The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §220.4 and §220.6.

**Background and Summary of the Factual Basis for the Proposed Rules**

House Bill 3618 (HB 3618 or bill), 85th Texas Legislature (2017), repealed Texas Water Code (TWC), §26.0285 which required, to the greatest extent practicable, that all Texas Pollutant Discharge Elimination System (TPDES) permits within a single watershed contain the same expiration date (known as basin permitting). The bill also amended TWC, §26.0135(d) to remove language that coordinated submittal of summary reports by river authorities with the existing "basin permitting rules" previously required under TWC, §26.0285.

TWC, §26.0135 was created by the 72nd Texas Legislature (1991). Also known as "the Texas Clean Rivers Act," the legislation provided a framework for river authorities and TCEQ's predecessor agency to establish a public input process, strategic monitoring, and the periodic assessment of water quality within each river basin of the state. Since 1991, river authorities and other partners in TCEQ's Clean Rivers Program have continued to provide surface water quality monitoring and assessments of waterbodies in Texas' river basins. TCEQ uses this information in water quality management programs such as the Texas Integrated Report of Surface Water Quality, the Texas Surface Water Quality Standards, total maximum daily loads, watershed protection plans, and wastewater permitting.
TWC, §26.0285 was created by the 75th Texas Legislature (1997) to create the basin permitting program. State and federal rules allow permits to be issued for five-year terms. In order to comply with basin permitting rules, a substantial number of TPDES permits were required to be issued for terms between two and four years.

This rulemaking will implement HB 3618 changes related to TWC, §26.0135(d). In a corresponding rulemaking, published in this issue of the Texas Register, the commission also proposes the repeal of 30 TAC §305.71, Basin Permitting, to implement HB 3618 changes to TWC, §26.0285.

Section by Section Discussion

§220.4, Responsibilities of River Authorities and Designated Local Governments
Proposed changes to §220.4 are to ensure consistency between statute and rule. Proposed revisions remove the requirement to coordinate data collection efforts with the permitting cycle referenced in TWC, §26.0285, which was repealed by HB 3618.

§220.6, Reporting Requirements
Proposed changes to §220.6 revise the frequency of submission for summary reports that are based on the basin permitting cycle referenced in TWC, §26.0285. The change is needed due to the repeal of TWC, §26.0285 by HB 3618. The proposed changes specify a report to be submitted once every third state fiscal biennium, in accordance
with the schedule provided in the *Texas Clean Rivers Program Guidance*, as amended.

**Fiscal Note: Costs to State and Local Government**

Maribel Montalvo, analyst in the Chief Financial Officer Division, 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 the administration or enforcement of the proposed rules.

The proposed rules would implement portions of HB 3618. HB 3618 repeals TWC, §26.0285 regarding "basin permitting rules," and amends TWC, §26.0135(d) to remove language that coordinated submittal of summary reports by river authorities with the existing "basin permitting rules" previously required under TWC, §26.0285. The proposed revisions to Chapter 220 replace cross-references to basin permitting with an established frequency for submittal of summary reports.

River authorities are the primary participants in the Texas Clean Rivers Program (CRP), however, local governments may enter into direct agreement with the commission to participate in the CRP. In addition to the current 12 river authorities, there is one water district, one council of government, and one federal agency that partners with TCEQ through the CRP. Each of these governmental entities will be affected by the proposed rulemaking.
Under the proposed rules, partners in the CRP will be required to submit summary reports on a less frequent basis than currently required. The proposed rules would change the frequency of submission for summary reports from the five-year basin permitting cycle, to once every six years, on average.

With a reduced frequency of submission of the summary reports, TCEQ anticipates that for each year in the three biennia’ cycle, beginning in the first even-numbered fiscal year after the proposed rules are in effect, each governmental entity participating in the CRP will save approximately $300 per year. The savings are not considered significant and it is assumed that any savings would be reallocated to support other program tasks.

**Public Benefits and Costs to Businesses and Individuals**

Ms. Montalvo also determined that for each year of the first five years the proposed rules are in effect, the public benefits anticipated from the changes seen in the proposed rules would be more efficient reporting by CRP participants. Although summary reports would be submitted less frequently as a result of the amendment to §220.6(a), the revised frequency can adequately capture changes in water quality detected in monitoring and assessment to support the agency’s water quality management programs.

No fiscal implications are anticipated for businesses or individuals. Businesses and individuals are not direct participants in a CRP, and will not be impacted by the proposed
amendments to Chapter 220. The proposed rules would change reporting requirements for CRP participants and would not affect regulatory or oversight responsibilities of governmental entities.

**Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed changes correct rule references and require governmental partners in the CRP to submit summary reports on a less frequent basis than currently required.

**Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect small or micro-businesses for the first five-year period the proposed rules are in effect.

**Local Employment Impact Statement**

The commission 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.
Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect a rural community in a material way for the first five years that the proposed rules are in effect. These state-wide rules will not affect rural communities or non-rural communities in any way. Governmental entities in the CRP will be required to submit summary reports on a less frequent basis than currently required.

Government Growth Impact Assessment

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rules do not create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand, limit or repeal an existing regulation; nor increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed rulemaking is administrative in nature and will correct rule references and require partners in the CRP to submit summary reports on a less frequent basis than currently
Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking 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. "Major environmental rule" is defined as 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. This rulemaking does not adversely affect, in a material way, the economy, a section 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 deletes the reference in §220.4(a)(2)(C) and §220.6(a) to TWC, §26.0285. The reference in §220.4(a)(2)(C) was used to coordinate water quality monitoring with the basin permitting cycle specified in TWC, §26.0285. The reference in §220.6(a) was used to set a schedule for submitting summary reports by each participant in TCEQ's Clean Rivers Program based on the basin permitting cycle. The proposed change to §220.6(a) would specify that summary reports be submitted once
every third state fiscal biennium, in accordance with the schedule provided in the
_Texas Clean Rivers Program Guidance_. These changes are proposed because the 85th
Texas Legislature repealed TWC, §26.0285 making it no longer applicable as a
reference for compliance in §220.4(a)(2)(C) and §220.6(a). The rulemaking does not
meet the definition of "major environmental rule" because it is not specifically
intended to protect the environment or reduce risks to human health from
environmental exposure. Therefore, the commission finds that this rulemaking is not a
"major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements
only applies to a state agency's adoption of a major environmental rule that: 1) exceeds
a standard set by federal law, unless the rule is specifically required by state law; 2)
exceeds an express requirement of state law, unless the rule is specifically required by
federal law; 3) exceeds 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 4) adopts a rule solely under the general powers of the
agency instead of under a specific state law.

Specifically, the rulemaking does not exceed federal standards because no applicable
federal standards exist regarding the timeline for submitting river basin reports and
the amendment is proposed for the purpose of clarifying when river basin reports
should be submitted. Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but as a result of the repeal of TWC, §26.0285. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed rules do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment on the Draft Regulatory Impact Analysis Determination. 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 performed an assessment of these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to clarify when river basin reports are submitted given the repeal of TWC, §26.0285, previously referenced to identify when reports should be submitted for their respective river basin cycle. Amendment of these rules will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in
value of the property as a result of this rulemaking.

**Consistency with the Coastal Management Program**

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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 December 12, 2017, 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/](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 2017-025-305-OW. The comment period closes on December 18, 2017. Copies of the proposed rulemaking can be obtained from the commission’s website at [http://www.tceq.texas.gov/rules/propose_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Jill Csekitz, Water Quality Planning Division, (512) 239-3136.
SUBCHAPTER A: PROGRAM FOR MONITORING AND ASSESSMENT OF WATER QUALITY BY WATERSHED AND RIVER BASIN
§220.4, §220.6

Statutory Authority
The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state.

The amendments implement House Bill 3618, 85th Texas Legislature, 2017, which repealed TWC, §26.0285.

§220.4. Responsibilities of River Authorities and Designated Local Governments.

(a) Each river authority and designated local government that has entered into an agreement with the commission to perform duties under this chapter shall:

(1) Organize and lead a basin-wide steering committee to assist with the development of water quality objectives and priorities for the basin and to fulfill responsibilities described in §220.5 of this title (relating Responsibilities of Steering Committees). Membership of the committee will reflect a diversity of interests in the basin and will include persons paying fees described under Chapter 21 of this title (relating to Water Quality Fees), the Texas State Soil and Water Conservation Board and other appropriate state agencies (for example, Texas Parks and Wildlife Department, Texas Water Development Board, Texas General Land Office, Texas
Department of Health, Texas Department of Agriculture, Texas Railroad Commission, and the Texas Department of Transportation), private citizens, representatives from political subdivisions, and other persons with an interest in water quality matters in the watershed or river basin.

(2) Develop and maintain a basin-wide water quality monitoring program that eliminates duplicative monitoring, facilitates the assessment process to identify problem areas and support long-term trend analyses, and targets monitoring to support the wastewater discharge permitting and standards process.

(A) A quality assurance project plan must be developed and approved to support all data collection activities. Data collected by subcontractors and others under this program must conform to the approved quality assurance project plans.

(B) The water quality monitoring program shall address collection of baseline water quality data to support trend analyses and development of the statewide water quality inventory required under federal Clean Water Act, §305(b).

(C) The water quality monitoring program shall include site-specific data collection to support the wastewater discharge permitting process for fee payers in the basin. [Data collection efforts for this aspect of the program should be
coordinated with the permitting cycle developed in accordance with Texas Water Code, §26.0285 (relating to permitting by basin).]

(D) The water quality monitoring program shall include watershed specific data collection to address priority water quality problem areas identified by river authority trends analyses or steering committee input.

(3) Establish [establish] and maintain a watershed and river basin water quality database and/or clearinghouse composed of quality-assured data, river authority programs, wastewater discharge permit holders, state and federal agencies, and other relevant data sources. This data shall be submitted to the commission for inclusion in the State of Texas Surface Water Quality Monitoring database and shall be made available to any interested person.

(A) Each river authority and designated local government shall establish and maintain the technology to aid in the electronic dissemination of water quality data and information for their basin. Water quality data for the basin shall be submitted to the commission at a minimum of once every six months in an agreed format for inclusion in the statewide water quality database.
(B) River authorities and designated local governments shall participate in task force meetings to establish, review, and update data management procedures to reflect changes in information management technology.

(4) Identify [identify] water quality problems and known pollution sources and set priorities for taking appropriate actions to eliminate those problems and sources.

(A) Each river authority shall utilize the commission's procedures for data evaluation and analyses to the maximum extent possible. If alternative evaluation processes are necessary, the procedure must be presented in writing to the commission for approval by the executive director prior to its application.

(B) In order to assure inclusion in the development of the statewide water quality inventory, the analytical procedures shall be comparable to those used by the commission.

(C) Steering committees shall be provided the opportunity to actively participate in the identification of priority problem areas and the development of appropriate actions to address the problems and pollutant sources. Steering committees shall have the opportunity to determine the priority of maintaining or protecting watersheds with existing good quality water.
(5) Develop [develop] a process for public participation that includes the basin steering committee and that provides for meaningful review and comments by private citizens and organizations in the local watersheds. [;]

(6) Recommend [recommend] water quality management strategies for correcting identified water quality problems and pollution sources. [;]

(7) Develop [develop] work plans which include priorities of the state and regional water quality management program. Upon agreement between the commission, the river authority, and/or designated local government, the provisions of the work plan become the scope of work of the program contract or cooperative agreement.

(b) Each local government or other agency that collects water quality data within the watershed shall cooperate with the river authority or designated local government in developing the basin monitoring plan and assessment by providing to the river authority all of the information available to that organization about water quality within its jurisdiction, including the extraterritorial jurisdiction of a municipality. Data collected by local governments must be consistent with an approved quality assurance plan to be included for wastewater discharge permitting and standards decisions.
(c) Monitoring and assessment is a continuing duty and shall be revised periodically with appropriate amendments and updates to the quality assurance plans to reflect changes in procedures and factors subject to the assessment.

§220.6. Reporting Requirements.

(a) Summary reports. Once every third state fiscal biennium, in accordance with the schedule provided in the Texas Clean Rivers Program Guidance, as amended, [In the appropriate year of the permitting cycle developed in accordance with Texas Water Code, §26.0285 (30 TAC §305.71) relating to Basin Permitting,] each river authority will submit a written summary report to the commission, the State Soil and Water Conservation Board, and Texas Parks and Wildlife Department on the water quality of the watershed or river basin.

(1) The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source or use impairment, and recommended actions that may be taken to address those concerns.

(2) The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input
in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process.

(3) Prior to submittal of the report to the agencies listed in subsection (a) of this section, the river authority will present the report to the basin steering committee for approval and will also make the report available to water right holder and wastewater permit holders for review and comment.

(4) All comments regarding satisfaction with or suggestions for modification of the report for the watershed, the operation and/or effectiveness of the monitoring and assessment program, and the use of funds shall be considered, summarized, and submitted, along with the approved summary report, to the governor, the lieutenant governor, and the speaker of the house of representatives not later than 90 days after submission to the commission and other agencies listed in paragraphs (1) - (3) of this subsection.

(b) Basin highlight reports. Each river authority and designated local government will develop a basin highlight report annually to be provided to each member of the basin steering committee and all fee payers within the basin. This report should summarize Texas Clean Rivers Program activities conducted in the basin. Procedures for electronic distribution should be developed to ensure most efficient availability to the public.