

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §205.4.

Background and Summary of the Factual Basis for the Proposed Rules

TCEQ is proposing to amend 30 Texas Administrative Code (TAC) Chapter 205 (General Permits for Waste Discharges) to implement Senate Bill (SB) 1302, 89th Regular Legislative Session and to continue to implement House Bill (HB) 2694, 82nd Regular Legislative Session.

SB 1302 amended Texas Water Code (TWC), §26.040 (General Permits), to: (1) add paragraph (h-1) stating that if an authorization under a general permit is denied or suspended by the commission due to an unsatisfactory compliance history (CH) rating on or after September 1, 2025, then the entity may not be eligible to discharge under a general permit until the executive director (ED) actively authorizes the discharger to use the general permit; and (2) add paragraph (h-2) prohibiting the ED from using an automated process to approve or authorize an application under a general permit following the denial or suspension of a general permit authorization ordered on or after September 1, 2025, due to an unsatisfactory CH rating.

HB 2694 originally amended TWC, §26.040, to revise subsection (h) regarding that the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if discharger's CH is unsatisfactory.

The rulemaking proposes to amend §205.4 to address the denial or suspension and re-authorization of a discharger that is classified as an unsatisfactory performer under 30 TAC §60.2. The rulemaking will clarify that: (1) the ED shall deny authorization to discharge under an existing general permit if the discharger has an unsatisfactory rating; (2) once a discharger authorized under a general permit has been denied an authorization, the ED must actively authorize the discharger to use the general permit; and (3) an automated process cannot be used to approve or authorize an application under a general permit following the denial or suspension of a general permit.

Section by Section Discussion

Proposed amended §205.4, *Authorizations and Notices of Intent*, would be revised to add subparagraph §205.4(c)(2)(G) to clarify that an unsatisfactory CH rating is an additional reason that the executive director shall deny authorization to discharge under an existing general permit.

Proposed subparagraph §205.4(d)(4)(F) would be revised to clarify that an unsatisfactory CH rating is an additional reason that the executive director shall suspend an authorization to discharge under an existing general permit.

Proposed subsection §205.4(e) would add that an unsatisfactory CH rating shall be an additional reason to suspend a discharger's authority to discharge under a general permit.

Proposed paragraph §205.4(e)(1) would establish that on or after September 1, 2025, any discharger authorized under a general permit that has been denied or suspended under part (e) of this section shall not be eligible to discharge under a general permit until the executive director actively authorizes the discharger to use the general permit.

Proposed paragraph §205.4(e)(2) would establish that once an applicant has regained a satisfactory CH rating, the ED shall not utilize an automated process to approve or authorize the discharger that was denied or suspended under part (e) of this section.

Fiscal Note: Costs to State and Local Government

Kyle Girtten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girtten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with state law, including existing statutory language and requirements in SB 1302 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not meet the definition of a “Major environmental rule” as defined in §2001.0225(g)(3). A “Major environmental rule” is a rule, the specific intent of which is

to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Office of Water is initiating rule changes to amend 30 TAC Chapter 205 to implement SB 1302, which amended TWC, §26.040. Specifically, the proposed rules will amend 30 TAC §205.4 to clarify that: (1) ED shall deny authorization to discharge under an existing general permit if the discharger has an unsatisfactory CH rating; (2) once a discharger authorized under a general permit has been denied an authorization on or after September 1, 2025, the discharge shall not use the general permit unless ED actively authorizes the discharger to use the general permit; and (3) an automated process cannot be used to approve or authorize an application under a general permit following the denial or suspension of a general permit ordered on or after September 1, 2025, due to an “Unsatisfactory” CH rating.

The proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the TGC, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather adds clarity to the rules that implement state law. Third, this rulemaking does not come under a delegation agreement or contract with a federal program, and finally, is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under existing state law found in TWC, Chapter 26 (Water Quality Control) and §26.040 that gives the commission authority to issue general permits to authorize the discharge of waste into or adjacent to waters in the state. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at

the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

TCEQ evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The specific purpose of the proposed rulemaking is to amend 30 TAC §205.4 (General Permits for Waste Discharges) to address the denial or suspension and re-authorization of a discharger that is classified as an unsatisfactory performer under 30 TAC §60.2.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rule amendments will not be a

statutory or constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These Chapter 205 rule amendments do not regulate property but instead address the denial or suspension and re-authorization of a discharger that is classified as an unsatisfactory performer under 30 TAC §60.2. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory

Committee and determined that the rulemaking is administrative and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on September 28, 2026, at 10:00 a.m. in building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons.

Individuals may present oral statements when called upon in order of registration.

Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, September 24, 2026. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the

hearing. Instructions for participating in the hearing will be sent on Friday, September 25, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

<https://events.teams.microsoft.com/event/2a383d9c-6ec5-4e8b-8b09-8e5909e50ddb@871a83a4-a1ce-4b7a-8156-3bcd93a08fba>

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2026-016-205-OW. The comment period closes at 11:59 p.m. on September 29, 2026. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Shannon Gibson, TCEQ's Water Quality Division, (512) 239-4284.

SUBCHAPTER A: GENERAL PERMITS FOR WASTE DISCHARGES

§205.4

Statutory Authority

The Texas Commission on Environmental Quality (the commission or TCEQ) proposes these amendments to TCEQ's rules under the authority of Texas Water Code (TWC), Chapters 5 and 26.

The proposed amendments are proposed under and implement TWC, §26.040, which provides the commission with the authority to regulate certain waste discharges by general permit, and TWC, §26.040(m), which authorizes the commission to adopt rules as necessary to implement TWC, §26.040.

TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.011, provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.027, authorizes the commission to issue permits for the discharge of waste or pollutants

into or adjacent to water in the state.

§205.4. Authorizations and Notices of Intent.

(a) A qualified discharger may obtain authorization to operate under a general permit by complying with the general permit's conditions for gaining coverage.

(1) A general permit shall specify either an applicable deadline for filing the notice of intent (NOI), or that an NOI is not required prior to commencement of a qualifying discharge.

(2) No new discharge under the authority of a general permit may commence after a general permit has expired.

(3) For those general permits requiring an NOI, a discharger may begin discharging under the general permit after the date or period of time specified in the general permit unless the executive director or commission before that time notifies the discharger pursuant to subsections (c) or (e) of this section that the discharger is not eligible for authorization under the general permit.

(4) The executive director shall provide written notice to a discharger if the executive director determines that the discharger is not eligible for authorization under the general permit. The content of the notice is described in subsections (c) and (d) of this section.

(5) An NOI shall be submitted 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 following requirements apply to existing individual permittees.

(1) The general permit shall specify how a discharger covered by an individual permit may substitute authorization to discharge waste under the general permit. At a minimum, the general permit shall provide that coverage under the general permit shall not commence until:

(A) the permittee has submitted an NOI, if one is required by the general permit, as specified by subsection (f) of this section; and

(B) the executive director has received the discharger's written request that the individual permit be canceled or amended, as appropriate.

(2) The general permit may allow a discharger who is covered by an individual permit to obtain authorization to discharge waste from a new outfall under a general permit. Agency action on a new discharge does not affect the status of the discharger's existing individual permit. The general permit shall describe how to obtain authorization to discharge waste from a new outfall. Authorization under the general permit shall not commence until the discharger:

(A) submits an NOI, if one is required by the general permit, as specified in subsection (f) of this section; and

(B) requests and receives written approval from the executive director of a minor modification to their individual permit exempting the new outfall from coverage under the individual permit.

(3) Except as provided under subsection (b)(2) of this section, the commission shall cancel an individual permit if the executive director or commission does not deny the NOI or authorization under subsection (c) or (e) of this section.

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

(1) The executive director shall provide written notice to a discharger if the executive director denies the discharger's NOI or authorization to discharge 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 discharge under an existing general permit for the following reasons:

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

(B) the discharge is required to be authorized under the Texas Pollutant Discharge Elimination System (TPDES), and discharging under the general permit would result in backsliding prohibited under 40 Code of Federal Regulations §122.44(l), as amended and adopted under §305.531(3) of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(C) the discharge causes a violation of the Texas Surface Water Quality Standards;

(D) the discharge is located where it causes or could cause an adverse impact upon a critical area, as defined in 31 TAC §501.3 (relating to Definitions and Abbreviations), and there is a suitable location that is available and capable of being used in light of cost, technology, and logistics;

(E) the discharger 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;

(F) the discharge would be inconsistent with the state water quality management plan (WQMP).

(G) the discharger has an unsatisfactory compliance history rating.

(3) The executive director may deny authorization to discharge 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 discharge necessary to be implemented to meet applicable federal or state standards;

(B) specific effluent limitation guidelines are promulgated for a discharge covered by the general TPDES permit, but the general permit has not yet been amended to incorporate the new effluent limitation guidelines;

(C) the owner and/or the operator of the facility has not filed an NOI in accordance with §305.43 of this title (relating to Who Applies);

(D) the discharger 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;

(E) the discharge contains pollutants that cause significant adverse effects to water quality. In making this determination, the executive director shall consider the following factors:

(i) the location of the discharge;

(ii) the size of the discharge;

(iii) the quantity and nature of pollutants discharged;

(iv) whether the discharge would adversely affect groundwater quality, inconsistent with the policy specified in TWC, §26.401; and

(v) other factors relating to the protection of water quality standards; and

(F) the discharger 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.

(4) If authorization to discharge 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 discharger is seeking to replace its individual permit with general permit coverage, but the discharger's general permit authorization is denied, the discharger shall apply for renewal of the individual permit prior to the expiration date of its individual permit to maintain authorization to discharge, in accordance with §305.63 of this title (relating to Renewal).

(d) The following requirements apply to suspensions of authorizations and NOIs.

(1) The general permit shall describe the procedures for suspension of authorization and NOIs under a general permit. The general permit shall require the executive director to provide written notice to a discharger that the executive director

intends to suspend a discharger's authority to discharge under a general permit,
including:

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

(B) a statement of whether the discharger shall immediately cease
the discharge;

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

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

(2) Except for suspensions under paragraph (5)(F) of this subsection
relating to storm water discharges, if a discharger's authorization under a general
permit is suspended, the discharger shall immediately cease the discharge.

(3) The executive director may require the person whose authorization to discharge is suspended to apply for and obtain an individual permit.

(4) After providing written notice to the discharger, the executive director shall suspend authorization to discharge under an existing general permit for the following reasons:

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

(B) the discharge causes a violation of the Texas Surface Water Quality Standards;

(C) the discharger 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;

(D) the discharge is inconsistent with the state WQMP;

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

(F) the discharger has an unsatisfactory compliance history rating.

(5) After providing written notice to the discharger, the executive director may suspend authorization to discharge 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 discharge necessary to be implemented to meet applicable federal or state standards;

(B) specific effluent limitation guidelines are promulgated for a discharge covered by the general TPDES permit, but the general permit has not yet been amended to incorporate the new effluent limitation guidelines;

(C) the owner and/or the operator of the facility has not filed an NOI in accordance with §305.43 of this title;

(D) circumstances have changed since the time of the NOI so that the discharge is no longer appropriately controlled to meet applicable water quality standards under the general permit, or either a temporary or permanent reduction, or elimination of the authorized discharge is necessary;

(E) the discharger 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;

(F) the discharge contains pollutants that cause significant adverse effects to water quality. In making this determination, the executive director shall consider the following factors:

(i) the location of the discharge;

(ii) the size of the discharge;

(iii) the quantity and nature of pollutants discharged;

(iv) whether the discharge would adversely affect groundwater quality, inconsistent with the policy specified in the TWC, §26.401; and

(v) other factors relating to the protection of water quality standards; and

(G) the discharger 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 discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history rating is unsatisfactory or 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.

(1) On or after September 1, 2025, any discharger authorized under a general permit that has been denied or suspended under subsections (c)(2)(G), (d)(4)(F), or (e) of this section shall not be eligible to discharge under a general permit until the executive director actively authorizes the discharger to use the general permit, as described in (2) below.

(2) The executive director may not utilize an automated process to approve or authorize an application under a general permit following the denial or suspension of a general permit, ordered on or after September 1, 2025, due to an unsatisfactory compliance history rating, under subsections (c)(2)(G), (d)(4)(F), or (e) of this section.

(f) The general permit shall describe the content of the NOI, if one is required by the general permit. At a minimum, the NOI shall require the submission of information necessary for adequate program implementation including, at a minimum, the legal name and address of the owner and operator, the facility name and address, specific description of its location, type of facility or discharges, and the receiving water(s). An NOI shall be signed in accordance with §305.44 of this title (relating to Signatories to Applications).

(g) Unless otherwise provided in the general permit or in §305.53 of this title (relating to Application Fee), a person seeking authorization by general permit shall submit a \$100 application fee payable to the agency at the time of filing an NOI. If a person is denied coverage under the general permit in accordance with subsection (c) or (e) of this section, any application fee will be applied to the application fee required for an individual permit application for the same discharge.

(h) The general permit shall require a person authorized to discharge waste under a general permit to submit up-to-date information to the executive director in a notice of change within a specified period of time prior to a change in previous information provided to the agency or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. In cases where the general permit requires that an NOI be submitted, the general permit shall require that when the ownership of the facility changes or is transferred, a notice of termination be submitted by the present owner, and a new NOI be submitted by the new owner, not later than ten days prior to the change in ownership.

(i) When requested by a county or municipality, the commission may establish a provision in a general permit for notification by the discharger to a county judge or mayor of a municipality of NOIs that would allow discharges within their respective jurisdiction. If the executive director or commission denies authorization for a proposed discharge in the county or municipality, the executive director shall notify the county judge or mayor.

(j) The executive director's decisions on NOIs under this chapter are subject to §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).