

SUBCHAPTER A: GENERAL PERMITS FOR WASTE DISCHARGES

§§205.1 - 205.7

Effective August 15, 2002

§205.1. Definitions.

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

(1) **Compliance history** - The record of all notices from the commission, including notices of violation from the executive director; and of all orders of the commission, of any other agency or political subdivision of the State of Texas and of the United States Environmental Protection Agency (EPA) pertaining to an applicant's adherence to environmental laws and rules of the State of Texas or the United States; with the terms of any permit, compliance agreement or order issued by the commission or the USEPA; and with any final judicial decision or settlement addressing the applicant's adherence to such environmental laws and rules. The history shall be for the five-year period before the date on which the NOI is filed or, if an NOI is not required, the five-year period before the permittee begins operating under the general permit. It shall not include any order that is precluded by its terms or by law from becoming part of the applicant's compliance history.

(2) **General permit** - A permit issued under the provisions of this chapter authorizing the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by Texas Water Code (TWC), §26.040.

(3) **Individual permit** - A permit, as defined in the TWC, §26.001, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in the TWC, Chapter 26, (other than TWC, §26.040).

(4) **Notice of change or NOC** - A written submittal to the executive director from a discharger authorized under a general permit providing changes to information previously provided to the agency, or any changes with respect to the nature or operations of the facility, or the characteristics of the discharge.

(5) **Notice of intent or NOI** - A written submittal to the executive director from a discharger requesting coverage under the terms of a general permit.

(6) **Notice of termination or NOT** - A written submittal to the executive director from a discharger authorized under a general permit requesting termination of coverage.

(7) **Texas Pollutant Discharge Elimination System (TPDES)** - The state program authorized under Clean Water Act, §§307, 318, 402, and 405 for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under the Texas Water Code and Texas Administrative Code regulations.

Adopted August 23, 2000

Effective September 13, 2000

§205.2. Purpose and Applicability.

(a) The commission may issue a general permit to authorize the discharge of waste into or adjacent to water in the state by category if the commission finds the discharges in the category are storm water or the dischargers in the category:

- (1) engage in the same or substantially similar types of operations;
- (2) discharge the same types of waste;
- (3) are subject to the same requirements regarding effluent limitations or operating conditions;
- (4) are subject to the same or similar monitoring requirements; and
- (5) are more appropriately regulated under a general permit than under individual permits, on the basis that both:

(A) the general permit can be readily enforced and the executive director can adequately monitor compliance with the terms of the general permit; this requirement being satisfied if the provisions of the general permit are clear and unambiguous and it requires adequate monitoring, recordkeeping, and reporting, appropriate to the type of activity authorized; and

(B) the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to surface or groundwater quality.

(b) The commission may issue a general permit to authorize the discharge of waste by categories of dischargers designated under subsection (a) of this section either within the entire state or within a discrete geographical area identified by an appropriate division or combination of geographic or political boundaries.

(1) General permits granted for discrete geographical areas may be based upon, but not limited to, factors such as related water quality standards, climatological conditions, and watershed specific standards in accordance with Chapter 311 of this title (relating to Watershed Protection).

(2) Discharges to be regulated with effluent limitations specific to a particular water body may be covered under a general permit limited to a particular watershed or geographical area.

(c) Authorization to discharge under a general permit does not confer a vested right.

(d) Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed under Chapter 307 of this title (relating to Texas Surface Water Quality Standards), the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations in Chapter 307.

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Effective August 15, 2002

§205.3. Public Notice, Public Meetings, and Public Comment.

(a) Notice shall be published as follows.

(1) If the draft general permit will not have statewide applicability, the agency shall publish notice of each draft general permit in the *Texas Register* and in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit.

(2) For draft general permits with statewide applicability, notice shall be published in the *Texas Register* and in at least one newspaper of statewide or regional circulation.

(3) The public notice shall be published not later than the 30th day before the commission considers the approval of a general permit.

(b) For Texas Pollutant Discharge Elimination System general permits, mailed notice of the draft general permit will also be provided to the following:

(1) the county judge of the county or counties in which the dischargers under the general permit could be located;

(2) if applicable, persons for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c); and

(3) any other person the executive director or chief clerk may elect to include.

(c) The contents of a public notice of a draft general permit shall:

(1) include the applicable information described in §39.11 of this title (relating to Text of Public Notice);

(2) include an invitation for written comments by the public regarding the draft general permit;

(3) specify a comment period of at least 30 days; and

(4) include either a map or description of the permit area.

(d) Requirements relating to public meetings are as follows.

(1) The agency may hold a public meeting to provide an additional opportunity for public comment and shall hold such a public meeting when the executive director determines, on the basis of requests, that a significant degree of public interest in a draft general permit exists.

(2) Notice of a public meeting shall be by publication in the *Texas Register* not later than the 30th day before the date of the meeting.

(3) Notice of the public meeting shall be mailed to the following:

(A) the county judge of the county or counties in which the dischargers under the general permit could be located;

(B) if applicable, persons for which notice is required in 40 CFR, §124.10(c);

(C) any other person the executive director or chief clerk may elect to include;
and

(D) persons who filed public comment or request for a public meeting on or before the deadline for filing public comment or request for a public meeting.

(4) The contents of a public notice of a public meeting shall include the applicable information described in §39.11 of this title (relating to Text of Public Notice). Each notice must include an invitation for written or oral comments by the public regarding the draft general permit.

(5) The public comment period shall automatically be extended to the close of any public meeting held by the agency on the proposed general permit.

(e) If the agency receives public comment during the comment period relating to issuance of a general permit, the executive director shall respond in writing to these comments, and this response shall be made available to the public and filed with the chief clerk at least ten days before the commission considers the approval of the general permit. The response shall address written comments received during the comment period and oral or written comments received during any public meeting held by the agency. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(1) The commission shall issue its written response to comments on the general permit at the same time the commission issues or denies the general permit.

(2) A copy of any issued general permit and response to comments shall be made available to the public for inspection at the agency's Austin office and also in the appropriate regional offices.

(3) A notice of the commission's action on the proposed general permit and a copy of its response to comments shall be mailed to each person who made a comment.

(4) A notice of the commission's action on the proposed general permit and the text of its response to comments shall be published in the *Texas Register*.

(f) Except as specified in subsection (g) of this section, the requirements of subsections (a) - (e) of this section apply to processing of a new general permit, an amendment, renewal, revocation, or cancellation of a general permit.

(g) A general permit may be proposed for minor amendment or minor modification, as described in §305.62(c) of this title (relating to Amendment), without newspaper publication.

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Effective September 13, 2000

§205.4. Authorizations and Notices of Intent.

(a) A qualified discharger may obtain authorization to operate under a general permit by complying with the general permit's conditions for gaining coverage.

(1) A general permit shall specify either an applicable deadline for filing the notice of intent (NOI), or that an NOI is not required prior to commencement of a qualifying discharge.

(2) No new discharge under the authority of a general permit may commence after a general permit has expired.

(3) For those general permits requiring an NOI, a discharger may begin discharging under the general permit after the date or period of time specified in the general permit unless the executive director or commission before that time notifies the discharger pursuant to subsections (c) or (e) of this section that the discharger is not eligible for authorization under the general permit.

(4) The executive director shall provide written notice to a discharger if the executive director determines that the discharger is not eligible for authorization under the general permit. The content of the notice is described in subsections (c) and (d) of this section.

(5) An NOI shall be submitted to the executive director in a form or format that is specified in the general permit or otherwise set out in commission rules.

(b) The following requirements apply to existing individual permittees.

(1) The general permit shall specify how a discharger covered by an individual permit may substitute authorization to discharge waste under the general permit. At a minimum, the general permit shall provide that coverage under the general permit shall not commence until:

(A) the permittee has submitted an NOI, if one is required by the general permit, as specified by subsection (f) of this section; and

(B) the executive director has received the discharger's written request that the individual permit be canceled or amended, as appropriate.

(2) The general permit may allow a discharger who is covered by an individual permit to obtain authorization to discharge waste from a new outfall under a general permit. Agency action on a new discharge does not affect the status of the discharger's existing individual permit. The general permit shall describe how to obtain authorization to discharge waste from a new outfall. Authorization under the general permit shall not commence until the discharger:

(A) submits an NOI, if one is required by the general permit, as specified in subsection (f) of this section; and

(B) requests and receives written approval from the executive director of a minor modification to their individual permit exempting the new outfall from coverage under the individual permit.

(3) Except as provided under subsection (b)(2) of this section, the commission shall cancel an individual permit if the executive director or commission does not deny the NOI or authorization under subsection (c) or (e) of this section.

(c) The following requirements apply to denial of an authorization or notice of intent.

(1) The executive director shall provide written notice to a discharger if the executive director denies the discharger's NOI or authorization to discharge under a general permit, including, at a minimum, a brief statement of the basis for this decision.

(2) The executive director shall deny authorization to discharge under an existing general permit for the following reasons:

(A) the quantity of discharge, the type of waste, or the type of operation does not comply with the general permit;

(B) the discharge is required to be authorized under the Texas Pollutant Discharge Elimination System (TPDES), and discharging under the general permit would result in backsliding prohibited under 40 Code of Federal Regulations §122.44(l), as amended and adopted under

§305.531(3) of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(C) the discharge causes a violation of the Texas Surface Water Quality Standards;

(D) the discharge is located where it causes or could cause an adverse impact upon a critical area, as defined in 31 TAC §501.3 (relating to Definitions and Abbreviations), and there is a suitable location that is available and capable of being used in light of cost, technology, and logistics;

(E) the discharger or facility:

(i) has failed to pay any portion of a delinquent fee or charge assessed by the executive director;

(ii) is not in compliance with all requirements, conditions, and time frames specified in an unexpired commission final enforcement order relating to the activity regulated by the general permit; or

(iii) is subject to an unexpired enforcement order that requires the facility to comply with operating conditions different from or additional to the requirements of the general permit;

(F) the discharge would be inconsistent with the state water quality management plan (WQMP).

(3) The executive director may deny authorization to discharge under an existing general permit for reasons including, but not limited to, the following:

(A) a change has occurred in the availability of demonstrated technology or practices for the prevention, control, or abatement of pollutants applicable to the discharge necessary to be implemented to meet applicable federal or state standards;

(B) specific effluent limitation guidelines are promulgated for a discharge covered by the general TPDES permit, but the general permit has not yet been amended to incorporate the new effluent limitation guidelines;

(C) the owner and/or the operator of the facility has not filed an NOI in accordance with §305.43 of this title (relating to Who Applies);

(D) the discharger has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director;

(E) the discharge contains pollutants that cause significant adverse effects to water quality. In making this determination, the executive director shall consider the following factors:

(i) the location of the discharge;

(ii) the size of the discharge;

(iii) the quantity and nature of pollutants discharged;

(iv) whether the discharge would adversely affect groundwater quality, inconsistent with the policy specified in the Texas Water Code (TWC), §26.401; and

(v) other factors relating to the protection of water quality standards;

and

(F) the discharger or facility is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated.

(4) If authorization to discharge is denied under this subsection, the executive director may require the person whose authorization is denied to apply for and obtain an individual permit. If the discharger is seeking to replace its individual permit with general permit coverage, but the discharger's general permit authorization is denied, the discharger shall apply for renewal of the individual permit prior to the expiration date of its individual permit to maintain authorization to discharge, in accordance with §305.63 of this title (relating to Renewal).

(d) The following requirements apply to suspensions of authorizations and NOIs.

(1) The general permit shall describe the procedures for suspension of authorization and NOIs under a general permit. The general permit shall require the executive director to provide written notice to a discharger that the executive director intends to suspend a discharger's authority to discharge under a general permit, including:

(A) a brief statement of the basis for this decision under this subsection;

(B) a statement of whether the discharger shall immediately cease the discharge;

(C) a statement setting the deadline for filing the application for an individual permit; and

(D) a statement that the person's discharge authorization under the general permit shall be suspended on the effective date of the commission's action on the individual permit

application unless the commission expressly provides otherwise, or unless the executive director has required the discharger to immediately cease the discharge;

(2) Except for suspensions under paragraph (5)(F) of this subsection relating to storm water discharges, if a discharger's authorization under a general permit is suspended, the discharger shall immediately cease the discharge.

(3) The executive director may require the person whose authorization to discharge is suspended to apply for and obtain an individual permit.

(4) After providing written notice to the discharger, the executive director shall suspend authorization to discharge under an existing general permit for the following reasons:

(A) the quantity of discharge, the type of waste, or the type of operation does not comply with the general permit;

(B) the discharge causes a violation of the Texas Surface Water Quality Standards;

(C) the discharger or facility:

(i) has failed to pay any portion of a delinquent fee or charge assessed by the executive director;

(ii) is not in compliance with all requirements, conditions, and timeframes specified in an unexpired commission final enforcement order relating to the activity regulated by the general permit, or

(iii) is subject to an unexpired enforcement order that requires the facility to comply with operating conditions different from or additional to the requirements of the general permit;

(D) the discharge is inconsistent with the state WQMP;

(E) an application is not received by the deadline specified by rule or in the general permit.

(5) After providing written notice to the discharger, the executive director may suspend authorization to discharge under an existing general permit for reasons including, but not limited to, the following:

(A) a change has occurred in the availability of demonstrated technology or practices for the prevention, control, or abatement of pollutants applicable to the discharge necessary to be implemented to meet applicable federal or state standards;

(B) specific effluent limitation guidelines are promulgated for a discharge covered by the general TPDES permit, but the general permit has not yet been amended to incorporate the new effluent limitation guidelines;

(C) the owner and/or the operator of the facility has not filed an NOI in accordance with §305.43 of this title;

(D) circumstances have changed since the time of the NOI so that the discharge is no longer appropriately controlled to meet applicable water quality standards under the general permit, or either a temporary or permanent reduction, or elimination of the authorized discharge is necessary;

(E) the discharger has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director;

(F) the discharge contains pollutants that cause significant adverse effects to water quality. In making this determination, the executive director shall consider the following factors:

(i) the location of the discharge;

(ii) the size of the discharge;

(iii) the quantity and nature of pollutants discharged;

(iv) whether the discharge would adversely affect groundwater quality, inconsistent with the policy specified in the TWC, §26.401; and

(v) other factors relating to the protection of water quality standards;

and

(G) the discharger or facility is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated.

(e) The commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations. A hearing under this subsection is not subject to Texas Government Code, Chapter 2001.

(f) The general permit shall describe the content of the NOI, if one is required by the general permit. At a minimum, the NOI shall require the submission of information necessary for adequate program implementation including, at a minimum, the legal name and address of the owner and operator, the facility name and address, specific description of its location, type of facility or discharges, and the receiving water(s). An NOI shall be signed in accordance with §305.44 of this title (relating to Signatories to Applications).

(g) Unless otherwise provided in the general permit or in §305.53 of this title (relating to Application Fee), a person seeking authorization by general permit shall submit a \$100 application fee payable to the agency at the time of filing an NOI. If a person is denied coverage under the general permit in accordance with subsection (c) or (e) of this section, any application fee will be applied to the application fee required for an individual permit application for the same discharge.

(h) The general permit shall require a person authorized to discharge waste under a general permit to submit up-to-date information to the executive director in a notice of change within a specified period of time prior to a change in previous information provided to the agency or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. In cases where the general permit requires that an NOI be submitted, the general permit shall require that when the ownership of the facility changes or is transferred, a notice of termination be submitted by the present owner, and a new NOI be submitted by the new owner, not later than ten days prior to the change in ownership.

(i) When requested by a county or municipality, the commission may establish a provision in a general permit for notification by the discharger to a county judge or mayor of a municipality of NOIs that would allow discharges within their respective jurisdiction. If the executive director or commission denies authorization for a proposed discharge in the county or municipality, the executive director shall notify the county judge or mayor.

(j) The executive director's decisions on NOIs under this chapter are subject to §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

Adopted August 23, 2000

Effective September 13, 2000

§205.5. Permit Duration, Amendment, and Renewal.

(a) A general permit may be issued for a term not to exceed five years. After notice and comment as provided by §205.3 of this title (relating to Public Notice, Public Meetings, and Public Comment), a general permit may be amended, revoked, or canceled by the commission or renewed by the commission for an additional term or terms not to exceed five years each.

(b) A general permit remains in effect until amended, revoked, or canceled by the commission or, unless renewed by the commission, until it expires. If before its expiration, the commission proposes to renew a general permit, the general permit shall remain in effect after the expiration date for those

existing discharges covered by the general permit. The general permit shall remain in effect for these dischargers until the date on which the commission takes final action on the proposed permit renewal. No new notices of intent (NOIs) will be accepted or new authorizations honored for authorization under the general permit after the expiration date.

(c) Upon issuance of a renewed or amended general permit, all facilities, including those covered under the expired general permit, shall submit an NOI, if one is required by the general permit, in accordance with the requirements of the new permit.

(d) If the commission has not proposed to renew a general permit at least 90 days before its expiration date, dischargers authorized under the general permit shall submit an application for an individual permit before the general permit's expiration. If an application for an individual permit is submitted before the general permit's expiration, authorization under the expired general permit remains in effect until the issuance or denial of an individual permit.

(e) The commission may, through renewal or amendment of a general permit, add or delete requirements or limitations to the permit. The commission may provide in the general permit a reasonable time to allow existing dischargers covered by the general permit to make the changes necessary to comply with any additional requirements deemed substantive by the commission.

(f) Before issuing a general permit, the commission shall review the general permit for consistency with the Texas Coastal Management Plan (CMP). The commission must find that the general permit is consistent with the applicable CMP goals and policies and that it will not adversely affect any applicable coastal natural resource areas as identified in the CMP before the commission may issue the general permit.

Adopted August 23, 2000

Effective September 13, 2000

§205.6. Annual Fee Assessments.

A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501-305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit; and may be subject to an annual watershed monitoring and assessment fee under TWC, §26.0135(h), consistent with §220.21 of this title (relating to Water Quality Assessment Fees) or as specified in the general permit.

Adopted August 23, 2000

Effective September 13, 2000

§205.7. Additional Characteristics and Conditions for General Permits.

40 Code of Federal Regulations (CFR) §122.28, as amended through April 2, 1992, at 57 FedReg 11413, is adopted by reference, except 40 CFR §122.28(b)(3)(ii) and (c), and except as follows: where 40 CFR §122.28 refers to an "NPDES permit," the references are more properly made, for state law

purposes, to a “TPDES permit,” as applicable; and where 40 CFR §122.28(b)(3)(iii) refers to 40 CFR §122.21, the reference is more properly made, for state law purposes, to applicable sections of this chapter, Chapter 281 of this title (relating to Application Processing), and Chapter 305 of this title (relating to Consolidated Permits).

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