

Effective Date: December 10, 1998

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
Permanent Rule Change

Rule Log Number 97170-033-AD
Consolidate Permit Processing

Chapter 33
Consolidated Permit Processing
Subchapters A, B, and C

Chapter 39
Public Notice
Subchapters A, E, and G

1. Purpose. This change transmittal provides the page(s) that reflect changes and addition to the Texas Natural Resource Conservation Commission (commission) Volume of Permanent Rules.
2. Explanation of Change. On November 18, 1998, the 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*.

On November 18, 1998, the 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*.

3. Effect of Change. 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).

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.