

The Texas Natural Resource Conservation Commission (commission) adopts new §§33.1, 33.3, 33.11, 33.13, 33.15, 33.17, 33.19, 33.21, 33.23, 33.25, 33.27, 33.29, 33.31, 33.41, 33.43, 33.45, 33.47, 33.49, and 33.51, concerning consolidated permit processing. Sections 33.1, 33.11, 33.19, 33.21, 33.25, and 33.29 are adopted with changes to the proposed text as published in the July 17, 1998, issue of the *Texas Register* (23 TexReg 7347). Sections 33.3, 33.13, 33.15, 33.17, 33.23, 33.27, 33.31, 33.41, 33.43, 33.45, 33.47, 33.49, and 33.51 are adopted without changes and will not be republished.

This action is part of the commission's implementation of House Bill (HB) 1228, 75th Legislature, 1997, which granted the commission authority to conduct consolidated permit processing and issue consolidated permits. In addition, the commission is concurrently adopting conforming amendments and other changes to 30 TAC Chapter 39, concerning Public Notice. This adoption is published in this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULES

HB 1228 created a new Texas Water Code (TWC), Chapter 5, Subchapter J. The new statute creates a process for an applicant to request consolidated permit processing and the issuance of a consolidated permit. Federal operating permits are prohibited from consolidation. The statute establishes a voluntary program by which a plant, facility, or site can request consolidated permit processing. It provides for designation of a lead permitting program for coordination of application reviews, a consolidated permit hearing on all permits requested by the applicant, and issuance of one consolidated permit. It also allows the applicant to opt-out of the process before public notice of the opportunity to

request a hearing and request separate processing either before or after referral to the State Office of Administrative Hearings (SOAH), depending on certain, specified circumstances.

The statute provides that the renewal period for a consolidated permit is the shortest term set by any state or federal statute or rule governing one or more of the authorizations in the consolidated permit. It also clarifies the commission's authority to modify, amend, or renew existing permits containing authority from more than one permit program (including so-called "one-stop" permits).

The statute requires the fee for a consolidated permit to be computed as if the permits that are consolidated had been processed separately. However, TWC, §5.405, authorizes the commission to reduce the fee by rule for a consolidated permit if processing results in savings to the agency.

Finally, TWC, §5.406, as added by HB 1228, allows the commission to adopt rules to implement the program, including rules that provide for consolidated notice and procedures for issuing such permits.

The rules are necessary for the implementation of the statute. They provide general procedural requirements governing consolidated processing of permit applications and the issuance of consolidated permits. The rules do not impact the voluntary nature of the program established by TWC, Chapter 5, Subchapter J. Applicants will retain the flexibility to determine if consolidated permitting would be consistent with their needs and processes.

The rules also do not represent a fundamental change to the commission's permitting processes. Due to the limited and voluntary nature of TWC, Chapter 5, Subchapter J, as well as other statutory limitations, such as permit and notice requirements under federal programs for which the commission is seeking authorization, implementation of this statute will be conducted under current commission rules and processes. Consequently, the rules cover only those areas where the commission believes rules are necessary, such as clarifying notice requirements. Other details relating to implementation, such as the role of the designated lead coordinating office, will be addressed in guidance rather than by rule.

New §33.1, concerning Purpose and Applicability, provides that the purpose of the chapter is to implement the commission's authority under TWC, Chapter 5, Subchapter J. The section also sets forth the chapter's applicability. The rules apply to units, plants, facilities, or sites required to have more than one permit issued by the commission. The language is nearly identical to the statutory language, though the commission did modify the proposal to add the term "unit" in response to comment. The commission believes this approach will provide as much flexibility, and allow as much participation, as possible. Under this approach, any entity that has to obtain more than one authorization can take part in the program. The section also states that federal operating permits may not be consolidated. The section implements TWC, §5.401.

New §33.3, concerning Definitions, defines consolidated permit as a permit issued under TWC, Chapter 5, Subchapter J, and that contains authorizations for activities in more than one program. The

new section also provides a definition for component authorization, which describes an authorization within a consolidated permit. These definitions are necessary for program implementation.

Subchapter B provides general provisions concerning consolidated permit processing and the issuance of consolidated permits. The subchapter includes provisions concerning renewals and changes to permits, as well as fee requirements. The general provisions are necessary to clarify that consolidated permit processing will be conducted, and consolidated permits will be issued, under current commission statutory authority and rules, unless otherwise provided by TWC, Chapter 5, Subchapter J.

New §33.11, concerning Issuance of Consolidated Permit, requires the commission to conduct coordinated application reviews if requested by an applicant. It also requires the commission to issue a consolidated permit if that is requested by an applicant. The proposed language has been modified to add the term “unit” to conform with the change made to §33.1. In addition, the commission has added language that clarifies that applicants can simply pursue coordinated application reviews without obtaining a consolidated permit. These changes were made in response to comments. The section implements TWC, §5.401.

New §33.13, concerning Applications for Consolidated Permits, requires applicants to use existing applications required under current commission rules.

New §33.15, concerning Fees for Consolidated Permit Processing, provides that the fee for a consolidated permit will be equal to the sum of the fees normally required if the applications were processed separately. In addition, the section allows the executive director to reduce the fee if there are savings to the agency. The section implements TWC, §5.405.

New §33.17, concerning Public Notice, provides that all notice requirements applicable to each separate authorization being requested must be satisfied. The section also clarifies that if an applicant is required under commission rules to mail notice for any part of a consolidated public notice, then the applicant must fulfill all mailed notice requirements. This clarification is necessary to avoid any duplication of notice mailed to interested entities. Rules concerning notice are authorized by TWC, §5.406.

New §33.19, concerning Renewal of Consolidated Permits, provides that the renewal period for a consolidated permit is the shortest term for one or more of the authorizations sought in the consolidated permit. The section also provides for the separation of a consolidated permit at renewal if requested by an applicant. The section requires renewal applications to be filed in a timely fashion. If they are not, the consolidated permit would expire in its entirety. Finally, the section provides that a component authorization that has been separated from a consolidated permit may be renewed for the full term provided by applicable law governing that authorization. The section was modified from the proposal to provide that current one-stop permits may be renewed as one-stop permits, converted to consolidated permits, or separated for renewal. This change was made in response to comments. The section

includes provisions necessary to implement TWC, §5.403 and §5.404, as well as provisions necessary for program implementation.

New §33.21, concerning Amendment of a Consolidated Permit, and new §33.23, concerning Transfer of a Consolidated Permit, provide requirements for amendments to, or transfers of, consolidated permits. Both sections provide that a consolidated permit can remain consolidated, or be separated at the request of the applicant, for purposes of processing amendments or transfers. In addition, the sections provide for the terms of any component authorizations that are separated at the request of the applicant. Both sections also provide that current commission rules apply to actions taken under the sections. The proposed language in §33.21 was modified from the proposal to clarify that the amendment requirements also apply to one-stop permits. This change was made upon recommendation of commission staff to more accurately reflect the statute.

New §33.25, concerning Correction of a Consolidated Permit, provides that any corrections to consolidated permits will be conducted under 30 TAC §50.45, concerning Corrections to Permits. The proposed language was modified to correct a minor typographical error. The commission filed a correction with the *Texas Register* on July 20, 1998, and that correction was published on August 14, 1998.

New §33.27, concerning Consolidated Permit Denial, Suspension, and Revocation, provides that all denials, suspensions, and revocations will be administered under existing commission rules.

New §33.29, concerning Modification of a Consolidated Permit, provides that a modification of a consolidated permit, or any constituent part of that permit, will be administered under existing commission rules. In addition, any component authorization separated for purposes of modification will retain the term of the consolidated permit. The language was modified from the proposal to clarify that the section also applies to one-stop permits. This change was made upon recommendation of commission staff to more accurately reflect statutory intent.

New §33.31, concerning Emergency or Temporary Orders, provides that the issuance of an emergency order or a temporary order will be administered under 30 TAC Chapter 35.

New Subchapter C, concerning Consolidated Permit Processing, sets forth procedural requirements for processing consolidated applications and issuing consolidated permits.

New §33.41, concerning Pre-submittal Conference, provides for a preliminary meeting between an applicant considering consolidated permitting and commission staff to discuss the consolidated permit process and various options that are available to applicants. The conference is not mandatory; however, the commission recommends it to help potential applicants determine if participation in this voluntary program would suit their needs and requirements. The conference would cover a variety of topics, identify important issues, and assist a potential applicant with the decision of whether to participate in the consolidated permitting process.

New §33.43, concerning Intent to File Applications for Consolidated Permit Processing and a Consolidated Permit, provides procedures for filing applications for consolidated processing with the commission. The section requires a letter of intent and prescribes its minimum contents. The section also contains the requirement that applications be filed within a 30-day time period, as required by TWC, §5.401. The section also provides that applications will not be processed until all have been received, and provides for the return of an incomplete set of applications by the executive director. These procedural requirements are necessary for processing and issuing consolidated permits.

New §33.45, concerning Separation by Executive Director, provides for separate processing of consolidated applications at the direction of the executive director. The executive director may require separate processing if an applicant has submitted an incomplete application or failed to respond as requested to any notices of deficiency. The section implements TWC, §5.401.

New §33.47, concerning Request for Separate Processing Before Public Notice of Opportunity to Request a Hearing, authorizes an applicant to request separation of applications before public notification of the opportunity to request a hearing. The section provides that these requests must be filed with the executive director. The section implements TWC, §5.402(a).

New §33.49, concerning Separate Processing After Notice of Opportunity to Request a Hearing and Before Referral to SOAH, authorizes the executive director to separate applications after notice is issued but before referral to SOAH, if an applicant demonstrates good cause. Good cause is defined by

TWC, §5.402(b) and the proposed rule as a change in a statutory requirement, or a substantial change in factual conditions surrounding the applications. The section also prescribes requirements concerning the request for separation that are necessary for implementation, and the disposition of any hearing requests that were received on the consolidated applications. Finally, the section provides for renotification of the separate applications in accordance with commission public notice rules.

New §33.51, concerning Separate Processing After Referral to SOAH, authorizes an applicant to have applications processed separately after the consolidated applications have been referred to SOAH. The applicant must comply with commission rules relating to the withdrawal of an application. This section implements TWC, §5.402(c).

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it prescribes limited procedural requirements governing a voluntary program. In addition, this action is expressly authorized by state statute, TWC, Chapter 5, Subchapter J.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to implement the statutory provisions of TWC, Chapter 5, Subchapter J, concerning consolidated permit processing. The rules will substantially advance this purpose by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that it is a rulemaking identified in the Coastal Coordination Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22, and found that the rules are consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to: construction and operation or solid waste treatment, storage,

and disposal facilities; and discharge of municipal and industrial wastewater to coastal areas.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the rules have no impact on existing commission rules concerning affected activities. They establish a voluntary program that will utilize existing commission rules and practices to the maximum extent required. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because they will have no impact on existing commission rules concerning affected activities.

HEARING AND COMMENTERS

A public hearing on the proposed rule was held in Austin on August 17, 1998, and the comment period also closed on August 17, 1998. No oral testimony was received at the public hearing, but Dow Chemical Company (Dow) and the Texas Chemical Council (TCC) submitted written comments on the proposal.

Dow expressed general support for the proposal, specifically citing the following provisions and concepts: the program's voluntary nature; the fee provisions; the voluntary pre-submittal conference; the lead program concept; coordinated reviews; voluntary combined notice; the flexibility to request one hearing; and the flexibility to separate consolidated permits at various points in the process.

The commission appreciates the support and views these provisions and concepts as providing applicants with maximum flexibility to determine whether to obtain coordinated application

reviews and/or a consolidated permit. The commission views this voluntary program as an opportunity to improve its permitting system, and will continue to look for further enhancements.

Dow and TCC commented that the statutory requirement that the term of a consolidated permit is the shortest term for a component authorization is a disincentive to obtaining a consolidated permit. Both commenters recommended that the commission consider pursuing a statutory change that would allow the longest term of a component authorization to dictate the term of a consolidated permit.

The commission recognizes that certain authorizations would likely not be consolidated because of the term provisions. For example, an air permit and a wastewater discharge permit would probably not be consolidated because the discharge permit's five-year term would shorten the term of the air component, which by itself would have a ten-year term. However, the term limitation provided in statute is viewed at this time to be necessary to not compromise the federal authorizations for certain permitting programs (e.g., Resource Conservation and Recovery Act permits). Therefore, the commission would propose no changes at this time, but directs staff to continue to examine this issue.

The commission notes, however, that the issuance of a consolidated permit is but one element of this voluntary program. Applicants may still take advantage of coordinated application reviews, one hearing, and one notice, without obtaining a consolidated permit, if they so choose. In addition, the voluntary pre-submittal conference in proposed §33.41 provides applicants an

opportunity to weigh all of the benefits and disincentives of the program and determine for themselves whether to participate. Finally, applicants are able to separate a consolidated permit at various points in the process. The commission believes that these program elements provide significant benefits to applicants in terms of greater consistency among their authorizations, maximum flexibility and choice, and better coordination with and among commission staff.

Dow recommended that the rules include a provision allowing the applicant to request a specific lead program for coordination.

The commission has made no changes in response to this comment. The commission believes that such a change is unnecessary, since an applicant would not be precluded from suggesting a lead program either in a pre-submittal meeting or in a letter of intent. However, the commission believes that it is appropriate for the executive director to have the final decision on the lead program. This would ensure that the appropriate program serves as the lead. Additionally, it ensures effective resource management, allowing the executive director to weigh work loads and make appropriate assignments.

Dow recommended that the commission reevaluate the 30-day period for submitting applications required in the statute, stating that a 60-day period would allow for better coordination.

The commission has made no changes in response to this comment. The provision to which the commenter refers implements TWC, §5.401. Thus, the commission is limited in its ability to modify the proposal. The commission notes that the intent of the 30-day period is to allow coordinated application reviews and/or the processing of consolidated permits to begin in a timely fashion. The commission believes that the 30-day period is reasonable, particularly if potential applicants avail themselves of the pre-submittal conference, which will foster planning.

Dow recommended a legislative change that would allow an applicant to obtain a one-stop permit instead of a consolidated permit.

Legislative recommendations are beyond the scope of this rulemaking action.

Dow recommended that the commission develop a single application form to address any overlaps among separate permit applications.

The commission has developed an optional General Request form that applicants may use to provide general information (a draft version of the form was provided in the draft guidance document). The form provides applicants an opportunity to provide the types of permits that would be reviewed together or consolidated, general facility information, and operator/owner information. Applicants who use the form would not have to fill out duplicate information on the

individual application form. The commission declined to create a single consolidated permitting form because of the possibility that permit applications undergoing coordinated reviews, or for which a consolidated permit has been requested, could be separated by the executive director or at the request of the applicant.

Dow recommended that the commission provide for expeditious processing times based on work process enhancements.

The commission believes that the commenter refers to its recent Business Process Review, which closely examined the commission's permitting systems and made recommendations for streamlining and standardization. At this time, the commission is considering implementation options, but its overall goal is to gain as much standardization as possible within state and federal statutory requirements. The commission welcomes the input of all interested parties on how to best achieve this standardization while improving permitting process, maintaining effective public participation, and protecting the environment.

TCC commented that the terms "plant, facility, or site" in proposed §33.1 should be clarified in the rules, preamble, or guidance. TCC specifically noted that the language is unclear with respect to how it would apply to site-wide permits and recommended that the commission specify that the consolidated permit could be unit, plant, site, or facility-specific.

The commission believes that the intent of the statute and proposed rules is to provide as much flexibility as possible to applicants. However, the commission agrees that further clarification is necessary and has amended proposed §33.1 and §33.11 to include the term “unit.” The term is commonly used within the commission’s permitting system, and the commission believes its addition is consistent with the statute’s intent to maximize participation in this voluntary program. The commission notes, however, that this modification would in no way affect an applicant’s obligation to comply with any applicable federal or state permitting requirements, including, but not limited to, corrective action or federal prevention of significant deterioration and/or nonattainment new source review, or Title III maximum available control technology.

Dow requested that proposed §33.11 be amended to clarify that applicants may obtain coordinated application review and processing with or without the issuance of a consolidated permit, and with or without a combined notice and hearing.

The commission agrees that further clarification is necessary and has amended proposed §33.11(a) to state that applicants may obtain coordinated application reviews and still receive separate permits. The commission believes that this modification is consistent with TWC, §5.401, which envisions providing applicants with the flexibility to request coordinated reviews only, or a consolidated permit. Therefore, applicants will have the ability to determine all of the facets of the permitting process that they wish to combine or leave separate. The commission recommends

that potential applicants use the optional pre-submittal conference established by §33.41 to help them make that decision.

Dow commented that proposed §33.13 and §33.29 should be amended to provide for expeditious review and issuance of multiple component authorizations at the request of an applicant. Dow stated that component authorizations for which reviews have been completed should be issued and not held up by any component(s) with longer processing times, thereby allowing the timely start of any construction or start-up activities.

The commission has made no changes in response to this comment. The issue raised by the commenter would be of primary concern to applicant requesting a consolidated permit. However, a consolidated permit, just as a normal permit issued by the commission, has a single term. Therefore, component authorizations of a consolidated permit cannot be issued separately. The commission notes, however, that applicants have the flexibility to determine whether to pursue coordinated application reviews and/or obtain a consolidated permit. In addition, the pre-submittal conference created by the proposed rules should provide applicants a forum to determine the types of applications for which reviews will be coordinated and the benefits or disadvantages of using this process.

Dow and TCC recommended that proposed §33.19(c) be revised to provide flexibility to applicants which have one-stop permitting in their existing permits to maintain the one-stop option upon renewal,

change to consolidated permit processing, or separate the permits upon renewal. TCC further noted that processing the renewal as a component of the existing permit allows expeditious renewal without major disruptions, and that without the option, one-stop permits may be separated, creating a burden for the commission and facilities.

The commission agrees with the commenters and has modified proposed §33.19(c) to provide that current one-stop permits may be renewed as one-stop permits, converted to consolidated permits, or separated, all at the discretion of the applicant. Further, the commission has modified proposed §33.21 and §33.29 similarly to allow one-stop permits to be amended or modified as one-stop permits. The commission believes this change is consistent with the intent of HB 1228 to provide flexibility to permittees with respect to how their one-stop permits are addressed at renewal. The commission also believes that it is consistent with the permitting sections of the Texas Solid Waste Disposal Act (TSWDA), Texas Health and Safety Code, Chapter 361. The commission has added references to the appropriate TSWDA sections in the statutory authority section of the preamble.

Dow requested that §33.19(d) be modified to provide that, for a consolidated permit that has been separated at the time of renewal, only the component authorization that is requested for renewal has to be considered administratively complete, not the other permits that have been separated. This comment is in response to the requirement that a consolidated permit expires in its entirety if renewal applications are not submitted in a timely fashion.

The commission has made no changes to the rules in response to this comment. The intent of the provision is that when a consolidated permit comes due for renewal, all of its components are due at the same time. This is because all of the component authorizations have the same term. Like any permit issued by the commission, the term is fixed and applicants must comply with any renewal requirements. In this sense, a consolidated permit is no different from a normal permit. The commission notes that an applicant may request separation after applications for renewal have been submitted, and upon issuance of separate permits, the permit may be renewed for the full term allowed under its enabling federal or state statute. The commission also notes that this is one of many issues that can be addressed at the pre-submittal conference.

TCC submitted comments on proposed §33.21 in support of allowing a component authorization to be amended without opening the entire consolidated permit. TCC also expressed support for distinguishing between amendment and modification by including proposed §33.29. However, TCC questioned why the two sections were separated and not incorporated together.

The commission made no change to the rules as proposed. The sections were separate in the proposal to acknowledge the different terminology and clearly show that the requirements apply to modifications as well as amendments. The commission believes this clarity improves the readability of the rules.

However, the commission has revised proposed §33.21 and §33.29 to clarify that those sections also apply to one-stop permits. This change was made upon staff recommendation, and the commission believes that the language more accurately reflects Texas Water Code, §5.404.

Dow requested that proposed §33.29 be amended to provide that a component authorization that is separated when modified assumes the term mandated in its applicable regulations.

The commission has made no changes in response to this comment. As with the requirements for amendments and transfers, the commission has provided that a component authorization that is separated from a consolidated permit retains the term of the consolidated permit. However, at the time of renewal of that component authorization, at the end of the original consolidated permit term, it may be renewed for the full term allowed by its enabling statute.

Dow recommended amending proposed §33.43(a) to add a requirement that the applicant indicate in the letter of intent the degree of consolidation it is seeking.

The commission has made no change in response to this comment. Section 33.43(a) provides only the minimum content requirements for the notice of intent. Applicants may include any other information they consider relevant to their needs, including whether they are simply requesting coordinated application reviews or a consolidated permit. The commission also notes that the

information to be included in the notice of intent could be discussed at the pre-submittal conference.

Dow commented that the commission should not wait to begin coordinated application reviews until all applications are received, as provided in proposed §33.43(b). Dow recommended amending the proposal to allow for processing to begin on each application as soon as it is received. Additionally, Dow stated that the permit review process should be as expedient as the most efficient regulatory authorization component and not slowed by the most complex review component.

The commission has made no changes in response to these comments. Regarding the first comment, the commission believes that it is appropriate to wait for all applications to be received before beginning coordinated application reviews. The commission believes that effective internal coordination would be hampered if applications were being reviewed on different time lines. Having reviews begin at the same time will facilitate effective reviews, which will ensure greater consistency among permits. In addition, waiting for the applications will also help with consolidating notices, which may help applicants to save resources.

Regarding the second comment, as noted in the proposal preamble, these rules do not and cannot represent a fundamental change in commission permitting operations. The statute is limited with respect to its impact on permitting processes, and the commission has, therefore, determined that it is appropriate to implement this legislation within the constraints of current processes. This is

necessary primarily because the commission must comply with federal and state requirements governing the specific permitting programs. However, within the confines of those requirements, commission staff will endeavor to make the review process as expedient as possible. The commission believes this is possible with coordinated application reviews. The commission notes that it is currently in the process of implementing the results of its comprehensive Business Process Review, and that the implementation of recommendations concerning permitting should result in greater standardization among the permitting processes.

Dow opposed the provision in proposed §33.49(c) which requires applicants who separate applications after notice to request a contested case hearing has been issued to re-notice the separate applications. Dow stated that this should only be required if separate processing will change the scope of an application.

The commission has made no change in response to this comment. The commission believes that separation of the applications would always represent a change in the scope of the proceedings on the application, and that it is therefore appropriate and desirable to notify the public of that change. The public should be given notice that any challenges to the required authorizations would need to be pursued under separate proceedings, rather than through one consolidated proceeding. The separation may affect resource allocation decisions for members of the public who oppose one or more of the requested authorizations. Additionally, although any person who has requested a hearing on the consolidated applications would not be required to submit

additional requests on the separated applications, notice of the separate applications may result in requestors submitting supplemental communication to the commission to clarify their intent to challenge all requested authorizations or only one or more specific authorizations.

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.401 et seq., which establishes the commission's authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §361.061, which establishes the commission's authority to issue permits for solid waste facilities; §361.088, which establishes the commission's authority to issue, amend, extend, or renew solid waste permits; and §382.017, which establishes the commission's rulemaking authority.

CHAPTER 33

CONSOLIDATED PERMIT PROCESSING

SUBCHAPTER A : PURPOSE AND APPLICABILITY

§33.1, §33.3

§33.1. Purpose and Applicability.

(a) The purpose of this chapter is to implement the commission's authority under Texas Water Code, Chapter 5, Subchapter J, to conduct coordinated permit processing and issue one consolidated permit.

(b) This chapter applies to any plant, facility, unit, or site that is required to have more than one permit issued by the commission and that files applications with the commission under Texas Water Code, Chapter 5, Subchapter J. This chapter sets forth the standards and requirements for applications and actions concerning consolidated permits and amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of those permits.

(c) A federal operating permit governed by the requirements of Texas Health and Safety Code, §§382.054-382.0543, may not be consolidated with other permits under this chapter.

§33.3. Definitions.

The following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Consolidated permit** - A permit issued under Texas Water Code, Chapter 5, Subchapter J, and this chapter, and that contains authorizations for activities in more than one program.

(2) **Component authorization** - An authorization within a consolidated permit that would normally be issued as an individual authorization under the requirements of applicable law governing operations at a facility, plant, or site.

SUBCHAPTER B : GENERAL PROVISIONS

§§33.11, 33.13, 33.15, 33.17, 33.19, 33.21, 33.23, 33.25, 33.27, 33.29, 33.31

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.401 et seq., which establishes the Texas Natural Resource Conservation Commission's (commission) authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §361.061, which establishes the commission's authority to issue permits for solid waste facilities; §361.088, which establishes the commission's authority to issue, amend, extend, or renew solid waste permits; and §382.017, which establishes the commission's rulemaking authority.

§33.11. Issuance of Consolidated Permit.

(a) If a plant, facility, unit, or site is required to have more than one permit issued by the commission, and the applications for all permits are filed within a 30-day period, the commission, on request of the applicant, shall conduct coordinated application reviews and one hearing on all permits requested to be consolidated by the applicant. The commission may issue one consolidated permit, or issue separate permits after consolidated processing under this chapter.

(b) The commission shall issue one consolidated permit upon request of an applicant meeting the requirements of this chapter.

§33.13. Applications for Consolidated Permits.

An applicant shall use existing applications required under commission rules for all of the authorizations sought in the consolidated permit.

§33.15. Fees for Consolidated Permit Processing.

A fee for a consolidated permit shall be equal to the sum of the fees that would be required if each application for a requested authorization was processed separately. The executive director may reduce the fee for a consolidated permit if he finds that consolidated processing of an application will result in savings to the agency.

§33.17. Public Notice.

(a) As provided by Chapter 39, Subchapter G of this title (relating to Public Notice for Applications for Consolidated Permits), all notice requirements that apply to each separate authorization must be satisfied when an applicant requests combined public notices of consolidated permits.

(b) If an applicant is required to mail notice under Chapter 39 of this title (relating to Public Notice), Chapter 305 of this title (relating to Consolidated Permits), or Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), for any part of a consolidated public notice, the applicant shall fulfill those mailed notice requirements.

§33.19. Renewal of Consolidated Permits.

(a) The renewal period for a consolidated permit is the shortest term set by any state or federal statute or rule governing one or more of the authorizations in the consolidated permit.

(b) A consolidated permit may be renewed as a consolidated permit; or may be separated at the request of the applicant and the applications processed separately. Consolidated permits shall be subject to the renewal requirements of applicable laws and commission rules governing operations at the facility, plant, or site.

(c) A permit issued before and effective on September 1, 1997, that authorizes more than one permit program, may be renewed under rules applicable to that existing permit, as a consolidated permit, or, upon request of the applicant, may be separated by programs and the permits processed separately.

(d) An applicant shall submit permit renewal applications in a timely fashion, as required in commission rules. Failure to submit permit renewal applications in a timely fashion shall cause a consolidated permit to expire in its entirety.

(e) If a component authorization has been separated from a consolidated permit when amended, transferred, or modified, as provided by this chapter, it may be renewed for the full term provided by applicable law governing that authorization.

§33.21. Amendment of a Consolidated Permit.

(a) A consolidated permit, or a permit issued before and effective on September 1, 1997, that authorizes more than one permit program, may be amended as a consolidated permit or, upon request of an applicant, separated by program and the permits processed separately. A component authorization that is separated from a consolidated permit for amendment shall retain the same term as the consolidated permit, unless the applicant requests a change in the term as part of a major amendment.

(b) A consolidated permit shall be amended under all applicable commission rules concerning amendments for the programs in the consolidated permit.

§33.23. Transfer of a Consolidated Permit.

(a) A consolidated permit may be transferred as a consolidated permit or, upon request of the applicant, separated for the purposes of transferring authorizations. A component authorization that is separated from a consolidated permit for transfer shall retain the same term as the consolidated permit.

(b) A consolidated permit, or any of its component authorizations, shall be transferred under all applicable transfer rules required for the programs in the consolidated permit.

§33.25. Correction of a Consolidated Permit.

A consolidated permit, or a component authorization of that permit, shall be corrected under §50.45 of this title (relating to Corrections to Permits).

§33.27. Consolidated Permit Denial, Suspension, and Revocation.

A consolidated permit, or any component authorization of that permit, shall be denied, suspended, or revoked under all applicable rules required for the programs in the consolidated permit.

§33.29. Modification of a Consolidated Permit.

(a) A consolidated permit, or any component authorization of that permit, shall be modified under all applicable rules required for the programs in the consolidated permit. A component authorization that is separated from a consolidated permit for modification shall retain the same term as the consolidated permit.

(b) A permit issued before and effective on September 1, 1997, that authorizes more than one permit program, shall be modified under rules applicable to that existing permit.

§33.31. Emergency or Temporary Orders.

An emergency or temporary order concerning a consolidated permit shall be issued under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

SUBCHAPTER C : CONSOLIDATED PERMIT PROCESSING

§§33.41, 33.43, 33.45, 33.47, 33.49, 33.51

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.401 et seq., which establishes the Texas Natural Resource Conservation Commission's (commission) authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §361.061, which establishes the commission's authority to issue permits for solid waste facilities; §361.088, which establishes the commission's authority to issue, amend, extend, or renew solid waste permits; and §382.017, which establishes the commission's rulemaking authority.

§33.41. Pre-submittal Conference.

An applicant considering the submission of applications for coordinated reviews and one hearing, or for a consolidated permit, may request a pre-submittal conference to determine, at a minimum, the types of permits to be consolidated, timelines for the submission of applications, and notice and hearing requirements. A request for a pre-submittal conference may be made to the executive director.

§33.43. Intent to File Applications for Consolidated Permit Processing and a Consolidated Permit.

(a) An applicant shall notify the commission of the intent to request consolidated permit processing or a consolidated permit by submitting a letter of intent to the executive director. The letter of intent must contain at least the following:

(1) the applicant's name;

(2) the applicant's address;

(3) the location of the facility;

(4) the number and types of authorizations to be consolidated;

(5) the types of notices the applicant wishes to combine; and

(6) the beginning and ending date of the time period, not to exceed 30 days, during which the applicant will submit all applications intended for consolidation.

(b) All applications received by the executive director will be held and not processed until the ending date identified by the applicant under subsection (a)(6) of this section. This does not exempt the applicant from the timely submittal of permit renewal applications as required in Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), or Chapter 336 of this title (relating to Radiation Rules). All applications received by that date are deemed as officially received on that date by the executive director for the purpose of processing the applications.

(c) If an applicant has not submitted all of the applications by the deadline specified in subsection (a)(6) of this section, the executive director shall return all of the applications to the applicant unless the applicant has amended its letter of intent. The letter of intent may be amended by submitting a revised letter of intent to the executive director. Renewal applications will not be returned, but shall be processed separately.

§33.45. Separation by Executive Director.

(a) The executive director may require separate processing of consolidated applications, or may return one or more applications, if the executive director determines:

- (1) that the applicant has submitted an incomplete application; or

(2) if the applicant does not respond as requested to notices of deficiency.

(b) The executive director shall notify the applicant of any decision concerning applications under this section. This notice shall include the reasons for the executive director's decision on the applications.

§33.47. Request for Separate Processing Before Public Notice of Opportunity to Request a Hearing.

(a) An applicant may request that consolidated applications be processed separately at any time before mailing or publishing any public notice of the opportunity to request a hearing.

(b) Requests shall be filed with the executive director in a timely fashion and include at least the applicant's name and a list of the applications to be separated.

§33.49. Separate Processing After Notice of Opportunity to Request a Hearing and Before Referral to SOAH.

(a) The executive director may separate the applications for processing at any time after the issuance of any notice of opportunity to request a hearing, but before referral of the matter to SOAH,

upon demonstration of good cause by the applicant. For purposes of this section, good cause includes, but is not limited to:

(1) a change in the statutory or regulatory requirements governing a permit; or

(2) a substantial change in the factual circumstances surrounding the applications for permits.

(b) An applicant shall file the request for separate processing with the executive director and provide copies to affected program offices. The request shall include the following:

(1) the applicant's name;

(2) a list of the applications to be separated; and

(3) the demonstration of good cause.

(c) Upon determination by the executive director that there is good cause for the separate processing of permit applications, the chief clerk shall notify anyone who submitted comment or a hearing request on any combined notice of the executive director's decision. The applicant shall re-notice the separate applications in accordance with applicable commission notice requirements.

(d) Any hearing requests received on the consolidated applications before the applicant requested separate processing shall be held by the chief clerk. The chief clerk shall process those requests along with all additional comments and hearing requests received for each of the separate applications after those applications are renoticed under subsection (c) of this section.

§33.51. Separate Processing After Referral to SOAH.

An applicant may have applications processed separately after an application has been referred to SOAH. An applicant shall show compliance with §80.25 of this title (relating to Withdrawing the Application) in order to have the applications processed separately.

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§39.1, 39.5, and 39.251, concerning public notice, and new §39.401, concerning public notice for applications for consolidated permits. The amendments and new section are adopted without changes to the proposed text as published in the July 17, 1998, issue of the *Texas Register* (23 TexReg 7353).

This action is part of the commission's implementation of House Bill (HB) 1228, 75th Legislature, 1997, which granted the commission authority to conduct consolidated permit processing and issue consolidated permits. It also includes minor corrections and clarifications to preexisting rules. In addition, the commission is concurrently adopting a new 30 TAC Chapter 33, concerning Consolidated Permit Processing. This action is published in this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULES

HB 1228 created a new Texas Water Code (TWC), Chapter 5, Subchapter J. The new statute creates a process for an applicant to request consolidated permit processing and the issuance of a consolidated permit. Federal operating permits are prohibited from consolidation. The statute establishes a voluntary program by which a plant, facility, or site can request consolidated permit processing. It provides for designation of a lead permitting program for coordination of application reviews, a consolidated permit hearing on all permits requested by the applicant, and issuance of one consolidated permit. It also allows the commission to adopt rules to implement the program, including rules that provide for consolidated notice and procedures for issuing such permits.

These rules are necessary to implement the notice provisions of the statute and do not represent a fundamental change to the commission's notice processes. Due to the limited and voluntary nature of TWC, Chapter 5, Subchapter J, as well as other statutory limitations, such as permit and notice requirements under federal programs for which the commission is seeking authorization, implementation of HB 1228 will be conducted under current commission rules and processes.

The rules also include corrections to certain provisions in Chapter 39. These are adopted for clarification purposes.

The amendment to §39.1, concerning Applicability, provides that Chapter 39 applies to applications for consolidated permit processing.

The amendment to §39.5, concerning General Provisions, removes redundant language concerning the publication of newspaper notice. This change is nonsubstantive, and its intent is to correct a mistake in the existing rule.

The amendment to §39.251, concerning Application for Injection Well Permit, clarifies that the rules apply to both existing and proposed facilities.

New §39.401, concerning Public Notice for Applications for Consolidated Permits, provides that combined notices for applications consolidated under TWC, Chapter 5, Subchapter J, and Chapter 33,

will be given only when requested by an applicant and when the combined notice satisfies all statutory and regulatory requirements applicable if each application had been processed separately. This provision clarifies that all applicable notice requirements must be met when an applicant requests consolidated permit processing. The commission notes that combined notices are not mandatory, and that an applicant retains the ability to do separate notices if it prefers.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the 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 that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it prescribes limited procedural requirements governing a voluntary program, and it provides for minor clarifications to existing rules. In addition, the provisions concerning notice for consolidated permits are expressly authorized by state statute, TWC, Chapter 5, Subchapter J.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to implement the statutory provisions of TWC, Chapter 5, Subchapter J, concerning consolidated permit processing, and to make necessary clarifications to existing rules. The rules will substantially

advance this purpose by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. These rules concern procedural requirements of the agency relating to public notice. Therefore, the rules are not subject to the CMP.

HEARING AND COMMENTERS

A public hearing on the proposed rules was held in Austin on August 17, 1998, and the comment period also closed on August 17, 1998. No written or oral comments were received regarding the proposal.

STATUTORY AUTHORITY

The amendments are adopted under the following sections of the TWC: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §5.401 et seq., which establishes the commission's authority concerning consolidated permit processing. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

CHAPTER 39

PUBLIC NOTICE

SUBCHAPTER A : APPLICABILITY AND GENERAL PROVISIONS

§39.1, §39.5

§39.1. Applicability.

This chapter applies to:

(1) - (7) (No change.)

(8) applications for consolidated permit processing and consolidated permits processed under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing).

§39.5. General Provisions.

(a) - (f) (No change.)

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in

which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.

(h) (No change.)

SUBCHAPTER E : PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS

§39.251

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which establishes the Texas Natural Resource Conservation Commission's (commission) general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

§39.251. Application for Injection Well Permit.

(a) - (c) (No change.)

(d) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located.

(2) - (4) (No change.)

(e) - (f) (No change.)

**SUBCHAPTER G : PUBLIC NOTICE FOR APPLICATIONS
FOR CONSOLIDATED PERMITS**

§39.401

STATUTORY AUTHORITY

The new section is adopted under the following sections of the TWC: §5.103, which establishes the Texas Natural Resource Conservation Commission's (commission) general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §5.401 et seq., which establishes the commission's authority concerning consolidated permit processing. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

§39.401. Public Notice for Applications for Consolidated Permits.

Combined public notices shall be given for applications consolidated under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing) only when:

- (1) combined notice is requested by the applicant; and

(2) combined notice satisfies all statutory and regulatory requirements that would apply if each application had been processed separately, including, without limitation, all requirements for notice content, publication, mailing, broadcasting, and the posting of signs.