

**SUBCHAPTER L: GENERAL PERMIT AUTHORIZING USE OF A CLASS I
INJECTION WELL TO INJECT NONHAZARDOUS DESALINATION
CONCENTRATE OR NONHAZARDOUS DRINKING WATER TREATMENT
RESIDUALS**

**§§331.201, 331.202, 331.203, 331.204, 331.205 and 331.206
Effective August 16, 2012**

§331.201. Purpose and Applicability.

(a) The commission may issue a permit to dispose of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals in a Class I injection well if the facility meets all the statutory and regulatory requirements for the issuance of a permit for a Class I injection well.

(b) The commission may issue a general permit authorizing the use of a Class I injection well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals if the commission determines that the injection well and injection activities are more appropriately regulated under a general permit than under an individual permit based on findings that:

(1) the general permit has been drafted to ensure that it can be readily enforced and that the commission can adequately monitor compliance with the terms of the general permit; and

(2) the general permit will contain proper safeguards to protect ground and surface fresh water from pollution.

(c) Authorization for the use of an injection well under a general permit does not confer a vested right.

(d) The use or disposal of radioactive material under this subchapter is subject to the applicable requirements of Chapter 336 of this title (relating to Radioactive Substance Rules).

Adopted June 18, 2008

Effective July 10, 2008

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

(a) Applicability. The requirements of subsections (b) - (e) of this section apply to processing a new general permit, an amendment, renewal, revocation, or cancellation of a general permit.

(b) Notice of a draft general permit shall be published as follows:

(1) Notice shall be published in the *Texas Register* and in at least one newspaper of statewide or regional circulation; and

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

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

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

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

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

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

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

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

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

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

(B) persons who filed public comment or request for a public meeting on or before the deadline for filing public comment or request for a public meeting; and

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

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

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

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

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

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

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

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

Adopted June 18, 2008

Effective July 10, 2008

§331.203. Authorizations and Notices of Intent.

(a) A person may obtain authorization to use a Class I injection well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals under a general permit by complying with the general permit's conditions. A person shall submit a Notice of Intent to the executive director in a form or format that is specified in the general permit or otherwise set out in commission rules.

(b) The general permit shall describe the content of the Notice of Intent. A Notice of Intent shall be signed in accordance with §305.44 of this title (relating to Signatories to Applications).

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

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

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

(A) the quantity of waste to be injected, the type of waste, the type of operation, the injection well design, or the injection well construction does not comply with the general permit;

(B) the person or facility:

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

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

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

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

(A) 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);

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

(C) the facility is the subject of an unresolved agency enforcement action in which the executive director has issued a written notice of enforcement.

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

(d) The following requirements apply to suspensions of authorizations and Notices of Intent:

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

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

(B) a statement of whether the permittee shall immediately cease injection of waste;

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

(D) a statement that the permittee's waste injection authorization under the general permit shall be suspended on the effective date of the commission's action on the individual permit application unless the commission expressly provides otherwise, or unless the executive director has required the permittee to immediately cease injection of waste.

(2) If a permittee's authorization under a general permit is suspended, the permittee shall immediately cease waste injection.

(3) The executive director may require the person whose authorization to inject or operate an injection well is suspended to apply for and obtain an individual permit.

(4) After providing written notice to the permittee, the executive director shall suspend authorization to inject or operate an injection well under an existing general permit for the following reasons:

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

(B) the permittee or facility:

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

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

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

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

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

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

(B) the owner and/or the operator of the facility has not filed a Notice of Intent in accordance with §305.43 of this title;

(C) circumstances have changed since the time of the Notice of Intent so that injection of waste is no longer appropriately controlled to meet applicable standards under the general permit, or either a temporary or permanent cessation of the authorized waste injection is necessary;

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

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

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

Adopted June 18, 2008

Effective July 10, 2008

§331.204. Permit Duration, Amendment, and Renewal.

(a) A general permit may be issued for a term not to exceed ten years. After notice and comment as provided by §331.202 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 ten years each.

(b) A general permit remains in effect until the commission amends, revokes, cancels or renews the general permit, or until it expires, whichever comes first. If before its expiration, the commission proposes to renew a general permit, the general permit shall remain in effect after the expiration date for those existing permittees covered by the general permit until the date on which the commission takes final action on the proposed permit renewal. No new Notices of Intent will be accepted or new authorizations honored for authorization under the general permit after the expiration date.

(c) Upon issuance of a renewed or amended general permit, all owners or operators, including those covered under the expired general permit, shall submit a Notice of Intent in accordance with the requirements of the new permit.

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

(e) The commission may, through renewal or amendment of a general permit, add or delete requirements or limitations to the permit. The commission may provide in the general permit a reasonable time to allow existing permittees covered by the general

permit to make the changes necessary to comply with any additional requirements deemed substantive by the commission.

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

Adopted June 18, 2008

Effective July 10, 2008

§331.205 Fees for Notice of Intent and Notice of Change.

(a) A person shall include with the notice of intent requesting coverage under the terms of a general permit issued under this subchapter a fee of \$100 for each disposal well.

(b) A permittee authorized under a general permit issued under this subchapter shall include with each notice of change a fee of \$100 for each disposal well.

Adopted June 18, 2008

Effective July 10, 2008

§331.206 Annual Fee Assessments.

A person authorized by a general permit shall pay annual facility and waste management fees according to Chapter 335, Subchapter J of this title (relating to Hazardous Waste Generation, Facility and Disposal Fee System) unless specified in the general permit.

Adopted July 25, 2012

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