

The Texas Natural Resource Conservation Commission (commission) proposes new Chapter 205, §§205.1-205.6, relating to general permits for waste discharges.

EXPLANATION OF THE RULE

This new chapter is proposed to implement amended Texas Water Code, §26.040, which became law as an act of the 75th Texas Legislature (1997). The proposed 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 Current authorizations-by-rule will remain in effect until expressly superseded by commission action.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 may cover discharges in one geographical area or may cover a category of discharges statewide. The rule will specify 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.

Proposed new §205.1 (relating to Definitions) contains definitions of key terms used in this chapter.

Proposed 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. General permits issued by the commission must protect water quality as identified in any site-specific study that indicates effluent limits more stringent than those contained in an applicable general permit. Proposed 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. The section also contains requirements for newspaper publication of notices, mailed notice, receiving oral and written public comment, and commission response to public comment.

Proposed 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. This section describes the method under which a discharger may seek coverage under a general permit. The section describes the criteria the executive director will use to deny or suspend coverage under a notice of intent.

Proposed 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.

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).

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect of the proposed sections will be to regulate by general permit rather than by individual permit certain wastewater treatment facilities. The effect on state government will be a reduction in those costs typically incurred by the commission that are associated with the review and approval of individual permit applications. Under the proposed regulations, fewer staff resources will be required to process requests for discharge authorization than would be necessary for the processing of individual permit applications from each entity depending on the scope of any given general permit. No significant change is anticipated for those costs associated with monitoring and compliance activities. While a net cost savings is anticipated, the actual number of facilities that will elect to apply for authorization under the proposed general permit cannot be determined. The total cost savings, therefore, has not been estimated.

There are no additional costs anticipated for local governments. Consistent with the proposed rule, many local governments could take advantage of future development of general permits which would

cover domestic wastewater treatment facilities. The cost savings to these political subdivisions will be equivalent to those savings realized by any applicant qualifying for an authorization by general permit rather than being subject to individual permit requirements. Moreover, owners or operators of facilities qualifying for authorization by general permit will potentially realize savings related to the costs of preparing permit applications and participating in the approval process. These savings may also result from a decreased need for legal services related to public hearings and may also include a time savings from the accelerated and streamlined approval process. These savings will vary on a case-by-case basis depending on the particular facility, its size and complexity, and the extent to which it qualifies under a future general permit. These savings cannot be determined exactly. It is anticipated, however, that savings of \$2,000 to \$5,000 will be typical of most facilities, while savings of up to \$25,000 could potentially be available in some circumstances. The minimum savings realized by affected parties is anticipated to be approximately \$1,000. The savings to businesses will apply equally to small businesses as well as to larger operations based on these factors.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with these sections will consist of improvements in the processes and procedures related to authorization of wastewater discharges, more efficient use of the public resources available for regulation of wastewater facilities, more cost-effective regulation of wastewater discharges, and improved protection of the quality of the surface

water resources of the state. There are no economic costs anticipated for any individual, including any small business, required to comply with the sections as proposed.

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 rules because the rules will not involve a physical invasion, dedication, or exaction of real property which is the subject of the rules, 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 rules.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), or will affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the proposed rule are the protection, preservation, restoration and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rule include the requirement that discharges of municipal and industrial wastewater in the coastal zone shall comply with water-quality-based effluent limits. Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rules will result in more efficient and cost-effective use of public resources regulating wastewater facilities, while maintaining protection of the quality of the surface water resources of the state.

The commission invites public comment on the consistency of the proposed rule.

PUBLIC HEARING

A public hearing will be held January 14, 1997, at 10:00 a.m. in Room 5108 of commission building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comment by interested persons. Individuals may present oral statements when called upon in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97151-205-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640.

Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., January 23, 1997. For further information concerning this proposal, please

contact Thomas W. Weber, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-4554.

STATUTORY AUTHORITY

These sections are proposed 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 proposed 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

These sections are proposed 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 proposed 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:

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 a category of waste discharges within a geographical area of the state or the entire state as provided by §26.040, Texas Water Code.

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) .

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

Same or similar monitoring requirements - Requirements for periodic testing or sampling applied to all dischargers covered by a general permit to determine compliance with effluent limitations in general permits which can 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.

Same or substantially similar types of operations - A defined category of facilities generating wastewater from a similar source. Examples of 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 .

Same requirements regarding effluent limitations - Permit requirements applied to all dischargers covered by a general permit for physical measurement of the characteristics of a discharge

specified in the general permit, such as temperature, quantity or analytical measurements of particular pollutants by concentration or total loading .

Same requirements regarding operating conditions - Requirements applied to all dischargers 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.

Same types of waste - A category of waste containing the same or similar type constituents that is generated or treated by the same or substantially similar types of operations, 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.

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 when 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 that 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 and ground water quality or of more than 500,000 gallons directly to 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 in accordance with §39.7 of this title (relating to Mailing Lists) and §39.13(2), (3), (7), and (8) of this title (relating to Mailed Notice).

(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, or when it finds, 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) For TPDES general permits, mailed notice of the public meeting will also be provided in accordance with §39.7 of this title (relating to Mailing Lists) and §39.13(2), (3), (7), and (8) of this title (relating to Mailed Notice). 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.

(4) 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 permit at the same time the commission issues or denies the permit.

(2) A copy of any issued 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*.

§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 (f) of this section along with a request that the individual permit be canceled, and 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).

(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. Any 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 and may require a person discharging under a general permit to either cease the discharge and/or obtain authorization to discharge under an individual permit. The notice of suspension to such a person shall include a brief statement of the basis for this decision under subsection (e) of this section, 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 or suspend a discharger's authorization under a general permit, and require the discharger to either cease the discharge and/or 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(l) would occur if the general permit would be substituted for the individual permit;

(4) Circumstances have changed since the time of the NOI so that the discharge is no longer of sufficient quantity 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 may 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) Other factors relating to the protection of water quality standards;

(6) 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;

(7) 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;

(8) Specific effluent limitation guidelines are promulgated for a discharge covered by the general TPDES permit; or

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

(f) The content of the notice of intent shall be specified in the general permit and 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).

(g) 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) and 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 any application fee required for any individual permit application for the same discharge .

(h) 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 or operator of the facility changes or has been transferred, a new NOI must be submitted not later than 10 days prior to the transfer.

§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 the agency publishes notice of a proposed renewal permit in accordance with §205.3 of this title before the permit expiration date, or if the agency publishes a notice that it has administratively continued the effectiveness of the existing permit pending completion of a draft revised permit, a general permit remains in effect after the expiration date. The general permit will not expire until commission action on the proposed renewal permit is final.

(c) Except as otherwise specified in a general permit, facilities are authorized to discharge under an expiring general permit beyond the expiration date of the general permit in the event commission action under subsection (b) of this section extends it past the expiration date. Upon issuance of a renewal 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 in accordance with §205.4(d) of this title (relating to Authorizations and Notices of Intent). An applicant for an individual permit must submit the application prior to the expiration date of the general permit in order to maintain authorization to discharge under the general 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.

§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).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Chapter 321, Subchapter I, §321.141 concerning Additional Characteristics and Conditions for Controlling Certain Activities by Rule.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed rule is to implement amended Texas Water Code, §26.040, which became law as an act of the 75th Legislature (1997). The proposed 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.

FISCAL NOTE

Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications for state and local units of government as a result of administering the section.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcement of and compliance with this section will be an accurate reference of state regulations in the Texas Administrative Code regarding control of certain

activities by rule and general permits. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

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 proposed 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 proposed 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.

PUBLIC HEARING

A public hearing will be held January 14, 1997, at 10:00 a.m. in Room 5108 of commission building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comment by interested persons. Individuals may present oral statements when called upon in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97151-205-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640.

Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be

received by 5:00 p.m., January 23, 1997. For further information concerning this proposal, please contact Thomas W. Weber, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-4554.

STATUTORY AUTHORITY

These sections are proposed 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 proposed 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. ~~for a "TPDES permit," respectively. Where §122.28(b)(iii) refers to 40 Code of Federal Regulations §122.21, the reference is more properly made, for state law purposes, to applicable sections of 31 Texas Administrative Code Chapters 281 and 305.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Texas Natural Resource Conservation Commission
Chapter 205 - General Permits for Waste Discharges
Chapter 321 - Control of Certain Activities By Rule
Rule Log No. 97151-205-WT

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