

Concepts to Implement SB 2445, 81st Legislature

Repeal of 30 Tex. Admin. Code (TAC) ch. 321, Subchapter A and Proposal of New 30 TAC ch. 321, Subchapter A

Reasons for the rulemaking:

- Rulemaking is necessary to implement Senate Bill (SB) 2445 which amended Sections 26.044 and 26.045 of the Texas Water Code. SB 2445, 81st Legislature, Regular Session (TX 2009) was sponsored by Representative Tracy King, and authored by Senator Carlos Uresti. The act takes effect September 1, 2009.

SB2445 amends current law relating to the disposal of sewage by certain boats by redefining the term, “boat”, and adding new definitions for “boat pump-out station”, “shoreside, mobile, or floating installation”, and “surface water in the state”; and by changing the frequency for renewal of certifications for pump-out stations from annual to biennial.

- In addition to the implementation of SB2445, changes to the rule are necessary to prohibit the discharge of treated waste from marine sanitation devices (MSDs) into all inland freshwater lakes, fresh water reservoirs, freshwater impoundments, or bodies of water (including rivers that do not support interstate vessel traffic) in Texas, in accordance with 40 CFR Part 140.

Current rules prohibit the discharge of sewage, treated or untreated, from a boat into or adjacent to 25 designated lakes listed in 30 TAC § 321.2, and prohibits the discharge of sewage which has not been treated in accordance with federal standards.

The Clean Water Act gives EPA and states the authority to designate No Discharge Zones (NDZs). *See* 33 U.S.C. § 1322(f). An NDZ is an area of a waterbody or an entire waterbody into which the discharge of sewage (treated or untreated) from all vessels is completely prohibited. EPA regulations include waterbodies that are NDZs by their geographical nature: freshwater lakes, freshwater reservoirs, or other freshwater impoundments whose entrance points and exit points are too shallow to support traffic by the regulated vessels (those vessels with installed toilets). Rivers that do not support interstate vessel traffic are also NDZs by default. *See* 40 C.F.R. § 140.3. States and EPA can designate other waterbodies such as coastal waters and estuaries as NDZs through a process where the states petition EPA for NDZ designation. *See* 40 C.F.R § 140.4.

- In addition to implementing SB 2445, TCEQ proposes to repeal certain rule requirements which can be interpreted as regulating the design, manufacture, or installation of MSDs. The current rule includes specifications for approved MSDs; however, federal laws regarding MSDs preempt state regulation of the design, manufacture, or installation or use of any MSD regulated under 33 USC § 1322(f)(1)(A). The purpose of the preemption was to provide uniformity throughout the U.S. to allow for the free flow of commerce and travel. There is an exception for houseboats. States may regulate the design, manufacture, or installation or use of a MSD on a houseboat, if the regulations are more stringent than federal standards. *See* 33 U.S.C § 1322(f)(1)(B).
- The current rule requires that MSDs have attached holding tanks, which are considered to be “Type III MSDs” under federal regulations; however, current TCEQ rules are more stringent than the federal requirements. Under 40 C.F.R § 159.7, vessels with installed toilets must have one of the 3 types of MSDs, depending on the size of the boat. Federal regulations further state that when operating a vessel on a federal NDZ, the operator must secure each Type I or Type II MSD in a manner which prevents discharge of treated or untreated sewage, and describes acceptable methods to secure the device.

Scope of the proposed rule:

Repeal of 30 TAC 321 Subchapter A and adoption of a complete new 30 TAC 321 Subchapter A. Listed below are some of the significant changes recommended.

The rule will be revised to incorporate the new definitions from SB2445, and change the frequency for renewal of certifications for pump-out stations.

Additional changes to the rule will ensure that the discharge of treated or untreated waste from MSDs into all enclosed freshwater lakes or bodies of water (including rivers that do not support interstate vessel traffic) in Texas is prohibited. This rule revision will clarify and incorporate additional waterbodies that are NDZs in Texas. This clarification will make the revised rules consistent with the CWA and current EPA regulations.

The MSD certification requirement, including fees, will be applied to boats that meet the new definition included in SB2445. The certification requirement can be expanded to boats that are located or operated on any surface water in the state (as defined in SB2445).

Specific design and installation requirements for MSDs on boats other than houseboats will be removed from the rule and Coast Guard regulations dealing with design, manufacture or installation will be incorporated by reference. For MSDs on houseboats, specifications more stringent than federal regulations will be retained in the rule.

The rule will be revised to allow for the use and certification of other types of MSDs (Type I, Type II, and Type III), and when located or operated on any NDZ, they must be secured in a manner that is allowed under federal regulations.

Minor changes are also necessary to replace references to repealed statutes.

Planned stakeholder involvement:

TCEQ anticipates holding a stakeholder meeting in Austin prior to proposal of the revised rules.

Some of the issues that will be presented to the stakeholders for consideration are:

- There is an alternative to requiring the certification for MSDs on boats that are located on Clear Lake, or any other coastal waters. During rulemaking in 1996 which added Clear Lake to the list of lakes designated as NDZs, it was determined that due to the large amount of transient, interstate, and ocean-going boat traffic on Clear Lake, the enforcement of the certification and related fee requirement was problematic; however, boats on Clear Lake must still adhere to the discharge prohibition and requirements for MSDs. Input from stakeholders regarding the transient nature of boats in these coastal areas and the difficulties related to certifying MSDs on these boats would be beneficial in developing the rule.
- Because states can adopt rules that are more stringent than federal regulations regarding the specifications and installation of MSDs on houseboats, stakeholders can provide input on the specifications to be included in the rule.
- Comments relating to federally designated no-discharge zones will also be entertained.