

The Texas Natural Resource Conservation Commission (commission) adopts new Chapter 205, §§205.1-205.6, relating to general permits for waste discharges. Sections 205.1-205.5 are adopted with changes to the proposed text as published in the December 19, 1997 issue of the *Texas Register* (22 TexReg 12418). Section 205.6 is adopted without changes and will not be republished.

EXPLANATION OF THE ADOPTED RULE

This new adopted chapter will implement amended Texas Water Code, §26.040, which became law as an act of the 75th Texas Legislature (1997). The adopted rule describes the procedures the commission will use to develop and issue general permits, as well as the procedures to authorize discharges under the terms of any general permit. These permits may supersede some authorizations-by-rule currently utilized by the commission, and will offer an alternative to individual permits for eligible dischargers. Current authorizations-by-rule will remain in effect until expressly superseded by commission action.

General permits can be issued for situations where a number of different dischargers are subject to the same discharge requirements. Instead of individual permits being issued for each discharger, one “umbrella” permit is issued by the commission, to authorize several facilities of the same category.

General permits may cover discharges in one geographical area or may cover a category of discharges statewide. The adopted rule specifies that general permits may be issued for categories of dischargers that engage in the same or similar types of operations, discharge the same types of waste, are subject to the same effluent limitations and/or operating conditions, and are subject to the same or similar monitoring requirements. The category of discharges covered by a general permit will not include

discharges of pollutants that will cause significant adverse effects to water quality, nor would any general permit allow a discharge of more than 500,000 gallons into surface water during any 24-hour period as provided by §26.040.

New §205.1 (relating to Definitions) contains definitions of key terms used in this chapter. In response to comments, some definitions were revised or deleted for clarification purposes. New §205.2 (relating to Purpose and Applicability) describes the authority of the commission in issuing general permits, consistent with §26.040 of the Texas Water Code. Minor changes were made to the rule in response to comments concerning the types of discharges that may not be authorized by general permit. New §205.3 (relating to Public Notice, Public Meetings, and Public Comment) specifies the public participation processes the commission will use to receive, analyze, and respond to public comment on each general permit. Revisions were made to clarify when a public meeting may be held, and to specify the applicability of the provisions of this section depending on the type of general permit action involved (new, amendment, renewal, etc.). Revisions were also made to the mailed notice requirements.

New §205.4 (relating to Authorizations and Notices of Intent) describes the notification and authorization procedures applicable to any discharger seeking coverage under a general permit. Clarifying changes were made in response to comments concerning coverage of new outfalls, reasons for denial or suspension of a discharger's authorization under a general permit, and notification of notices of intent (NOIs) to Harris County and potentially to other local governments.

New §205.5 (relating to Permit Duration, Amendment and Renewal) establishes the term of general permits, and the procedures for permit renewals for amending the requirements and/or limitations of a general permit. Revisions were made to this section concerning renewals and to reinforce the requirement that general permits maintain consistency with the Texas Coastal Management Program.

Proposed new §205.6 (relating to Annual Fee Assessments) provides that the commission shall impose an annual assessment on a discharger in accordance with §§305.501-305.507 of this title (relating to the Waste Treatment Inspection Fee Program) and in accordance with §320.21 of this title (relating to Water Quality Assessment Fees).

FINAL REGULATORY IMPACT ASSESSMENT

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to implement House Bill 1542, which amended Texas Water Code, §26.040, to authorize the

commission, under limited circumstances, to issue general permits authorizing the discharge of waste. The specific purpose of the legislation was to ease the burden on the commission and the regulated community by allowing the issuance of general permits in place of individual permits, while still providing protection to human health and the environment. The rule will advance this specific purpose by providing a process for the commission to adopt general permits authorizing certain waste discharge activities which qualify for regulation by general permit, rather than by individual permit, under the parameters set out in the legislation. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rule, because the rule will not involve a physical invasion, dedication, or exaction of real property which is the subject of the rule, will not restrict or limit a property right that would otherwise exist, and will not eliminate all economic uses of private property which is the subject of the rule.

COASTAL MANAGEMENT PROGRAM (CMP)

The commission has reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the rule include the protection, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the rule include the requirement that discharges of municipal and industrial wastewater in the coastal zone comply with the following: (1) discharges shall comply with water-quality-based effluent limits, (2) discharges that increase pollutant loadings to coastal waters shall not

impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development, and (3) new wastewater outfalls shall be located where they will not adversely affect critical areas to the greatest extent practicable.

Promulgation and enforcement of this rule will not violate (exceed) any standards identified in the applicable CMP goals and policies because the rule limits the issuance of general permits to those categories of discharges that will not cause significant adverse effects to surface water quality. In keeping with this requirement, specific general permits must include permit conditions and effluent limitations that will maintain water quality standards. Through the specific general permits, the commission will insure that discharges comply with water-quality-based effluent limits, and that existing and designated uses will be protected, in keeping with the state's antidegradation policy.

The rule also provides the executive director with the discretion to deny or suspend a discharger's authority to discharge under a general permit if it is determined that the discharge is a significant contributor of pollutants impairing surface or ground water quality. Among other facts, the executive director may consider the location of the discharge. In addition, the rule specifies that authority under a general permit may be denied or suspended if the discharge poses or could pose an adverse impact upon a critical area as defined in the Coastal Coordination Act rules, 31 TAC §501.3, and there is a practicable alternative to the discharge location.

HEARINGS AND COMMENTERS

A public hearing was held on January 14, 1998. No oral testimony was received at the hearing. The public comment period closed on January 23, 1998. Five commenters submitted written comments. Texas Utilities Service, Inc. (TUS) wrote in support of the rule on behalf of Texas Utilities Electric Company, Texas Utilities Fuel Company, Texas Utilities Mining Company, and ENSERCH Corporation. The law firm of Henry, Lowerre, Johnson, Hess & Frederick (Henry, Lowerre) wrote in opposition to the rule on behalf of ACCORD Agriculture, Inc., ACAFO, and the Lone Star Chapter of the Sierra Club. Three commenters did not generally support or oppose the rulemaking, but suggested changes: Harris County Pollution Control Department (HCPCD), Office of Public Interest Counsel of the Texas Natural Resource Conservation Commission (OPIC), and an individual.

ANALYSIS OF TESTIMONY

Henry, Lowerre commented that the consistency determination regarding the CMP is inadequate, stating that the proposed rule is inconsistent with the goals and policies of the Texas CMP as provided in the rules of the Coastal Coordination Council. More specifically, the commenter noted that the rule is inconsistent with 31 TAC §501.12(9) of the council rules because the rule does not provide for public participation in individual permit determinations for discharges that may adversely affect coastal resources.

The commission responds that the rule does not pertain to individual permit determinations. The rule provides for specific public participation processes to consider public comment (§205.3),

including comments regarding coastal resources for any general permit that is proposed. The CMP rules do not require public participation for each individual permit determination in areas that may affect coastal resources. Rather, it requires public participation in the “ongoing development and implementation of the Texas CMP.” Also, because §26.040 does not require public participation in determinations regarding specific discharges under a general permit, this action is not inconsistent with the CMP. This is due to a provision in the CMP that states, “a goal or policy may not require an agency...to perform an action that would exceed the constitutional or statutory authority of the agency...to which the goal or policy applies.” (Texas Natural Resources Code §33.204) The commission further responds that the rulemaking should not result in an adverse effect upon coastal resources because §205.2(c)(2) states that a general permit may be issued only when the commission finds that the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to surface water quality.

Henry, Lowerre commented that the rule is inconsistent with 31 TAC §501.13(a)(1) of the council rules relating to the CMP goals and policies because the rule fails to ensure that applicants will submit adequate information in an NOI to the commission to make an informed decision on coastal zone discharges.

The commission responds that general permits will not be developed from information submitted by an applicant. Instead, the commission will be developing general permits applicable to

categories of dischargers. The commission agrees that any general permit it develops that would allow coverage of dischargers in the coastal zone must include a determination that the discharges would comply with the goals and policies of the CMP. To emphasize this point, a new provision has been included in the rule under §205.5(f) to address the issue on coastal consistency for such general permits.

Henry, Lowerre commented that the rule is inconsistent with §501.13(a)(2) because the rule fails to identify the monitoring necessary for dischargers in the coastal zone.

The commission responds that §205.2(c)(1) requires that general permits issued by the commission include provisions for adequate monitoring by dischargers. The commission intends to require monitoring of discharge quality and quantity by dischargers in a manner similar to what it requires of individual permit holders. Monitoring requirements will be specified, as necessary for a given category of dischargers, in general permits developed in accordance with the rule.

Henry, Lowerre commented that the rule is inconsistent with 31 TAC §501.14(f)(2)(A - C), because it does not ensure compliance with water quality based effluent limits, it does not ensure that possible impairment of designated uses of coastal waters are avoided, and it does not ensure that new outfalls will not affect critical areas.

The commission responds that several specific provisions of the rule ensure that water quality in the coastal zone will be protected, and disagrees with the comment that the rule is inconsistent with the CMP policies. Section 205.2(c)(2) states that a general permit may be issued only when the commission finds the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to surface water quality. In development of a general permit which would allow a discharge into a surface water body, justification must be developed for permit conditions and effluent limitations which will maintain water quality standards. Additionally, if an NOI should be received by the commission which proposes a discharge location that may impair a water body, §205.4(e)(1) - (8) (especially paragraph (3)) provides the executive director with the broad discretion to deny the NOI or to suspend the authorization under the general permit. Additionally, in response to the commenter, the commission has added a new §205.4(e)(4) and §205.4(f)(6) to the subsection. The new paragraph specifies that it will deny or suspend an NOI when the discharge could impair a designated use of a coastal water or adversely affect a critical area.

Henry, Lowerre commented that the consistency determination regarding the coastal management plan is inadequate. The commenter suggested that the rule preamble did not contain an adequate reasoned justification explaining the basis for a determination of consistency with each policy as described in 31 TAC §505.22(a)(2).

The commission disagrees that a more extensive explanation regarding the consistency of the rule with the CMP is needed. However, in response to comments, the consistency determination has been revised to further explain how the rule will insure general permits are consistent with the goals and policies of the CMP. The revised summary of the consistency determination is included earlier in the preamble.

Henry, Lowerre commented that there are no provisions in the rule that specify the contents of general permits, such as criteria for effluent limitations, operating conditions, monitoring requirements, water quality standards review, and antidegradation review. Henry, Lowerre contended that these criteria must be included in any rulemaking.

The commission responds that these types of provisions were not included because each criterion mentioned is a specific consideration to be developed for each general permit. General permits will resemble individual permit documents, usually with effluent limitations, sampling, monitoring, and reporting requirements, standard provisions which cite applicable commission rules, and other requirements, all of which will be tailored to the category of dischargers covered. General permits that allow for discharge to surface water bodies will include a technical review for standards compliance. Effluent limitations must not allow for degradation of a water body with high or exceptional quality aquatic life uses.

The commission further responds that criteria and conditions of each specific general permit will be subject to review and comment with public participation processes as described in §205.3. The commission disagrees with the commenter's argument that further description in the rule is mandatory, based upon Texas Water Code, §26.040(k), which states that the commission may adopt rules as necessary to implement and administer this section.

Henry, Lowerre questioned whether the rule will limit the size of discharges to ground water in this rulemaking. The commenter stated that such a limitation should be established in the rule, and include other situations for which a general permit would not be appropriate.

The commission responds that it will also address the prevention of discharges to ground water in specific permits it develops, rather than in this rule making, for categories of waste which could pose an adverse impact upon ground water. The approach is anticipated to be similar to its existing individual permits and authorizations by rule that require engineered, low-permeability liners for land-based management of waste and irrigation practices that utilize wastewater at the surface through uptake by crops at rates which minimize migration to ground water. The commission further responds that §26.040(a) specified situations for which general permits would and would not be appropriate. These limitations are included in the rule under §205.2.

Henry, Lowerre commented that the rule does not specify revocation provisions as expressly described in Texas Water Code, §26.040(j), which must not allow for a contested case hearing.

The commission responds that revocation provisions for NOIs are unnecessary in the rule because pursuant to §26.040(f) of the Texas Water Code, proposed §205.4(d) already provides that the executive director, after written notice, may suspend a discharger's authority to discharge under a general permit and may require a discharger to obtain authorization to discharge under an individual permit. However, the commission also responds to the suggestion by specifying the procedural requirements for revocation of a general permit by revisions to §205.3. The rule provisions do not include an opportunity for a contested case hearing on the issue of revocation of a general permit.

An individual questioned how the commission intends to apply the rule to existing concentrated animal feeding operations (CAFOs) authorized under Chapter 321 rules or to CAFOs with applications pending under what the commenter describes as the invalidated CAFO rules.

The commission responds that Texas Water Code, §26.040 specifies that the agency may amend or modify rules previously adopted under the statute, until repeal of the rule. Because of pending litigation, the commission has proposed and may adopt a CAFO general permit and/or amendments to Subchapter B of Chapter 321, as needed. The commission also responds that required notice and opportunity to comment on these actions were made available when the rule and general permit were proposed.

An individual questioned whether the commission plans to use general permit authorizations as mechanisms for authorizing air emissions such as was done in Chapter 321, Subchapter K.

The commission responds that under appropriate circumstances, such as a CAFO general permit, the commission intends to use a general permit as a mechanism for authorizing air emissions. In such instances, the general permit issued by the commission will contain provisions related to air quality, and rulemaking will be initiated to adopt a rule providing that a person who meets all of the requirements for operating under the general permit is entitled to an air quality standard permit authorization in lieu of the requirement to obtain an air quality permit under 30 TAC Chapter 116.

DEFINITIONS (§205.1)

Henry, Lowerre commented that the rulemaking exceeds the scope of the 1997 legislation (which amended §26.040 of the Texas Water Code) and that the commission has no authority to expand the universe of discharges qualifying for general permits beyond any legislative limitations. The commenter contended that the rule would allow the commission to establish general permits for discharges beyond the categories of discharges allowed within the limitations of the amended statute by proposing definitions that expand the universe of discharges qualifying for general permits. The specific comments regarding the definitions are addressed in more detail below.

The commission had no intention of expanding the universe of discharges qualifying for a general permit. The commission further maintains that the rulemaking does not subvert the letter and spirit of Texas statute. However, the commission has made some specific language changes to the definitions in the rule that should alleviate the concerns of the commenter. The revisions should clarify the intent of the rule and remedy any misunderstanding that may have arisen regarding the commission's intent. These are explained in more detail in the response to comments regarding specific definitions.

Henry, Lowerre expressed concerns over the definition of "same or similar monitoring requirements," stating that the definition needs to be redrafted to assure that any general permits issued will require the same or similar monitoring requirements of all dischargers authorized under the general permit. The commenter contended that the definition, as written, is not specific enough to meet legislative intent.

The commission responds that the phrase "can be applied" gave the wrong impression to the commenter and possibly others that the commission seeks more flexibility than what legislation may have intended. The commission will apply the same or similar monitoring requirements in a given general permit. The commission has revised the definition and also the definitions of "general permit" and "same requirements regarding operating conditions" based upon this comment.

Henry, Lowerre commented that the definition of “same or substantially similar types of operations” essentially defines the term with a new term of “generating wastewater from similar sources.”

Additionally, Henry, Lowerre contended that stormwater management and control activities by municipalities is an overly broad term to define an operation. The commenter recommended that the commission develop an exclusive list of operations that might qualify for general permits, or list characteristics that define similar types of operations.

The commission agrees with some of the comments, and as a result, the rule will not define the term as operations having similar sources of wastewater. Instead, the definition has been revised to list characteristics of similar type operations, as suggested. The commission disagrees that developing a general permit for municipal storm water discharges would be overly broad. The commission purposely included the term “same or substantially similar types of operations” for state and federal consistency. This term is also found in 40 CFR §122.28. Just as the term has not deterred the U.S. Environmental Protection Agency from developing a Phase II municipal storm water permitting strategy based upon the use of general permits, the commission believes it has adequate authority to use general permits for broad categories of operations.

Henry, Lowerre commented that the definition of “same requirements regarding effluent limitations” appears to frustrate an express legislative limitation.

The commission responds that it has no such intent, but that the agency simply wishes to make clear what specific conditions must be included in general permits. In response to the comment, the commission has analyzed this issue and now concludes that a definition of the term is unnecessary and has deleted it.

Henry, Lowerre commented that the definition of “same types of waste” appears to frustrate an express legislative limitation. The commenter contended that same types of waste would have not only the same constituents, but would also have them in similar concentrations. He provided an example to illustrate why this might be so.

The commission responds by agreeing with the commenter in part. Many specific categories of waste are expected to have similar concentrations of pollutants, but this may not always be the case. For instance, most municipal treatment works have similar influent biochemical oxygen demand (BOD) concentrations, but a subset of the treatment works may be designed to handle a more dilute wastewater when there are storm water contributions. At each facility, the same type of waste is treated, but different concentrations of constituents are expected. Based on some of these comments, the commission has chosen to revise the definition to describe “same types of waste” as having the same constituents, and to take out the reference to types of operations.

PURPOSE AND APPLICABILITY (§205.2)

TUS recommended that the rule be revised to allow general permits to be issued for discharges that meet one of four criteria: (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; or (4) are subject to the same or similar monitoring requirements.

The commenter suggested this be done by adding the word “or” so the rule requires criteria (1), (2), (3) and/or (4) be met, rather than (1), (2), (3) and (4). This change would give the commission more flexibility in determining what types of discharges would qualify for a general permit.

The commission responds that "and" is stated in the statute to expressly require that all four criteria must apply, and that the rule needs to be consistent with the statute. The plain meaning of such grammatical construction is that none of the criteria are sufficient on their own, but that all of them must be met. Also, the statute was drafted with the word "and" to be consistent with National Pollutant Discharge Elimination System (NPDES) requirements specified in 40 CFR §122.28(a)(2)(D).

Henry, Lowerre suggested that §205.2(c) include other limits or factors for the commission to consider when determining the appropriateness of issuing a general permit. Factors such as adverse impacts on human health, the environment, level of public concern, and receiving water conditions were specifically suggested.

The commission responds that the legislatively enacted limitations already specified in Texas Water Code, §26.040 and reflected in §205.2(a), (b), and (c) restrict the commission in using general permits as a tool for authorizing discharges. Adding restrictions onto those already legislated could unnecessarily reduce opportunities for permit streamlining and flexibility in managing its regulatory program. Additionally, the commission argues that its use of general permits should track the use of general permits under NPDES. Adding limitations not part of the federal requirements could lead to significant inefficiencies.

Henry, Lowerre commented that §205.2(c)(1) does not adequately describe what an enforceable general permit might be. Henry, Lowerre indicated that a permit must include express limitations on discharges that are enforceable, and also contended that the commission must ensure that it has adequate compliance personnel to devote toward oversight.

The commission responds that it believes §205.2(c)(1) is consistent with the statutory language of Texas Water Code, §26.040(a)(5)(A), and therefore has made no change to the rule. Effluent limitations will normally be placed in municipal or industrial discharge permits, whether it is an individual permit or a general permit. However, there may be categories of discharges where other permit provisions such as best management practices would be required of a person covered under a general permit, in lieu of actual limitations. For example, a storm water discharge from a construction site or from an industrial facility might not include effluent limitations.

The commission also disagrees that it should be required to make a finding that it has adequate compliance personnel before issuing a general permit. An authorization to discharge can be granted when it can be readily enforced and when the commission can adequately monitor compliance with the terms of the general permit. Compliance need not be monitored exclusively by the ability to inspect discharge facilities that might seek coverage. There would be no benefit to requiring that facilities be permitted individually, because such action would not increase the likelihood of the facility being inspected.

Henry, Lowerre made the suggestion that §205.2(c)(2) be revised to change “surface and ground water quality” to “surface or ground water quality.”

The commission responds that the intent of the passage is “or,” and that the revision has been made.

Henry, Lowerre commented that it is not permissible for the commission to adopt rules to implement the legislative amendments to Texas Water Code, §26.040, without defining significant adverse effects to water quality. Additionally, Henry, Lowerre contended that the rules must establish a process for ensuring that such determinations are made.

A discharge that violates Texas surface water quality standards (TSWQS) would be considered a significant adverse effect. As with individual permits, general permits will be drafted in

accordance with the requirements of the TSWQS, under Chapter 307 of the commission rules, to insure discharges will not have significant adverse effects to water quality.

Henry, Lowerre objected to the language proposed in §205.2(c)(2) which states “more than 500,000 gallons directly into surface water during any 24-hour period.” The commenter believes the addition of the word “directly” exceeds legislative intent and is illegal.

The commission disagrees that the proposed use of the word in the rule goes beyond the intent of the statute. However, to remove any confusion, the language has been revised by deleting the word in order to track the language in the statute.

PUBLIC NOTICE, PUBLIC MEETINGS, AND PUBLIC COMMENT (§205.3)

An individual commented that the rule should specify that processing of general permits will comply with the rulemaking procedures established in the Texas Administrative Procedures Act (APA). The commenter contended that the issuance of a general permit must include a statement of reasons for and against adoption and comply with the requirement for a reasoned justification of the rule.

The commission disagrees with the contention that the issuance of a general permit must comply with the rulemaking procedures established in the Texas APA. As noted by the commenter, §26.040(j) provides that the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit or of authority to discharge under a general permit is not subject

to Subchapters C-F of the APA. This provision exempts the listed commission actions related to a general permit from all APA provisions related to contested cases except those contained in Subchapter G relating to judicial review. This provision was in the legislation providing for commission authority to issue general permits in order to make absolutely clear that while there is no opportunity for contested case hearing on the listed commission actions related to a general permit, there is opportunity for judicial review of those actions. The commission further responds that §26.001 defines the term “permit” as “an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.” A general permit issued pursuant to §26.040 of the Texas Water Code is clearly a permit according to this definition, and therefore a license pursuant to the definitions in the APA rather than a rule. The commission further responds that §26.040 clearly sets out in detail the procedural requirements for adopting a general permit. The procedural requirements set out in the statute would be meaningless if the APA rulemaking requirements are to apply to issuance of a general permit. Accordingly, such an interpretation runs counter to the rules of statutory construction.

Henry, Lowerre commented that §205.3 should specify that the procedures of this section pertain to renewals and amendments.

The commission agrees with the comments and has modified the section accordingly. However, if an amendment to a general permit would be considered a minor amendment, the modified public participation procedures are not as extensive as for the issuance, major amendment, or renewal of a general permit. Consistent with 30 TAC §305.62(c)(2), the rule at §205.3(g) specifies that newspaper publication is not required. The commission has determined that the public is not adversely affected by amendments considered to be minor, and that newspaper publication of these type of actions would be a costly burden.

The OPIC and Henry, Lowerre provided comments on §205.3(d)(1). The OPIC believes the rule should be changed so that a public meeting on all proposed general permits is mandatory. Henry, Lowerre suggested that the rule be clarified regarding the commission's discretion over whether to hold a public meeting.

The commission disagrees that making public meetings for all proposed general permits mandatory would maximize public participation. Holding a public meeting is costly and the expense is not justified for those situations where there is no public interest in a general permit. The commission agrees that the language suggested by Henry, Lowerre clarifies the meaning of the rule, and has revised the rule accordingly.

The OPIC commented on §205.3(d)(2) that mailed notice of a public meeting should be provided by publication in a daily or weekly newspaper of general circulation in the area affected by the activity.

Henry, Lowerre commented on this provision and suggested that mailed notice be provided to each person who commented on the general permit, regardless of whether it is a general permit under Texas Pollutant Discharge Elimination System (TPDES) or under the state program.

The commission responds that the rule as proposed inadvertently did not specify mailed notice in a non-TPDES scenario. The rule has been modified in §205.3(d)(3) to ensure any commenter on the draft permit receives notice of a public meeting, and to maintain consistency with §205.3(b). The rule's public notice provisions have not been modified to include newspaper notice of a public meeting, to be consistent with the statutory requirements. The commission is satisfied that *Texas Register* notice, mailed notice to local, state, and federal officials, mailed notice to commenters, and mailed notice to persons who ask to be on agency mailing lists will all lead to effective public participation in meetings that might be convened.

AUTHORIZATIONS AND NOTICES OF INTENT (§205.4)

TU Services recommended that facilities covered by an individual permit be allowed to obtain authorization for new discharge points under a general permit.

The commission responds that individual permits, similar to general permits, specify particular categories of waste which are authorized for discharge. If a category of waste not already described in the existing permit is proposed for discharge from a new point source location, the commission agrees it could be authorized by general permit. However, this would only be the case

if the discharge was not commingled with permitted discharges or if it was a category of waste distinct from the category of waste identified in the individual permit. For example, if a steam electric station discharges non-contact cooling water under an individual permit and proposes to obtain a general permit to discharge treated ground water from a remediation activity, it could do so if the treated ground water was conveyed to waters in the state without commingling with the non-contact cooling water upstream of the outfall. Conversely, if the steam electric station had an outfall established in an individual permit for discharge of treated ground water and wanted to permit new discharges of treated ground water by general permit via the same outfall, the commission would require the station to cancel the individually permitted outfall by minor amendment when the general permit became effective for the treated ground water discharges. The commission is revising §205.4(b) to add a new paragraph (4) to specify how it would process these requests. The commission would not allow splitting of discharge flows in an effort to fall below the 500,000 gallons per 24-hour statutory limit. The commission intends to utilize the authority it has specified in §205.4(e)(1) and §205.4(f)(2) to prevent this from occurring.

HCPCD commented that §205.4(c) should include a provision for a discharger to provide notice to a county judge, and to a mayor of a city when the discharger files an NOI with the commission. The commenter also suggested that if the commission denies the request, it will provide notice to the county and city of the denial.

The commission disagrees that this rule should require notification to all county judges or mayors in any affected jurisdiction, but believes that specific general permits could address notification to interested jurisdictions by the discharger at the time those permits are proposed and issued. The opportunity to implement such notification is included as a new subsection (j).

Henry, Lowerre commented on §205.4(d) that the executive director should not be required to allow a discharger to continue discharging after suspension of the applicability of the general permit.

The commission responds that §205.4(d) and (e) both allow the executive director to require a discharger to cease discharges upon written notice if certain conditions exist that would threaten water quality. Nonetheless, the executive director may also allow an existing discharge to continue until an applicant can submit a timely request for permit and have the agency then act upon the request. To clarify what the commenter referred to as confusing language, the commission has revised both subsections to remove “and/or” and to split up the lengthy sentences. The commission has also clarified that a notice of suspension will include a statement of whether the discharger shall immediately cease discharging.

Henry, Lowerre commented that §205.4(e) is confusing because it combines both reasons for denying and suspending authorizations in one set of criteria. The commenter also stated that the executive director should not be limited to the specified factors in the rule as bases for denying or suspending authorizations.

The commission has revised the rule to separate the actions of denying and suspending an authorization to discharge to avoid any confusion and make the rule as clear as possible. The rule now states that the executive director shall deny an NOI for reasons included in §205.4(e). In the case of dischargers currently authorized under a general permit, the rule has been revised to give the executive director discretion over whether or not to suspend a discharger’s authorization for reasons included under §205.4(f). The commission further revised §205.4(e)(5) to clarify and specify the nature of compliance problems that would result in the denial of an NOI. These compliance problems include those instances where a discharger is “the subject of an unresolved TNRCC enforcement action in which the executive director has issued written notice that enforcement has been initiated.” A notice of violation (NOV) letter would not be included under this definition. Additionally, the commission points out that it is not limited to the criteria listed in the subsection; denials or suspensions may be decided for “reasons including, but not limited to, the following:” as stated in the introductory passage to subsection (e) and (f).

HCPCD and Henry, Lowerre both commented on §205.4(e)(4) and described what appears to be a typographic error. Henry, Lowerre also requested clarification of the reference to “changed circumstances” in the rule.

In response to the comments, the commission has revised §205.4(f)(4) to state “circumstances have changed since the time of the NOI so that the discharge is no longer appropriately controlled to meet water quality standards under the general permit, or either a temporary or permanent

reduction or elimination of the authorized discharge is necessary.” This change will make the rule consistent with federal regulations at 40 CFR §122.28(b)(3)(E).

Henry, Lowerre commented that §205.4(e)(5) should be a basis for denying a proposed discharge, concluding that the criterion should not be a basis for suspending a discharge (since no general permit should allow impairment of a water body).

The commission generally agrees with the commenter. After a change in water quality standards, the commission will deny future authorizations under an existing general permit affected by the change. Consistent with the commission’s implementation procedures, and pursuant to Texas Water Code §26.040(h), existing authorizations will generally continue until the general permit expires. However, individual authorizations to discharge under the general permit may be suspended and/or the general permit revised due to imminent threats to human health or the environment. In addition, the rule was revised to state the executive director “shall” consider the factors in §205.4(e)(3) and §205.4(f)(5), rather than “may” for clarification.

Henry, Lowerre commented that §205.4(e)(5) is inadequate, particularly for protection of ground water and because the commission has not yet adopted ground water quality standards.

The commission responds that it has revised the rule to add an additional factor to address the comment, to reference Texas Water Code, §26.401, as a basis for denying or suspending a discharge.

Henry, Lowerre questioned the meaning of §205.4(e)(7), stating that if a technology for treatment is necessary, a general permit could not be issued unless the technology was implemented as a permit condition.

The commission responds that this paragraph is in the rule to be consistent with federal regulations at 40 CFR §122.28(b)(3)(B). The commission understands it to mean that if new technology-based guidelines were promulgated and affected a category discharging under a general permit, the executive director could deny new NOIs and require individual permits by suspending NOIs for existing dischargers already covered under the general permit. The commission could then revoke or cancel the general permit. Alternatively, the commission could allow existing discharges to continue, but could amend the permit to add additional controls to meet the new technology-based guidelines. Additionally, the commission has determined the language in §205.4(e)(8) needs clarification, as well. Therefore, this paragraph (now §205.4(e)(7) and §205.4(f)(9)) has been revised to add "but the general permit has not yet been amended to incorporate the new effluent limitation guidelines."

Henry, Lowerre commented that Texas Water Code, §26.040(e) restricts coverage of dischargers under a general permit to dischargers not already covered by an individual permit and that §205.4(h) is inconsistent with the statute.

The commission disagrees with this interpretation of the statute. Texas Water Code, §26.040(e) only describes the authorization process for those persons not yet authorized to discharge. Someone not authorized to discharge is prohibited from doing so for up to the 31st day after submitting an NOI. The subsection of the statute need not address dischargers already covered by an individual permit because they need not wait; such an authorized discharger has the ability to discharge under the permit previously approved, assuming the permit is still in effect.

It would be poor public policy to carry out the commenter's interpretation. Someone interested in seeking a general permit by shifting from an individual permit would need to let their permit expire, file an NOI, wait up to 31 days, and then resume discharging. Further, the language pertaining to who may be covered under a general permit is described in detail in Texas Water Code, 26.040(a). The commission may issue a general permit to authorize the discharge of waste by category of dischargers if the dischargers in the category are, in the commission's opinion, more appropriately regulated under a general permit than under individual permits. There is no restriction that would freeze a discharger forever in an individual permit.

The commission has also revised the rule to specify that a new NOI must be submitted to the commission when there has been a change in ownership of a facility, and not a change in operator to make the rule consistent with 30 TAC §305.43 and §305.64.

PERMIT DURATION, AMENDMENT, AND RENEWAL (§205.5)

Henry, Lowerre commented that Texas Water Code, §26.040(j), excludes the applicability of Subchapter C of the Texas Government Code, Chapter 2001, when a general permit is being renewed. Therefore, the commenter argued that §205.5(b) - (d) cannot allow for extensions to a term of a general permit.

The commission responds that it fully intends to complete the renewal process for general permits prior to the expiration of the term of the permits. Texas Water Code, §26.040(g) specifies that a general permit remains in effect until it expires, unless renewed. Therefore, the commission has revised subsections (b), (c), and (d) to be consistent with the statutory language.

STATUTORY AUTHORITY

These sections are adopted under the Texas Water Code, §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, and §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission.

Additionally, these sections are adopted pursuant to the Texas Water Code, §26.040, which provides the commission with the authority to regulate certain waste discharges by general permit.

SUBCHAPTER A : GENERAL PERMITS FOR WASTE DISCHARGES

§§205.1-205.6

STATUTORY AUTHORITY

These sections are adopted under the Texas Water Code, §5.102, which provides the Texas Natural Resource Conservation Commission (commission) with general powers to carry out duties under the Texas Water Code, and §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission. Additionally, these sections are adopted pursuant to the Texas Water Code, §26.040, which provides the commission with the authority to regulate certain waste discharges by general permit.

§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) **General permit** - A permit issued under the provisions of this chapter authorizing the discharge of waste into or adjacent to waters 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 §26.040, Texas Water Code.

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

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

(4) **Same or similar monitoring requirements** - Requirements for periodic testing or sampling applied to all dischargers of a category covered by a general permit to determine compliance with effluent limitations in general permits which will be applied with the same or similar frequency, sample type, or reporting requirements. This may include conditions which are applied in accordance with a distinct formula in the general permit, such as a sampling frequency based upon the quantity or rate of discharge.

(5) **Same or substantially similar types of operations** - An operation engaged in storm water management activities, or wastewater management activities as defined in a general permit. Examples of substantially similar types of operations include manufacturing processes relating to a specific industrial category or standard industrial classification, a specific type of agricultural production activity, publicly owned treatment works, or storm water management and control activities by municipalities.

(6) **Same requirements regarding operating conditions** - Requirements applied to all dischargers in a category covered by a general permit including, but not limited to, requirements for maintenance, monitoring, reporting, best management practices, facility management, the integrity of analytical testing, and record keeping.

(7) **Same types of waste** - A category of waste containing the same or similar type constituents that can be safely and appropriately controlled using a similar treatment technology, or that can be safely and appropriately controlled through the same requirements regarding effluent limitations. Examples of such waste types include domestic wastewater, contact stormwater from concrete batch operations, or filter backwash from water treatment.

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

§205.2. Purpose and Applicability.

(a) The commission may issue a general permit to authorize the discharge of waste into or adjacent to waters in the state by category of dischargers if 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; and

(4) are subject to the same or similar monitoring requirements.

(b) The commission may issue a general permit to authorize the discharge of waste by categories of dischargers designated pursuant to 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. For example, certain dischargers of the same type of waste may be covered under one statewide general permit. 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). 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) The commission may issue a general permit pursuant to subsection (a) of this section only if it finds the dischargers in the category are more appropriately regulated under a general permit than under individual permits, on the basis that both:

(1) the general permit can be readily enforced and that the commission can adequately monitor compliance with the terms of the general permit. This requirement is satisfied if the provisions of the general permit are clear and unambiguous and it requires adequate monitoring, record keeping, and reporting, appropriate to the type of activity authorized; and

(2) the category of discharges covered by the general permit will not include a discharge either of pollutants that will cause significant adverse effects to surface or ground water quality or of more than 500,000 gallons into surface water during any 24-hour period.

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

(a) The commission shall publish notice of a draft general permit 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 and in the *Texas Register*. If the draft general permit will have statewide applicability,

then the requirement for newspaper notice shall be accomplished by publishing notice in the daily newspaper of largest general circulation within each of the following metropolitan areas: Dallas; Houston; San Antonio; Austin; Tyler; Corpus Christi; the Lower Rio Grande Valley; Amarillo; Lubbock; the Permian Basin; and El Paso.

(b) For TPDES 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, state and federal agencies for which notice is required in 40 CFR, §124.10(c);

(3) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists); and

(4) 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 be in accordance with §39.11 of this title (relating to Text of Public Notice) except where clearly not applicable. Each notice must include an invitation for written comments by the public regarding the draft general permit. The public notice will specify a comment period of at least thirty (30) days and the public notice will be published not later than the thirtieth (30th) day before the commission considers the approval of a general permit. Additionally, the public notice of a draft TPDES general permit must include either a map or description of the permit area.

(d) Public Meetings.

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

(2) The commission shall give notice of a public meeting under this subsection by publication in the *Texas Register* not later than the 30th day before the date of the meeting.

(3) Mailed notice of the public meeting will also be provided 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, state and federal agencies for which notice is required in 40 CFR, §124.10(c);

(C) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists);

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

(E) 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 be in accordance with §39.11 of this title (relating to Text of Public Notice) except where clearly not applicable. 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.

(e) If the commission receives public comment during the comment period relating to issuance of a general permit, the commission may issue the general permit only after responding in writing to these comments. The response shall address written comments received during the comment period and oral or written comments received during any public meeting held by the commission.

(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 will be made available to the public for inspection at the commission's Wastewater Permits Section in its 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 will 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 will 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, and to amendment, renewal, revocation, or cancellation of a general permit.

(g) A general permit may be proposed for minor amendment, as described in §305.62(c)(2) of this title (relating to Amendment), without newspaper publication.

§205.4. Authorizations and Notices of Intent.

(a) New Permittees. A discharger who is not covered by an individual permit may submit to the executive director a written notice of intent to be covered by the general permit in accordance with this section. The executive director may deny the request for coverage under the general permit, in accordance with subsection (e) of this section.

(b) Existing Individual Permittees.

(1) A discharger who is covered by an individual permit may obtain substitute authorization to discharge waste under a general permit if, at least 180 days prior to the expiration date of the individual permit, the permittee submits a notice of intent as specified by subsection (g) of this section. The discharger shall also request that the individual permit be canceled or that the existing permit be amended to remove an authorization pertaining to an affected outfall. The commission will

cancel or amend the permit if the executive director does not deny the NOI under subsection (e) of this section.

(2) The individual permit will be automatically canceled when authorization under the general permit becomes effective.

(3) If the NOI is denied under subsection (e) of this section, the discharger shall apply for renewal of the individual permit prior to the expiration date of the individual permit to maintain authorization to discharge, in accordance with §305.63 of this title (relating to Renewal).

(4) A discharger who is covered by an individual permit may obtain authorization to discharge waste from a new outfall under a general permit if the discharger submits a written NOI as specified in subsection (f) of this section. Agency action on a new discharge does not affect the status of the discharger's existing individual permit.

(c) A general permit will specify any applicable deadline for filing the notice of intent. A discharger may begin discharging under the general permit on the 31st day after the executive director receives the discharger's notice of intent unless the executive director before that time notifies the discharger pursuant to subsection (e) of this section that the discharger is not eligible for authorization under the general permit. A NOI must be submitted to the executive director by certified mail, return receipt requested.

(d) Authorization to discharge under a general permit does not confer a vested right. After written notice to the discharger, the executive director may suspend a discharger's authority to discharge under a general permit. The executive director may require a person discharging under a general permit to immediately cease the discharge. The executive director may also require the person to apply for and obtain an individual permit. The notice of suspension to such a person shall include a brief statement of the basis for this decision under subsection (f) of this section, a statement of whether the discharger shall immediately cease the discharge, an application form, a statement setting the deadline for filing the application for an individual permit, and 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. If an application is not received by the deadline specified, the executive director shall suspend a discharger's authority to discharge under a general permit.

(e) The executive director shall deny an NOI to discharge under an existing general permit and require the person to apply for and obtain an individual permit if the discharger is not eligible for authorization under the general permit for reasons including, but not limited to, the following:

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

(2) In the case of determining eligibility to discharge under the Texas Pollutant Discharge Elimination System (TPDES), a determination that backsliding under 40 CFR §122.44(l) would occur if the general permit replaced the individual permit;

(3) The discharge is a significant contributor of pollutants impairing the quality of surface or ground water in the state. In making this determination, the executive director shall consider the following factors:

(A) The location of the discharge;

(B) The size of the discharge;

(C) The quantity and nature of pollutants discharged; and

(D) Whether the discharge would impair existing or potential uses of ground water, inconsistent with the policy specified in §26.401 of the Texas Water Code;

(E) Other factors relating to the protection of water quality standards;

(4) The discharge is located where it poses or could pose an adverse impact upon a critical area, as defined in 31 TAC §501.3 (relating to Definitions and Abbreviations), and it is

practicable to locate the discharge in a more suitable location. An alternative is practicable if it is available and capable of being done in light of cost, technology, and logistics;

(5) The discharger or facility:

(A) has failed to pay any portion of a delinquent fee or charge assessed by the commission;

(B) is the subject of an unresolved TNRCC enforcement action in which the executive director has issued written notice that enforcement has been initiated;

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

(D) 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;

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

(7) 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; or

(8) The discharge would be inconsistent with the state Water Quality Management Plan.

(f) The executive director may suspend a discharger's authorization under a general permit, and may require the discharger to immediately cease the discharge. The executive director may also require the person to apply for and obtain an individual permit if the discharger is not eligible for authorization under the general permit for reasons including, but not limited to, the following:

(1) The owner and/or the operator of the facility has not filed a notice of intent in accordance with §305.43 of this title (relating to Who Applies);

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

(3) In the case of determining eligibility to discharge under the Texas Pollutant Discharge Elimination System (TPDES), a determination that backsliding under 40 CFR §122.44(1) would occur if the general permit replaced the individual permit;

(4) 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;

(5) The discharge is a significant contributor of pollutants impairing the quality of surface or ground water in the state. In making this determination, the executive director shall consider the following factors:

(A) The location of the discharge;

(B) The size of the discharge;

(C) The quantity and nature of pollutants discharged;

(D) Whether the discharge would impair existing or potential uses of ground water, inconsistent with the policy specified in §26.401 of the Texas Water Code; and

(E) Other factors relating to the protection of water quality standards;

(6) The discharge is located where it poses or could pose an adverse impact upon a critical area, as defined in 31 TAC §501.3 (relating to Definitions and Abbreviations), and it is

practicable to locate the discharge in a more suitable location. An alternative is practicable if it is available and capable of being done in light of cost, technology, and logistics;

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

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

(9) 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; or

(10) The discharge would be inconsistent with the state Water Quality Management Plan.

(g) The content of the notice of intent shall be specified in the general permit which 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). A NOI shall be signed in accordance with §305.44 of this title (relating to Signatories to Applications).

(h) A person seeking authorization by general permit shall submit an application fee payable to the commission at the time of filing a notice of intent. The amount of the fee shall be set in accordance with §305.53 of this title (relating to Application Fee) or will be specified in each general permit and NOI form. If a person is denied coverage under the general permit in accordance with subsection (e) of this section, the application fee will be applied to the application fee required for an individual permit application for the same discharge.

(i) A person authorized to discharge waste under a general permit must submit up-to-date information to the executive director in a new NOI not later than 10 days prior to a change in previous information provided to the commission or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. When the owner of the facility changes or has been transferred, a new NOI must be submitted not later than 10 days prior to the change in ownership.

(j) 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 denies an NOI for a proposed discharge in the municipality, the executive director will notify the county judge or mayor.

§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.

(c) Upon issuance of a renewed or amended general permit, the facility shall submit a notice of intent in accordance with the requirements of the new permit.

(d) If the commission does not renew a general permit, it will provide such determination prior to the expiration of the general permit, and each discharger authorized under the general permit will be provided written notice that the discharger must apply for 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) A general permit must be consistent with the Texas Coastal Management Plan (CMP). A proposed general permit must be reviewed and the action of issuing a general permit must be found to be consistent with the applicable CMP goals and policies and will not adversely affect any applicable coastal natural resource areas (CNRAs) as identified in the CMP.

§205.6. Annual Fee Assessments.

A person authorized by a general permit shall pay: an annual waste treatment inspection fee under Texas Water Code, §26.0291 consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program); and an annual watershed monitoring and assessment fee under Texas Water Code, §26.0135(h) consistent with §320.21 of this title (relating to Water Quality Assessment Fees).

The Texas Natural Resource Conservation Commission (commission) adopts amendments to Chapter 321, Subchapter I, §321.141, concerning Additional Characteristics and Conditions for Controlling Certain Activities by Rule. The amendments are adopted without changes to the proposed text as published in the December 19, 1997 issue of the *Texas Register* (22 Tex Reg 12423) and will not be republished.

EXPLANATION OF THE RULE

The purpose of the rule is to implement amended Texas Water Code, §26.040, which became law as an act of the 75th Legislature (1997). The rule amendment revises Chapter 321, Subchapter I, to reflect the new authority of the commission to authorize certain discharges by general permit, rather than through permit by rule. The amendments also revise the rule to add a reference to new 30 TAC Chapter 205 (relating to General Permits) being established simultaneously with this rulemaking.

FINAL REGULATORY IMPACT ASSESSMENT

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The specific purpose of the rule is to update Chapter 321, Subchapter I, to reflect the authority of the commission to issue general permits. The rule amendment will not burden private real property as it does not propose any substantive regulations impacting private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program. The rule does not govern any of the actions that must be subject to the goals and policies of the program, pursuant to 31 TAC §505.11.

HEARINGS AND COMMENTERS

A public hearing was held January 14, 1998, and the public comment period closed January 23, 1998. No comments were received at the hearing or during the public comment period on the proposed rule amendments.

STATUTORY AUTHORITY

These sections are adopted under the Texas Water Code, §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, and §§5.103, 5.105, and 5.120, which

provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission.

Additionally, these sections are adopted pursuant to the Texas Water Code, §26.040 which provides the commission with the authority to regulate certain waste discharges by general permit.

**SUBCHAPTER I : ADDITIONAL CHARACTERISTICS AND CONDITIONS OF
GENERAL PERMITS AND
FOR CONTROLLING CERTAIN ACTIVITIES BY RULE**

§321.141

**§321.141. Additional Characteristics and Conditions for General Permits and Control of Certain
Activities by Rule.**

40 Code of Federal Regulations §122.28, as in effect on the date of TPDES program authorization, as amended, is adopted by reference, except 40 Code of Federal Regulations §122.28, subsections (b)(3)(ii) and (c), and except as follows: Where 40 Code of Federal Regulations §122.28 refers to a "general permit" or an "NPDES permit," the references are more properly made, for state law purposes, to a "permit by rule," a "general permit" or a "TPDES permit," as applicable. Where §122.28(b)(3)(iii) refers to 40 Code of Federal Regulations §122.21, the reference is more properly made, for state law purposes, to applicable sections of Chapters 205, 281 and 305 of this title.