

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 11, 2022
Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director
From:  Earl Lott, Director
Office of Water

Docket No.: 2021-0682-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 305, Consolidated Permits
Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System
Chapter 314, Toxic Pollutant Effluent Standards
Chapter 315, Pretreatment Regulations for Existing and New Sources of Pollution
Consolidation of TPDES Program Regulations
Rule Project No. 2021-020-305-OW

Background and reason(s) for the rulemaking:

During the 2019 quadrennial rule reviews, the Texas Commission on Environmental Quality (TCEQ, agency, or commission) determined that 30 Texas Administrative Code (TAC) Chapter 308, Subchapters C and J were obsolete. Additionally, the executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated with Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations, similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program. Lastly, the executive director identified a federal regulation related to cooling water intake structures at oil and gas facilities (40 Code of Federal Regulations (CFR) Part 125, Subpart N) that was not previously adopted when 40 CFR Part 125 was adopted in Chapter 308. This rulemaking will adopt this additional federal regulation by reference.

Scope of the proposed rule:

A.) Summary of what the rulemaking will do:

This adopted rulemaking will repeal Chapters 308, 314, and 315 and re-propose these rules within Chapter 305, Subchapter P, except Chapter 308, Subchapters C and J which will not be re-proposed because these subchapters were determined to be obsolete. The rulemaking will also adopt by reference 40 CFR Part 125, Subpart N.

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

None.

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

None.

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Statutory authority:

- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state;
- TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and
- TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

Effect on the Regulated Community, the Public, and Agency programs:

The regulated community, the public, and the agency will benefit from the repeal of obsolete rules and the consolidation of the rules governing the TPDES program. These actions will improve the overall organization of TCEQ rules and remove outdated rules. Additionally, adopting 40 CFR Part 125, Subpart N will ensure that cooling water intake structures at oil and gas facilities are regulated in accordance with federal regulations, as required by the Memorandum of Agreement between TCEQ and the United States Environmental Protection Agency regarding the TPDES program, effective January 15, 2021.

Stakeholder meetings:

This rulemaking was discussed at the quarterly Water Quality Advisory Workgroup meetings.

Public comment:

The commission held a virtual public hearing on November 9, 2021. The comment period closed on Tuesday, November 9, 2021. No public comments were received.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

There is no known controversial concerns or legislative interest at this time.

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

If Chapter 308, Subchapters C and J are not repealed, these obsolete rules will remain in effect. A potential alternative to the adopted rulemaking would be to repeal only those

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subchapters that are obsolete but not consolidate Chapters 305, 308, 314, and 315. If these rules are not consolidated, the regulations governing the TPDES program will remain fragmented across multiple rule chapters. Failure to adopt by reference 40 CFR Part 125, Subpart N may jeopardize TPDES program authorization for oil and gas discharges.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** October 8, 2021

Anticipated *Texas Register* adoption publication date: April 15, 2022

Anticipated effective date: April 21, 2022

Six-month *Texas Register* filing deadline: April 8, 2022

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Attachments: None

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