

**Effective: October 4, 2001**

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION  
Permanent Rule Changes

Rule Log Number 2000-031-279-WT  
Water Quality Certification

Chapter 279  
Water Quality Certification

1. Purpose. The attached provides the pages that reflect changes and additions to the Texas Natural Resource Conservation Commission (TNRCC) Volume of Permanent Rules.
2. Explanation of Change. On September 12, 2001, the commission adopted amendments to Chapter 279, Water Quality Certification, §§279.1 - 279.12; the repeal of §279.13; and new §279.13; to revise procedures for waivers of certification, amend enforcement provisions, and modify existing language for consistency with other agency rules. Sections 279.2, 279.3, 279.7, 279.8, and 279.11 were adopted *with changes* to the proposed text as published in the May 4, 2001 issue of the *Texas Register* (26 TexReg 3365). Sections 279.1, 279.4 - 279.6, 279.9, 279.10, 279.12; the repeal of §279.13; and new §279.13 were adopted *without changes* to the proposed text and were not republished.
3. Effect of Change. Title 33 United States Code (USC), §1341, commonly known as the federal Clean Water Act (CWA), §401, requires all applicants for a federal license or permit to conduct any activity that may result in a discharge into navigable waters, including the construction or operation of facilities, to request a certification from the state that the discharge will comply with state water quality standards. The commission rules in Chapter 279 contain the procedures for public notice and review of any such activity proposed to be authorized by federal permit, including applications for dredge and fill permits issued by the U.S. Army Corps of Engineers (Corps). Under Chapter 279, the commission reviews the proposed activity for compliance with 30 TAC Chapter 307, Water Quality Standards, and Texas Water Code (TWC), §§26.011, 26.023, 26.027, 26.121, and 26.127, which direct the commission to act to protect the quality of water in the state. These adopted amendments will provide for the executive director either to review the proposed activity or to waive certification.

These adopted amendments specifically allow the executive director to waive certification when the applicant agrees to include specific water quality-related conditions in the permit. The adopted amendments add detail concerning the time and procedures for the executive director's review of permit applications. These adopted amendments expand the category of persons who may request a public meeting, allow the executive director to waive public notice in an emergency or when certification is waived, more clearly describe the type of public meetings that may be held on certification decisions in response to public comments received, and change notice requirements for public meetings. If the executive director grants, grants conditionally, or denies certification, these amendments will specify the contents of the statement of this decision. These adopted amendments will specify the persons to receive notice of a decision, and, if the activity is certified, a statement of reasonable assurance that the proposed activity will not violate water quality standards. Finally, these adopted amendments require applicants to comply with agreements and

permit conditions resulting from the certification procedures in these rules, and provide for enforcement for noncompliance.

The commission adopts these changes in order to partially restructure the certification process, making it less cumbersome and more flexible. Some of these amendments are the outgrowth of recent discussions and agreements with the Corps aimed at streamlining certification procedures on 404 Permits. Some of these amendments reflect the commission and the Corps conclusions, upon review of past practices, that the system should be revised to maximize interagency cooperation and minimize possible duplication of effort.