

SUBCHAPTER A: GENERAL PROVISIONS

§§305.1 - 305.3

Effective July 5, 2006

§305.1. Scope and Applicability.

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under Texas Water Code, Chapters 26 - 28 and 32, and Texas Health and Safety Code, Chapters 361 and 401.

(b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system (TPDES). The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in Texas Water Code, §26.001.

(1) The following are point sources requiring TPDES permits for discharges:

(A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations (CFR) §122.24;

(C) discharges into aquaculture projects as set forth in 40 CFR §122.25;

(D) discharges from separate storm sewers as set forth in 40 CFR §122.26;

and

(E) silvicultural point sources as defined in 40 CFR §122.27.

(2) The TPDES permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of Subtitle C, the Federal Solid Waste Disposal Act, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with CWA, §405.

(3) The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect

public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

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§305.2. Definitions.

The definitions contained in Texas Water Code, §§26.001, 27.002, 28.001, and 32.002, and Texas Health and Safety Code, §§361.003, 401.003, and 401.004, apply to this chapter. The following words and terms, when used in this chapter, have the following meanings.

(1) **Application**--A formal written request for commission action relative to a permit or a post-closure order, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

(2) **Bypass**--The intentional diversion of a waste stream from any portion of a treatment facility.

(3) **Class I sludge management facility**--Any publicly owned treatment works identified under 40 Code of Federal Regulations §403.10(a), as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(4) **Component**--Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

(5) **Continuous discharge**--A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(6) **Corrective action management unit (CAMU)**--An area within a facility that is designated by the commission under 40 Code of Federal Regulations Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes while implementing such corrective action requirements at the facility.

(7) **Daily average concentration**--The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) Domestic wastewater treatment plants. When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) All other wastewater treatment plants. When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

(8) **Daily average flow**--The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

(9) **Direct discharge**--The discharge of a pollutant.

(10) **Discharge monitoring report**--The United States Environmental Protection Agency uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

(11) **Disposal**--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

(12) **Disposal facility**--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(13) **Effluent limitation**--Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

(14) **Facility**--Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units; and

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner and operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste).

(15) **Facility mailing list**--The mailing list for a facility maintained by the commission in accordance with 40 Code of Federal Regulations (CFR) §124.10(c)(1)(ix) and §39.7 of this title (relating to Mailing Lists). For Class I injection well underground injection control permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(16) **Functionally equivalent component**--A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(17) **Indirect discharger**--A non-domestic discharger introducing pollutants to a publicly owned treatment works.

(18) **Injection well permit**--A permit issued in accordance with Texas Water Code, Chapter 27.

(19) **Land disposal facility**--Includes landfills, waste piles, surface impoundments, land farms, and injection wells.

(20) **Licensed professional geoscientist**--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(21) **National Pollutant Discharge Elimination System**--The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under Clean Water Act, §§307, 402, 318, and 405. The term includes an approved program.

(22) **New discharger**--

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective National Pollutant Discharge Elimination System permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

(23) **New source**--Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under Clean Water Act , §306; or

(B) after proposal of standards of performance in accordance with Clean Water Act, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

(24) **Operator**--The person responsible for the overall operation of a facility.

(25) **Outfall**--The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.

(26) **Owner**--The person who owns a facility or part of a facility.

(27) **Permit**--A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(28) **Post-closure order**--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation Recovery Act and solid waste management units.

(29) **Primary industry category**--Any industry category listed in 40 Code of Federal Regulations Part 122, Appendix A, adopted by reference by §305.532 of this title (relating to Adoption of Appendices by Reference).

(30) **Process wastewater**--Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(31) **Processing**--The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage, or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline, or other means.

(32) **Publicly owned treatment works (POTW)**--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(33) **Radioactive material**--A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(34) **Recommencing discharger**--A source which recommences discharge after terminating operations.

(35) **Regional administrator**--Except when used in conjunction with the words "state director," or when referring to United States Environmental Protection Agency approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Commission on Environmental Quality, or to the Texas Commission on Environmental Quality, consistent with the organization of the agency as set forth in Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations Part 122, is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(36) **Remediation waste**--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code (TWC), §7.031 (relating to Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under TWC, §7.031; §335.166(5) of this title (relating to Corrective Action Program); or §335.167(c) of this title.

(37) **Schedule of compliance**--A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with the Clean Water Act and regulations.

(38) **Severe property damage**--Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

(39) **Sewage sludge**--The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(40) **Site**--The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(41) **Solid waste permit**--A permit issued under Texas Health and Safety Code, Chapter 361, as amended.

(42) **Storage**--The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere.

(43) **Texas pollutant discharge elimination system (TPDES)**--The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under Clean Water Act, §§307, 318, 402, and 405; Texas Water Code; and Texas Administrative Code regulations.

(44) **Toxic pollutant**--Any pollutant listed as toxic under Clean Water Act, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing Clean Water Act, §405(d).

(45) **Treatment works treating domestic sewage**--A publicly owned treatment works or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(46) **Variance**--Any mechanism or provision under Clean Water Act, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act or this title.

(47) **Wastewater discharge permit**--A permit issued under Texas Water Code, Chapter 26 or under Texas Water Code, Chapters 26 and 32.

(48) **Wetlands**--Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

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§305.3. Abbreviations.

The following abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) **CFR** - Code of Federal Regulations.
- (2) **CWA** - Clean Water Act.
- (3) **DMR** - Discharge monitoring report.
- (4) **EPA** - United States Environmental Protection Agency.
- (5) **NODES** - National pollutant discharge elimination system.
- (6) **POTW** - Publicly owned treatment works.
- (7) **TPDES** - Texas pollutant discharge elimination system.

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