will only apply to a wastewater treatment facility or collection system owned or operated by a local government.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and are necessary to comply with state law.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local

employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may 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. The proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it revises procedural rules regarding when and how specific accidental discharges or spills of treated or untreated wastewater are to be reported. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912.

The proposed rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater and is procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments

section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated and untreated wastewater. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. Therefore, the proposed rules are not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 1, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-

3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to

comments being submitted via the eComments system. All comments should reference

Rule Project Number 2015-024-305-CE. The comment period closes on March 7, 2016.

Copies of the proposed rulemaking can be obtained from the commission's website at

http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please

contact Macy Beauchamp, Program Support Section, (512) 239-0437.

CHAPTER 327: SPILL PREVENTION AND CONTROL

§327.1, ~~§327.32~~

Statutory Authority

The amendment and new section are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §26.039, concerning Accidental Discharges and Spills and TWC, §26.121, concerning Unauthorized Discharges Prohibited, which prohibits unauthorized discharges into or adjacent to water in the state.

The proposed amendment and new section implement TWC, §26.039, and Senate Bill 912 (84th Texas Legislature, 2015).

§327.1. Applicability.

(a) This chapter applies to discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of this state.

(b) This chapter does not apply to:

(1) discharges or spills of oil that enter or threaten to enter coastal waters of the State. Except for spills of oil of 240 barrels or less for which the Railroad Commission of Texas is the on-scene coordinator, such discharges or spills are regulated by the Texas General Land Office under the Oil Spill Prevention and Response Act of 1991, the Texas Natural Resources Code, Chapter 40, Subchapters C, D, E, F, and G;

(2) spills or discharges from activities subject to the jurisdiction of the Railroad Commission of Texas under the Texas Water Code, §26.131;

(3) releases only to air;

(4) the lawful placement of waste or accidental discharge of material into a solid waste management unit registered or permitted under Chapter 335, Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General);

(5) units and activities regulated under the authority of the Texas Water Code, Chapter 26, Subchapter I (Underground and Aboveground Storage Tanks);

(6) the lawful application of materials, including but not limited to fertilizers and pesticides, to land or water;

(7) discharges that are authorized by a permit, order, or rule issued under federal law or any other law of the State of Texas; provided, however, that unauthorized discharges [not so authorized] shall be reported under this chapter unless the permit, order, or another commission rule provides an applicable reporting requirement;

(8) discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency [(EPA)] under 40 Code of Federal Regulations [(CFR)] §302.8; [and]

(9) discharges or spills occurring during the normal course of rail transportation; or [.]

(10) accidental discharges or spills of treated or untreated wastewater that are reported in accordance with §305.132 of this title (relating to Special Conditions for Certain Wastewater Discharges).

§327.32. Reporting Requirements for Certain Accidental Discharges or Spills of Treated or Untreated Wastewater at Wastewater Treatment Facilities or Collection Systems.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Collection system--Pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility.

(2) History of noncompliance--History of non-reporting of accidental discharges or spills of treated or untreated wastewater.

(3) Local government--An incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(4) Wastewater treatment facility--All contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A

wastewater treatment facility does not include the collection system located outside of the fenced area.

(b) Except as provided by subsection (c) of this section, all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours of the occurrence. A written submission shall be provided to the executive director within five days of the occurrence. The written submission shall contain a description of the accidental discharge or spill and its cause; the potential danger to human health or safety, or the environment; the duration of the accidental discharge or spill, including exact dates and times; if the cause of the accidental discharge or spill has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence, and to mitigate its adverse effects.

(c) The responsible person of a wastewater treatment facility or collection system that is owned or operated by a local government may report accidental discharges or spills of treated or untreated wastewater that do not endanger human health or safety or the environment to the executive director as a monthly summary if each individual accidental discharge or spill:

(1) has a volume of 1,000 gallons or less;

(2) is not associated with another simultaneous accidental discharge or spill of treated or untreated wastewater;

(3) is controlled or removed before the accidental discharge or spill enters water in the state or adversely affects a public or private source of drinking water; and

(4) is not otherwise subject to local regulatory control and reporting requirements.

(d) The responsible person shall submit a monthly summary by the 20th day of the month for each accidental discharge or spill that occurred during the previous month. The summary must include, at a minimum, the:

(1) location, volume and content of the accidental discharge or spill;

(2) description of the accidental discharge or spill;

(3) cause of the accidental discharge or spill;

(4) exact dates and times of the accidental discharge or spill; and

(5) steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

(e) The responsible person must use one of the following methods for determining the volume of the discharge or spill.

(1) Visual estimate. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill and then multiply by 50 to obtain the number of gallons discharged or spilled.

(2) Measured volume. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

(3) Duration and flow rate. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated

by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

(f) The responsible person must keep records of all accidental discharges or spills of treated or untreated wastewater reported under this section. The records must remain on-site for three years and be made immediately available to commission staff upon request.

(g) The executive director may require more frequent reporting based on the responsible person's history of noncompliance.