

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** May 11, 2016

**DATE OF REQUEST:** April 22, 2016

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Derek Baxter, (512) 239-2613

**CAPTION: Docket No. 2015-1076-RUL.** Consideration of the adoption of new Section 305.132 of 30 TAC Chapter 305, Consolidated Permits; and amended Section 327.1 and new Section 327.32 of 30 TAC Chapter 327, Spill Prevention and Control.

The adopted rulemaking would implement Senate Bill 912, 84th Texas Legislature, 2015, Regular Session, by including a new monthly-based reporting option for certain accidental discharges or spills of treated or untreated wastewater from wastewater treatment facilities and collection systems in the new and amended sections. The proposed rules were published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 930). (Macy Beauchamp, Celia Castro) (Rule Project No. 2015-024-305-CE)

Ramiro Garcia, Jr.  
\_\_\_\_\_  
**Deputy Director**

Susan Jablonski  
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**Division Director**

Derek Baxter  
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**Agenda Coordinator**

**Copy to CCC Secretary? NO YES X**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 22, 2016

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Ramiro Garcia, Jr., Deputy Director  
Office of Compliance and Enforcement

**Docket No.:** 2015-1076-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 305, Consolidated Permits  
Chapter 327, Spill Prevention and Control  
SB 912: Volume-Based Exemptions for Certain Accidental Discharges  
Rule Project No. 2015-024-305-CE

### **Background and reason(s) for the rulemaking:**

Senate Bill (SB or bill) 912, 84th Texas Legislature, 2015, authored by Senator Kevin Eltife, provides for volume-based exemptions from reporting requirements for certain accidental discharges or spills from wastewater treatment facilities or collection systems. SB 912 amends Texas Water Code (TWC), §26.039(b) and (e) and adds TWC, §26.039(g) - (j).

The bill provides that single, accidental discharges or spills at wastewater treatment facilities or collection systems can be reported monthly instead of within 24 hours under certain conditions. Specifically, any single, accidental discharge or spill of treated or untreated domestic wastewater that occurs at a wastewater treatment or collection system owned or operated by a local government will be reported as a summary of spills to the Texas Commission on Environmental Quality (TCEQ or commission) on a monthly basis when the following conditions are met:

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.

The bill requires the TCEQ to establish standard method(s) for calculating the volume of an accidental discharge or spill, consider the compliance history of the individual, and establish procedures for formatting and submitting a summary. The summary shall include the location, volume, and content of each accidental discharge or spill that occurred during the preceding month.

The bill also requires the owner or operator of the facility to use the established standard method(s) for calculating the volume of an accidental discharge or spill.

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**Scope of the rulemaking:**

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

The adopted rulemaking will amend 30 Texas Administrative Code (TAC) Chapters 305 and 327 to implement SB 912. The rules are amended to allow single, accidental discharges or spills of treated or untreated domestic wastewater that occur at a wastewater treatment facility or collection system owned or operated by a local government to be reported as a summary of spills to the TCEQ on a monthly basis when the following conditions are met:

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.

The adopted rulemaking also establishes standard methods for calculating the volume of an accidental discharge or spill and requires the owner or operator of the facility or collection system to use the standard methods in the adopted rules.

The adopted rulemaking identifies the minimum data that must be submitted on the summary, consistent with SB 912.

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

This rulemaking is required to implement the provisions of SB 912.

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

There are no additional staff recommendations that are not required by federal rule or state statute.

**Statutory authority:**

TWC, §§5.013, 5.103, 5.105, 5.102, 26.039, and 26.121.

**Effect on the:**

**A.) Regulated community:**

The adopted rulemaking is applicable to wastewater treatment facilities and collection systems owned and operated by local governments. Currently, any accidental discharge or spill is required to be reported to the agency within 24 hours verbally and a written report is required within five days. The adopted rulemaking will allow owners or operators of wastewater treatment facilities or collection systems to report applicable lessor accidental discharges or spills once a month. If a local government has numerous spills to report, there may be minor cost savings from the consolidation of notifications.

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**B.) Public:**

There is no effect to the public.

**C.) Agency programs:**

Updates will need to be made to the boilerplate language for Municipal Wastewater Permits. A new noncompliance notification form will need to be created to include the data summary which includes the method for spill estimation. A new Regulatory Guidance will be created (or existing RG-395, Unauthorized Discharges and Sanitary Sewer Overflows, will be amended) to explain the methods for determining accidental discharge and spill estimates.

**Stakeholder meetings:**

A stakeholder meeting was conducted in Austin on September 15, 2015. Approximately 50 people were in attendance. The majority in attendance were with local governments and utilities. Some consulting firms and environmental groups were also in attendance. Inquiries were made about the information that the commission will be collecting on the monthly notification form. The utilities also provided information on current practices for determining standard volumes of spills. These standards were incorporated into the adopted rulemaking.

**Public comment:**

The comment period was from February 5, 2016 through March 7, 2016. The commission held a public hearing in Austin on March 1, 2016, and received an oral comment from Water Environment Association of Texas (WEAT). The commission received written comments from Harris County Pollution Control Services Department (HCPCSD); Lloyd Gosselink; San Jacinto River Authority; WEAT and Texas Association of Clean Water Agencies; and one individual. The comments received were neither in support nor against the proposed rulemaking, but each recommended changes to the proposed language. Their main comment was allowing an additional option for the responsible person to use to calculate spill volumes that contains elements of the three options described in the proposed rule language. Additionally, commenters recommended removing the word "exact" from the requirements for reporting time of the accidental discharge or spill; and removing the requirement for the monthly summary to include the steps taken to reduce, eliminate and prevent reoccurrence of the accidental discharge or spill that is required under the current 24-hour reporting requirements.

**Significant changes from proposal:**

In response to comments: the reference to the 50-gallon barrel in §305.132(d)(1) and §327.32(e)(1) is changed to 55 gallons to be consistent with industry standards; the word "exact" is removed from §305.132(c)(4) and §327.32(d)(4); a fourth standard for estimating spill volumes is added to §305.132(d) and §327.32(e); the definition of history of noncompliance in §305.132(a)(2) and §327.32(a)(d) is updated to address reoccurrence of spills; and the definition of wastewater treatment facility is updated to be consistent with 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

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**Potential controversial concerns and legislative interest:**

Some groups that opposed the legislation cited that reduced reporting will lead to an increase in *E. coli* in water bodies that are already impaired. During the legislative session, a desire was expressed to maintain reporting of accidental discharges as currently required. Only one concern was also brought up in the stakeholder meeting that the rulemaking will allow this reporting change not only to the treatment facility but also to the collection system.

**Does this rulemaking affect any current policies or require development of new policies?**

This rulemaking does not affect any current policies or require development of new policies.

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

Without approval, Chapters 305 and 327 will be inconsistent with state statutes. There are no alternatives to rulemaking.

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

***Texas Register* proposal publication date:** February 5, 2016

**Anticipated *Texas Register* adoption publication date:** May 27, 2016

**Anticipated effective date:** June 2, 2016

**Six-month *Texas Register* filing deadline:** August 5, 2016

**Agency contacts:**

Macy Beauchamp, Rule Project Manager, Program Support Section, (512) 239-0437

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

Derek Baxter, Texas Register Coordinator, (512) 239-2613

**Attachments**

SB 912

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Erin Chancellor  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
Macy Beauchamp  
Derek Baxter

AN ACT

relating to a volume-based exemption from reporting requirements for certain accidental discharges or spills from wastewater facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.039, Water Code, is amended by amending Subsections (b) and (e) and adding Subsections (g), (h), (i), and (j) to read as follows:

(b) Except as provided by Subsection (g), whenever ~~Whenever~~ an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the commission as soon as possible and not later than 24 hours after the occurrence. The individual's notice to the commission must include the location, volume, and content of the discharge or spill.

(e) Except as provided by Subsection (g), if ~~if~~ an accidental discharge or spill described by Subsection (b) from a wastewater treatment or collection facility owned or operated by a local government may adversely affect a public or private source of drinking water, the individual shall also notify appropriate local government officials and local media.

(g) The individual is not required to notify the commission of an accidental discharge or spill of treated or untreated

1 domestic wastewater under Subsection (b) or officials or media  
2 under Subsection (e) of a single accidental discharge or spill  
3 that:

4 (1) occurs at a wastewater treatment or collection  
5 facility owned or operated by a local government;

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

7 (3) is not associated with another simultaneous  
8 accidental discharge or spill;

9 (4) is controlled or removed before the accidental  
10 discharge or spill:

11 (A) enters water in the state; or

12 (B) adversely affects a public or private source  
13 of drinking water;

14 (5) will not endanger human health or safety or the  
15 environment; and

16 (6) is not otherwise subject to local regulatory  
17 control and reporting requirements.

18 (h) The commission by rule shall establish standard methods  
19 for calculating the volume of an accidental discharge or spill to be  
20 used for the purposes of this section.

21 (i) The individual shall calculate the volume of an  
22 accidental discharge or spill using an established standard method  
23 to determine whether the discharge or spill is exempted under  
24 Subsection (g) from the notification requirements of this section.

25 (j) The individual shall submit to the commission at least  
26 once each month a summary of accidental discharges and spills  
27 described by Subsection (g) that occurred during the preceding

1 month. The commission by rule shall:

2 (1) consider the compliance history of the individual;

3 and

4 (2) establish procedures for formatting and

5 submitting a summary, including requirements that a summary include

6 the location, volume, and content of each accidental discharge or

7 spill.

8 SECTION 2. (a) Not later than June 1, 2016, the Texas  
9 Commission on Environmental Quality shall adopt rules necessary to  
10 implement Section 26.039, Water Code, as amended by this Act.

11 (b) The change in law made by this Act applies only to an  
12 offense committed on or after the effective date of a rule adopted  
13 by the Texas Commission on Environmental Quality under this  
14 section. For purposes of this section, an offense was committed  
15 before the effective date of a rule adopted by the Texas Commission  
16 on Environmental Quality under this section if any element of the  
17 offense occurred before that date.

18 (c) An offense committed before the effective date of a rule  
19 adopted by the Texas Commission on Environmental Quality under this  
20 section is governed by the law in effect on the date the offense was  
21 committed, and the former law is continued in effect for that  
22 purpose.

23 SECTION 3. This Act takes effect September 1, 2015.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 912 passed the Senate on April 14, 2015, by the following vote: Yeas 28, Nays 3.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 912 passed the House on May 19, 2015, by the following vote: Yeas 143, Nays 3, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §305.132.

Section 305.132 is adopted *with change* to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 930) and, therefore, the text will be republished.

### **Background and Summary of the Factual Basis for the Adopted Rule**

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 adopts new §305.132 in order to implement the requirements of SB 912 for permitted wastewater treatment facilities.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts to amend 30 TAC Chapter 327, Spill Prevention and Control.

## **Section by Section Discussion**

### *§305.132, Special Conditions for Certain Wastewater Discharges*

The commission adopts new §305.132(a) to define terms used in the section.

The commission adopts new §305.132(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 adopts new §305.132(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting or reoccurrences of accidental discharges or spills of treated or untreated wastewater. Section 305.132(a)(2) was changed in response to comment about broadening the definition of history of noncompliance to account for a high number of accidental discharges or spills.

The commission adopts new §305.132(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 adopts new §305.132(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 around a wastewater treatment facility. This definition is consistent with the definition in Chapter 217. The phrase "around a wastewater treatment facility" was added in response to comments to remain consistent with Chapter 217.

The commission adopts new §305.132(b) to allow for an accidental discharge or spill 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 adopts new §305.132(b)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission adopts new §305.132(b)(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 adopts new §305.132(b)(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 adopts new §305.132(b)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission adopts new §305.132(c) which specifies that the summary must be reported to the executive director by the 20th day of the month for accidental discharges or spills of treated or untreated wastewater that occurred during the previous month. This date is consistent with other reporting requirements in the permit. This subsection also specifies that the summary must include the location; volume; content; description of the accidental discharge or spill and its cause, including dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill. The term "exact" was removed in subsection (c)(4) in response to comments.

The commission adopts new §305.132(d) to provide four standard methods for determining spill volumes.

The commission adopts new §305.132(d)(1) to describe visual estimates as the first of four standard methods. If the accidental discharge or spill is less than 55 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill and then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 55 gallons, using a standard 55-gallon barrel for reference, estimate the number of barrels that the discharge

or spill would fill and then multiply by 55 to obtain the number of gallons discharged or spilled. The number 50 was changed to 55 in response to comments to remain consistent with industry standards.

The commission adopts new §305.132(d)(2) to describe measured volume as the second of four 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 adopts new §305.132(d)(3) to describe 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 adopts new §305.132(d)(4) to include an alternative method in which the responsible person may use other volumetric calculation methodologies rather than those listed in subsection (d)(1) - (3), so long as such methodologies include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodology must be identified in the responsible person's monthly report. New §305.132(d)(4) was added in response to comment to allow flexibility and in

recognition of other existing standardized methods.

The commission adopts new §305.132(e) which specifies that the owner or operator must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §305.132. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period for recordkeeping is consistent with other records required to be maintained onsite by the permit.

The commission adopts new §305.132(f) which specifies that the executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

### **Final Regulatory Impact Analysis**

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 adopted rule 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 adopted rulemaking is to implement changes made to the TWC in SB 912.

The adopted 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.

This rulemaking does not meet any of the four applicability requirements listed in Texas Government Code §2001.0225(a). 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. Specifically, the adopted rule 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 adopted rulemaking is to implement changes made to the TWC in SB 912. This adopted 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.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted rule 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 Plan (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 adopted rule is not subject to the CMP.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

### **Public Comment**

The commission held a public hearing on March 1, 2016. The comment period closed on March 7, 2016. The commission received comments from Harris County Pollution Control Services Department (HCPCSD), Lloyd Gosselink Attorneys at Law (Lloyd Gosselink), San Jacinto River Authority - Woodlands Division (SJRA), Texas Association of Clean Water Agencies (TACWA) and Water Environment Association of Texas (WEAT) and one individual. The comments received were neither in support of nor against the rulemaking, but each commenter suggested changes to the proposed rule language.

### **Response to Comments**

#### *Comment*

HCPCSD commented that it has a concern with using the term "collection system" as it is defined in 30 TAC Chapter 217 in this rule, rather than using the term "collection facility" used in SB 912. HCPCSD would like the definition to exclude lift stations, mains, and

manholes from the definition because of their proximity to ditches and storm drains in Harris County. HCPCSD is also concerned that discharges to waters of the state will not be reported timely under the new rule. HCPCSD suggested narrowing the definition by adding language to §305.132(b)(3) to state that an accidental discharge or spill "is controlled or removed before it enters water in the state, specifically including, but not limited to ditches and storm drains."

***Response***

**The commission respectfully disagrees with the comment. The commission understands the term "facility" used in SB 912 is synonymous with the term "collection system" that is defined in Chapter 217. The rule requires 24-hour reporting for discharges or spills which reach waters of the state. No change was made in response to this comment.**

***Comment***

HCPCSD commented that the definition of history of noncompliance in §305.132(a)(2) should be broadened to include the number of accidental discharges or spills not just the reporting of them.

***Response***

**The commission agrees with the comment and has made a change in the proposed rule language to broaden the definition by accounting for**

**reoccurrences.**

*Comment*

HCPCSD commented that the definition of wastewater treatment facility in §305.132(a)(4) should include "around a wastewater treatment facility" to be consistent with Chapter 217.

***Response***

**The commission agrees with the comment and has made the change to be consistent with Chapter 217.**

*Comment*

HCPCSD recommended that language is added to §305.132(f) to allow for local pollution control authorities to require more frequent reporting of accidental discharges or spills based on the history of noncompliance.

***Response***

**The commission respectfully disagrees with this comment. The noncompliance forms are reported to the TCEQ regional office and Enforcement Division. It is the responsibility of TCEQ to determine the history of noncompliance. No change was made in response to this comment.**

*Comment*

Lloyd Gosselink, SJRA, WEAT and TACWA recommended removing the word "exact" in §305.132(c)(4). They commented that this revision would maintain the requirement for reporting date and time without placing an undue burden on the permittees to identify the exact time.

***Response***

**The commission agrees with the comment and has removed the term "exact" from the rule language.**

*Comment*

Lloyd Gosselink, SJRA, WEAT and TACWA commented that §305.132(c)(5) should be removed. They noted that it is unnecessary to identify steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill for small volume accidental discharge or spills. They also commented that the proposed language requires diagnosis and planning that is suitable for larger spills but places an undue burden on the permittees to submit with a monthly summary.

***Response***

**The commission respectfully disagrees with the comment. This information is already captured under the 24-hour reporting requirements and ensures that the responsible person has attempted to prevent future accidental discharges or spills. No change was made in response to this comment.**

*Comment*

Lloyd Gosselink, SJRA, WEAT and TACWA commented that while the three methods for calculating spill volume in §305.132(d)(1) - (3) capture the most commonly used calculations, they believe there are other methods that are appropriate in certain circumstances. They commented that an "other methods" option is necessary so that permittees are not forced to report small accidental discharges or spills on the same basis as accidental discharges or spills greater than 1,000 gallons only because the volumetric calculation method differs from the three methods TCEQ currently proposes. They propose adding §305.132(d)(4), "Other Methods. The responsible person may use other volumetric calculation methodologies rather than those listed above, so long as such methodologies, include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodologies must be identified in the responsible person's monthly report."

*Response*

**The commission agrees with the suggested change. The language submitted allows for an additional documented methodology that includes elements of the other three standards already in the proposed rule language. Adding the additional language allows application of other acceptable industry standards**

**for calculating spills while not diminishing the documentation of important parameters that characterize each spill. Section 305.132(d)(4) was added.**

*Comment*

An individual commented that the industry standard for metal and plastic barrels and drums is 55 gallons. Therefore, he commented that the references to a 50-gallon drum be revised to 55-gallon in §305.132(d)(1).

***Response***

**The commission agrees with the comment and has changed "50" in §305.132(d)(1) to "55" to be consistent with the industry standard.**

## **SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS**

### **§305.132**

#### **Statutory Authority**

The new section is adopted 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 prohibit unauthorized discharges into or adjacent to water in the state.

The adopted new section implements TWC, §26.039 and Senate Bill 912 (84th Texas Legislature, 2015).

#### **§305.132. Special Conditions for Certain Wastewater Discharges.**

(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 or reoccurrences 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 around a wastewater treatment facility.

(b) The owner or operator 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.

(c) The owner or operator shall submit a monthly summary to the executive director by the 20th day of the month for each accidental discharge or spill of treated or untreated wastewater 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.

(d) The owner or operator 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 55 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill and then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 55 50 gallons, using a standard 55 50 gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 55 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).

(4) Other methods. The responsible person may use other volumetric calculation methodologies rather than those listed in paragraphs (1) - (3) of this subsection, so long as such methodologies include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodologies must be identified in the responsible person's monthly report.

(e) The owner or operator 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.

(f) The executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

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

Section 327.1 is adopted *without change* to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 933) and, therefore, will not be republished. Section 327.32 is adopted *with change* to the proposed text and, therefore, will be republished.

### **Background and Summary of the Factual Basis for the Adopted 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 adopts amended §327.1 and 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 adopts amended 30 TAC Chapter 305, Consolidated Permits.

### **Section by Section Discussion**

#### *§327.1, Applicability*

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

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

The commission adopts 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 adopts new §327.32(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting or reoccurrences of accidental discharges or spills of treated or untreated wastewater. Section 327.32(a)(2) was changed in response to comment about broadening the definition of history of noncompliance to account for a high number of accidental discharges or spills.

The commission adopts 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 adopts 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 around a wastewater treatment facility. This definition is consistent with the definition in Chapter 217. The phrase "around a wastewater treatment facility" was added in response to comments to remain consistent with Chapter 217.

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

The commission adopts 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 adopts 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 adopts 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 adopts 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 dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

The term "exact" was removed in subsection (d)(4) in response to comments.

The commission adopts new §327.32(e) to provide four standard methods for

determining spill volumes.

The commission adopts new §327.32(e)(1). This paragraph describes visual estimates as the first of four standard methods. If the accidental discharge or spill is less than 55 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 55 gallons, using a standard 55-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 55 to obtain the number of gallons discharged or spilled. The number 50 was changed to 55 in response to comments to remain consistent with industry standards.

The commission adopts new §327.32(e)(2). This paragraph describes volume as the second of four 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 adopts 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 adopts new §327.32(e)(4) to include an alternative method in which the responsible person may use other volumetric calculation methodologies rather than those listed in subsection (e)(1 - (3)), so long as such methodologies include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodology must be identified in the responsible person's monthly report. New §305.132(d)(4) was added in response to comment to allow flexibility and in recognition of other existing standardized methods.

The commission adopts 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 adopts new §327.32(g) which specifies that the executive director may require more frequent reporting based on the responsible person's history of noncompliance.

### **Final Regulatory Impact Analysis**

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 adopted 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 adopted rulemaking is to implement changes made to the TWC in SB 912.

The adopted 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.

This rulemaking does not meet any of the four requirements listed in Texas Government Code, §2001.0225(a). 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. Specifically, the adopted 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 adopted rulemaking is to implement changes made to the TWC in SB 912. This adopted 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.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an assessment of

whether Texas Government Code, Chapter 2007, is applicable. The adopted 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 adopted rulemaking will not burden private real property. The adopted 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 adopted rules are not subject to the CMP.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

## **Public Comment**

The commission held a public hearing on March 1, 2016. The comment period closed on March 7, 2016. The commission received comments from Harris County Pollution Control Services Department (HCPCSD), Lloyd Gosselink Attorneys at Law (Lloyd Gosselink), San Jacinto River Authority - Woodlands Division (SJRA), Texas Association of Clean Water Agencies (TACWA) and Water Environment Association of Texas (WEAT), and an individual. The comments received were neither in support of nor against the rulemaking, but each commenter suggested changes to the proposed rule language.

## **Response to Comments**

### *Comment*

HCPCSD commented that it has a concern with using the term "collection system" as it is defined in 30 TAC Chapter 217 in this rule rather than using the term "collection facility" used in SB 912. HCPCSD would like the definition to exclude lift stations, mains and manholes from the definition because of their proximity to ditches and storm drains in Harris County. HCPCSD is concerned that discharges to waters of the state will not be reported timely under the new rule. HCPCSD suggested narrowing the definition by adding language to §327.32(c)(3) to state that an accidental discharge or spill "is controlled or removed before it enters water in the state, specifically including, but not limited to ditches and storm drains."

***Response***

**The commission respectfully disagrees with the comment. The commission understands the term "facility" used in SB 912 is synonymous with the term "collection system" that is defined in Chapter 217. The rule requires 24-hour reporting for discharges or spills which reach waters of the state. No change was made in response to the comment.**

*Comment*

HCPDSD commented that the definition of history of noncompliance in §327.32(a)(2) should be broadened to include the number of accidental discharges or spills not just the reporting of them.

***Response***

**The commission agrees with the comment and has made a change in the proposed rule language to broaden the definition by accounting for reoccurrences.**

*Comment*

HCPDSD commented that the definition of wastewater treatment facility in §327.32(a)(4) should include "around a wastewater treatment facility" to be consistent

with Chapter 217.

***Response***

**The commission agrees with the comment and has made the change to be consistent with Chapter 217.**

*Comment*

HCPCSD recommended that language is added to §327.32(g) to allow for local pollution control authorities to require more frequent reporting of accidental discharges or spills.

***Response***

**The commission respectfully disagrees with this comment. The noncompliance forms are reported to the TCEQ regional office and Enforcement Division. It is the responsibility of TCEQ to determine the history of noncompliance. No change was made in response to this comment.**

*Comment*

Lloyd Gosselink, SJRA, WEAT and TACWA recommended removing the word "exact" in §327.32(d)(4). They commented that this revision would maintain the requirement for reporting date and time without placing an undue burden on the permittees to identify

the exact time.

***Response***

**The commission agrees with the comment and has removed the term "exact" from the rule language.**

*Comment*

Lloyd Gosselink, SJRA, WEAT and TACWA commented that §327.32(d)(5) should be removed. They noted that it is unnecessary to identify steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill for small volume accidental discharge or spills. They also commented that the proposed language requires diagnosis and planning that is suitable for larger spills but places an undue burden on the permittees to submit with a monthly summary.

***Response***

**The commission respectfully disagrees with the comment. This information is already captured under the 24-hour reporting requirements and ensures that the responsible person has attempted to prevent future accidental discharges or spills. No change was made in response to this comment.**

*Comment*

Lloyd Gosselink, SJRA, WEAT and TACWA commented that while the three methods for calculating spill volume in §327.32(e)(1) - (3) capture the most commonly used calculations, they believe there are other methods that are appropriate in certain circumstances. They commented that an "other methods" option is necessary so that permittees are not forced to report small accidental discharges or spills on the same basis as accidental discharges or spills greater than 1,000 gallons only because the volumetric calculation method differs from the three methods TCEQ currently proposes. They propose adding §327.32(e)(4) "Other Methods. The responsible person may use other volumetric calculation methodologies rather than those listed above, so long as such methodologies, include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodologies must be identified in the responsible person's monthly report."

***Response***

**The commission agrees with the suggested change. The language submitted allows for an additional documented methodology that includes elements of the other three standards already in the proposed rule language. Adding the additional language allows application of other acceptable industry standards for calculating spills while not diminishing the documentation of**

**important parameters that characterize each spill. Section 305.132(d)(4) was added in response to comment.**

*Comment*

An individual commented that the industry standard for metal and plastic barrels and drums is 55 gallons. Therefore, he commented that the references to a 50-gallon drum be revised to 55-gallon in §327.32(e)(1).

***Response***

**The commission agrees with the comment and has changed "50" in §327.32(e)(1) to "55" to remain consistent with the industry standard.**

## **CHAPTER 327: SPILL PREVENTION AND CONTROL**

### **§327.1, §327.32**

#### **Statutory Authority**

The amendment and new section are adopted 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 prohibit unauthorized discharges into or adjacent to water in the state.

The adopted 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 or reoccurrences 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 around a wastewater treatment facility.

(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 55 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 55 50 gallons, using a standard 55 50 gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill and then multiply by 55 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).

(4) Other methods. The responsible person may use other volumetric calculation methodologies rather than those listed in paragraphs (1) - (3) of this subsection, so long as such methodologies include procedures to identify a duration, flow rate, depth, affected area, and total quantity of each spill (including, as appropriate, reference to estimation tools such as barrels, for example), and such methodology is consistent with standard and accepted industry practices. Such alternative methodologies must be identified in the responsible person's monthly report.

(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.

tive for plans marketed in the individual market on or after November 1, 2016, with an effective date on or after January 1, 2017.

(b) The requirements under §§21.3030 - 21.3033 of this title are effective for plans marketed in the group market on or after September 1, 2017.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600232

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 676-6584



### 28 TAC §21.3005, §21.3021

**STATUTORY AUTHORITY.** The repeal of §21.3005 and §21.3021 is proposed under Insurance Code §§1369.052, 1369.054, 1369.057, 1369.154 and 36.001. Section 1369.052 extends the applicability of Subchapter B to individual, small group, and large group health benefit plans; §1369.054 provides the notice and disclosure of certain information required by issuers of a health benefit plan that covers prescription drugs and uses one or more drug formularies to specify the prescription drugs covered under the plan; §1369.057 provides that the commissioner may adopt rules to implement Chapter 1369, Subchapter B; §1369.154 provides that the commissioner may adopt rules to implement Chapter 1369, Subchapter D; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The proposed repeal of §21.3005 and §21.3021 affect the following statutes: Insurance Code §§36.001, 1369.052, 1369.054, 1369.057, and 1369.154.

§21.3005. *Previously Issued Identification Cards.*

§21.3021. *Required Disclosure of Drug Formulary.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600228

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 676-6584



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 305. CONSOLIDATED PERMITS SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

### 30 TAC §305.132

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §305.132.

Background and Summary of the Factual Basis for the Proposed Rule

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 new §305.132 in order to implement the requirements of SB 912 for permitted wastewater treatment facilities.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 327, Spill Prevention and Control.

Section Discussion

*§305.132, Special Conditions for Certain Wastewater Discharges*

The commission proposes new §305.132(a) to define terms used in the section.

The commission proposes new §305.132(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 §305.132(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 §305.132(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 §305.132(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 §305.132(b) to allow for an accidental discharge or spill 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 §305.132(b)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission proposes new §305.132(b)(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 §305.132(b)(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 §305.132(b)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission proposes new §305.132(c) which specifies that the summary must be reported to the executive director by the 20th day of the month for accidental discharges or spills of treated or untreated wastewater that occurred during the previous month. This date is consistent with other reporting requirements in the permit. This subsection 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 §305.132(d) to provide three standard methods for determining spill volumes.

The commission proposes new §305.132(d)(1) to describe 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 and 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.

The commission proposes new §305.132(d)(2) to describe measured 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 §305.132(d)(3) to describe 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 §305.132(e) which specifies that the owner or operator must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §305.132. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period for recordkeeping is consistent

with other records required to be maintained onsite by the permit.

The commission proposes new §305.132(f) which specifies that the executive director may require more frequent reporting based on the owner or operator'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 rule is 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 rule.

The proposed rule implements 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 TCEQ within 24 hours verbally and by written report within five days. SB 912 language allows for owners or operators 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 1,223 wastewater treatment facilities owned or operated by local governments that may be affected by the proposed rule. 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 owners or operators 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 accidental discharges or 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 rule.

Public Benefits and Costs

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

The proposed rule is 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 rule for the first five-year period the proposed rule is in effect for small or micro-businesses. The proposed rule 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 rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect and is 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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 rule 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 rule 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 or untreated wastewater. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rule 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 Plan (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 rule is 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](http://www.tceq.texas.gov/rules/propose_adopt.html). For

further information, please contact Macy Beauchamp, Program Support, (512) 239-0437.

#### Statutory Authority

The new section is 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 new section implements TWC, §26.039 and Senate Bill 912 (84th Texas Legislature, 2015).

#### §305.132. Special Conditions for Certain Wastewater Discharges.

(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) The owner or operator 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.

(c) The owner or operator shall submit a monthly summary to the executive director by the 20th day of the month for each accidental discharge or spill of treated or untreated wastewater 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.

(d) The owner or operator 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 and 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.

(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).

(e) The owner or operator 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.

(f) The executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2016.

TRD-201600278

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-2613



## CHAPTER 327. SPILL PREVENTION AND CONTROL

### 30 TAC §327.1, §327.32

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](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Macy Beauchamp, Program Support Section, (512) 239-0437.

#### 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 Above-ground 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2016.

TRD-201600279

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-2613

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 356. GROUNDWATER MANAGEMENT**

# Texas Commission on Environmental Quality



## ORDER ADOPTING NEW AND AMENDED RULES

**Docket No. 2015-1076-RUL**

**Rule Project No. 2015-024-305-CE**

On May 11, 2016, the Texas Commission on Environmental Quality (Commission) adopted new § 305.132 in 30 TAC Chapter 305, concerning Consolidated Permits; and amended § 327.1 and new § 327.32 in 30 TAC Chapter 327, concerning Spill Prevention and Control. The proposed rules were published for comment in the February 5, 2016, issue of the *Texas Register* (41 TexReg 930).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new and amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by Tex. Gov't Code Ann., Chapter 2001 (West 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Signed:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., P.E., Chairman