

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** September 3, 2021

**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 Proposed Rulemaking  
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 would 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 would adopt this additional federal regulation by reference.

**Scope of the proposed rule:**

**A.) Summary of what the rulemaking would do:**

This rulemaking would repeal Chapters 308, 314, and 315 and re-propose these rules within Chapter 305, Subchapter P, except Chapter 308, Subchapters C and J which would not be re-proposed because these subchapters were determined to be obsolete. The rulemaking would 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 would benefit from the repeal of obsolete rules and the consolidation of the rules governing the TPDES program. These actions would improve the overall organization of TCEQ rules and remove outdated rules. Additionally, adopting 40 CFR Part 125, Subpart N would 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 would be discussed at the quarterly Water Quality Advisory Workgroup meetings.

**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 would remain in effect. A potential alternative to the proposed rulemaking would be to repeal only those 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 would 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.

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**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** September 22, 2021

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

**Anticipated public hearing date:** November 9, 2021

**Anticipated public comment period:** October 8, 2021 to November 9, 2021

**Anticipated adoption date:** March 30, 2022

**Agency contacts:**

Laurie Fleet, Rule Project Manager, Water Quality Division, (512) 239-5445

Celia Castro, Staff Attorney, (512) 239-5692

Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

**Attachments:** None

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Brody Burks  
Office of General Counsel  
Laurie Fleet  
Celia Castro  
Cecilia Mena