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TEXAS WATER COMMISSION

CHAPTER 281. APPLICATIONS PROCESSING

APPLICATIONS PROCESSING

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Authority: The provisions of this chapter issued under Texas Water Code §5.103 and §5.105.

APPLICATIONS PROCESSING

§ 281.1. Purpose

It is the intent of the Texas Water Commission to establish a general policy for the processing of applications for permits, licenses and other types of approvals in order to achieve the greatest efficiency and effectiveness possible. To this end, it is the policy of the commission that applications for permits, licenses, and other types of approvals listed in §281.2 of this title (relating to Applicability) be processed by the executive director according to the schedule established in this chapter.

Source: The provisions of this §281.1 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.2. Applicability

These sections are applicable to the processing of:

- (1) applications for new, amended, or renewed water use permits, certificates of adjudication and certified filings, and extensions of time to commence and/or complete construction of water use facilities;
- (2) applications for new, amended or renewed wastewater discharge permits;
- (3) applications for new, amended or renewed injection well permits, except those filed

pursuant to §331.11 of this title (relating to Application Required for Existing Wells);

(4) applications for new, amended, or renewed industrial solid waste permits filed pursuant to §335.2 of this title (relating to Permit Required) and §335.43 of this title (relating to Permit Required) or for new or amended compliance plans filed pursuant to §305.401 of this title (relating to Groundwater Compliance Plan);

(5) applications for plan approval of reclamation projects (levees, etc.);

(6) applications for creation of water districts;

(7) water district applications and petitions requiring commission approval;

(8) applications for weather modification permits and licenses; and

(9) applications for new or amended certificates of convenience and necessity.

Source: The provisions of this §281.2 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987, 12 TexReg 2102.

§ 281.3. Initial Review

(a) Applications for permits, licenses, or other types of approvals, except as provided in subsection (b) of this section, shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application by the executive director.

(b) Applications made under §335.43 of this title (relating to Permit Required) or §331.7 of this title (relating to Permit Required) shall be reviewed by the staff for administrative completeness within 15 working days after assignment of the application to a staff member for review under this section. Prior to commencement of review of an application under this section, the executive director shall notify the applicant by first-class mail of the date on which the review will commence.

(c) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, applicants for existing hazardous waste management facilities shall have 30 days from receipt of notice of deficiency in a Part A permit application to respond to the notification and to explain or cure the alleged deficiency in the Part A application. Applicants shall be afforded this opportunity to cure the

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deficiencies before the executive director may pursue enforcement action concerning deficient applications.

Source: The provisions of this § 281.3 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987, 12 TexReg 2102.

§ 281.4. Applications for Use of State Water

Applications for the use of state water must include:

- (1) complete application form(s), signed and notarized;
- (2) the payment of fees in accordance with §§ 295.131-295.139 of this title (relating to Water Use Permit Fees);
- (3) the verified legal status of the applicant;
- (4) appropriate ownership documents (including easements and consents);
- (5) an adequate map or plat;
- (6) the required engineering plans or studies; and
- (7) any other information as the executive director or the commission may reasonably require.

Source: The provisions of this § 281.4 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.5. Application for Wastewater Discharge, Underground Injection, Hazardous Waste, and Industrial Solid Waste Management Permits

Applications for wastewater discharge, underground injection, hazardous waste, and industrial solid waste management permits include:

- (1) complete application form(s), signed and notarized, and appropriate copies provided;
- (2) the payment of fees;
- (3) the verified legal status of the applicant;
- (4) the signature of the applicant, checked against agency requirements;
- (5) the attachment of technical reports and supporting data required by the application;
- (6) a list of adjacent and potentially affected landowners and their address along with a map locating the property owned by these persons; and
- (7) any other information as the executive director or the commission may reasonably require.

Source: The provisions of this § 281.5 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987, 12 TexReg 2102.

§ 281.6. Applications for Plan Approval of Reclamation Projects

Applications for plan approval of reclamation projects must include:

- (1) complete application form(s), signed and notarized;
- (2) an engineering report and supporting data; and
- (3) a list of adjacent and potentially affected landowners along with a map locating the land owned by these persons; and
- (4) any other information as the executive director or the commission may reasonably require.

Source: The provisions of this § 281.6 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.7. Applications for Weather Modification Permits

Applications for weather modification permits and licenses must include:

- (1) complete application form(s);
- (2) the payment of fees;
- (3) for weather modification permits, a notice of intention approved in form by the executive director in accordance with § 289.17 of this title (relating to Notice of Intention); and
- (4) any other information as the executive director or the commission may reasonably require.

Source: The provisions of this § 281.7 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.8. Application for Local Sponsor Designation

(a) An application for designation as the local sponsor of a project under the Texas Water Code, § 16.092, shall include:

- (1) a detailed description of the proposed project, including the location and purpose(s) of the project;
- (2) the reasons for the application;
- (3) the contemplated use of water the applicant might derive from the project if a permit for use is subsequently granted by the commission; and

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(4) the contribution the applicant is prepared to make up to the planning and/or development of the project.

Source: The provisions of this §281.8 adopted to be effective December 16, 1987, 12 TexReg 4530.

§ 281.16. Applications for Certificates of Convenience and Necessity

Applications for certificates of convenience and necessity must include:

(1) Three copies of the appropriate application form prescribed by the executive director, completed as instructed, and properly executed.

(2) Territorial maps filed in support of such application for initial or amended certificates that fulfill the following requirements.

(A) For water and sewer utilities, the area to be served shall be shown on a state highway county map, scale one inch equals two miles. It shall clearly define the proposed location of the applicant and each neighboring water or sewer utility within five miles of applicant's present location, and service boundaries shall conform to verifiable landmarks such as roads, creeks, railroads, etc. Facilities shall be shown on United States Geological Survey 7 1/2-minute series maps, subdivision plats, engineering planning maps, or other large scale maps.

(B) Three copies of each map shall be filed.

(C) Separate maps shall be filed for each county in which the reporting utility operates.

(D) If applicable, the map shall separately indicate the production facilities, transmission facilities, and distribution facilities as located within the territory claimed. A color code may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facility can be located on the ground from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location.

(3) Three copies of any evidence as required by the commission to show that the applicant has received the required consent or permit of any other public authority having jurisdiction, for example, municipalities.

(4) Any other information as the executive director or the commission may reasonably require.

Source: The provisions of this §281.16 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.17. Notice of Receipt of Application and Declaration of Administrative Completeness

(a) Applications for use of state water. If an application for the use of state water, other than for a permit under §297.13 of this title (relating to Temporary Permit) or §297.17 of this title (relating to Emergency Permit), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing or publishing, and a brief technical summary of the application to assist the chief clerk. The executive director shall forward a copy of the statement and brief technical summary to the chief clerk, along with a copy of the application. The chief clerk shall notify every person entitled to notification of the filing of an application under §295.153 of this title (relating to Notice by Mail) by mail in the manner provided therein.

(b) Applications for temporary permits to use state water. If an application for a temporary permit, other than a provisional temporary permit under §295.181 of this title (relating to Applications for Temporary Permits; Provisional Issuance in Certain Cases), for the use of state water is received containing the required information and attachments required by §281.4 of this title (relating to Applications for Use of State Water) as set forth therein, the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing or publishing, and shall forward a copy of the statement to the chief clerk. The chief clerk shall mail a copy of the statement of the receipt of the application and declaration of administrative completeness to every water rights holder of record with the commission who would be entitled to notice of hearing under §295.154 of this title (relating to Notice for Temporary Water Use Permit).

(c) Applications for provisional temporary permits to use state water. When an application for a provisional temporary permit for the use of state water under §295.181 of this title (relating to Application for Temporary Permits; Provisional Issuance in Certain Cases), is received containing

the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the chief clerk shall cause notice of the receipt of the application and declaration of administrative completeness to be published in the Texas Register. The chief clerk may include in the notice other information concerning the disposition of the application.

(d) Other applications. Upon receipt of an application described in §281.2(2)-(9) of this title (relating to Applicability) which contains the information and attachments required by §§281.5-281.7 and 281.16 of this title (relating to Application for Wastewater Discharge, Underground Injection, Hazardous Waste and Industrial Solid Waste Management Permits; Applications for Plan Approval of Reclamation Projects; Applications for Weather Modifications Permits; and Applications for Certificates of Convenience and Necessity), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification of a particular application under the rules of the commission.

(e) Notice requirements. The notice of receipt of the application and declaration of administrative completeness shall contain the following information:

- (1) the identifying number given the application by the commission;
- (2) the type of permit or license sought under the application;
- (3) the name and address of the applicant;
- (4) the date on which the application was submitted; and
- (5) a brief summary of the information included in the application.

(f) Notice of application and draft permit. Nothing in this section shall be construed so as to waive the requirement of notice of the application and draft permit in accordance with §§305.91-305.105 of this title (relating to Actions, Notice, and Hearing) for applications for wastewater discharge, underground injection, and hazardous waste and industrial solid waste management permits.

Source: The provisions of this §281.17 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.18. Applications Returned

(a) If an application or petition is received which is not administratively complete, the staff shall notify the applicant of the deficiencies prior to expiration of the applicable review period established by §281.3(a) and (b) of this title (relating to Initial Review) by certified mail return receipt requested. If the additional information is received within 30 days of receipt of the deficiency notice, the staff will evaluate the information within eight working days and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). If the required information is not forthcoming from the applicant within 30 days of the date of receipt of the deficiency notice, the executive director shall return the incomplete application to the applicant.

(b) For applications involving industrial solid waste or municipal hazardous waste, the executive director may extend the response time to a maximum of 270 days upon sufficient proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this chapter, the application shall be considered withdrawn.

Source: The provisions of this §281.18 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective December 16, 1987, 12 TexReg 4530.

§ 281.19. Technical Review

(a) After an application is determined by the staff to be administratively complete on its face, the staff shall commence a technical review as necessary and appropriate. For purposes of these sections, the technical review period is that period of time beginning with the completion of the initial review period and will continue for a period of time not to exceed 75 working days. In the case of applications filed under §291.102 of this title (relating to Certificate Required), the technical review period is that period of time beginning 30 days after notice of the application has been given in accordance with §291.109 (relating to Notice and Hearing for Applications for Certificates of Convenience and Necessity) and will continue for a period of time not to exceed 75 working days. In the case of applications filed under §335.43 of this title (relating to Permit Required)

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or §331.7 of this title (relating to Permit Required), the technical review period shall commence upon assignment of the application to a staff member and continue for a period of time not to exceed 120 days.

(b) The applicant shall be promptly notified of any additional technical material as may be necessary for a complete staff review. If the applicant provides the information within the period of time prescribed by subsection (a) of this section, the staff will complete processing of the application within the technical review period extended by the number of days required for the additional data. If the necessary additional information is not received by the executive director prior to expiration of the technical review period and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director may return the application to the applicant. In no event, however, will the applicant have less than 30 days to provide the technical data before an application is returned. Decisions to return material to the applicant during the technical review stage will be made on a case by case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision instead of having the application returned.

Source: The provisions of this §281.19 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.20. Extension

If the staff determines that the technical review of an application cannot be completed within the period of time prescribed by §281.19(a) of this title (relating to Technical Review), the staff will furnish the executive director or his designee with written information regarding the reasons which necessitate the delay and the amount of additional time required by the staff to complete the review. Any extension of the period for technical review must be approved by the executive director or his designee in writing.

Source: The provisions of this §281.20 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.21. Draft Permit and Compliance Summary

(a) The provisions of this section are applicable to applications for waste disposal activities conducted under the authority of the Texas Water Code, Chapters 26 and 27, and the Texas Solid

Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

(b) The executive director shall prepare a draft permit consistent with all applicable commission rules, unless a recommendation is made not to grant an application. The draft permit will be filed with the commission to be included in the consideration of the application for permit and is subject to change during the course of the proceedings on the application. The draft permit shall be available for public review.

(c) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The executive director shall send this summary together with the draft permit to the applicant and on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft permit;

(2) the type and quantity of wastes, fluids, or pollutants which are proposed to be or are being processed, stored, disposed of, injected, emitted, or discharged;

(3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(4) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(5) a description of the procedures for reaching a final decision on the draft permit, including procedures whereby the public may participate in the final decision; and

(6) the name and telephone number of any person to contact for additional information.

(d) The executive director shall prepare a summary which describes the compliance status of persons applying for permits issued under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7; the Injection Well Act, Texas Water Code, Chapter 27; and the Water Quality Control Act, Texas Water Code, Chapter 26. For applications filed under the Texas Solid Waste Disposal Act or the Injection Well Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the Texas Water Commission under the authority of both statutes. For applications filed under the

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Water Quality Control Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the Texas Water Commission under the authority of the Texas Water Code. Upon completion of technical review and prior to issuance of public notice in accordance with §§305.91-305.105 of this title (relating to Actions, Notice and Hearing), the executive director shall send the compliance summary, together with the draft permit and technical summary, if applicable, to the applicant and on request, to any other person. The compliance summary shall include information relative to the site which is the subject of the current application as well as other facilities owned or operated by the applicant which are under the commission's jurisdiction whether permitted or not. The summary shall cover at least the two-year period preceding the date on which technical review is complete and shall include:

- (1) the date(s) and description of any citizen complaints received;
- (2) the date(s) of all agency inspections;
- (3) for each inspection, whether a condition of noncompliance was alleged by the inspector and a brief description of the resulting environmental impact;
- (4) the date(s) of any agency enforcement action and the applicant's response to such action;
- (5) for applicable facilities, the date(s) and description of any incident the applicant reported to the agency which required implementation of the facility's contingency plan; and
- (6) the name and telephone number of a person to contact for additional information regarding compliance history.

Source: The provisions of this §281.21 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.22. Referral to Commission

(a) When administrative and technical review has been completed, the application shall be forwarded to the commission for filing and setting. For the purpose of providing adequate notice, the executive director shall include a recommendation to the commission of the area wherein the application, if granted, would have a potential impact, and a mailing list of persons who may be affected.

(b) For applications involving hazardous waste, the commission shall not issue a permit before receiving a complete application for a permit. However, a facility may be eligible for a permit by rule or may be subject to an emergency order.

Source: The provisions of this §281.22 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987, 12 TexReg 2102.

§ 281.23. Application Amendment

No amendments to application which would constitute a major amendment under the terms of §305.62 of this title (relating to Amendment) can be made by the applicant after the chief clerk has issued notice of the application and draft permit pursuant to §§305.91-305.105 of this title (relating to Actions, Notice and Hearing), unless new notice is issued which includes a description of the proposed amendments to the application. For purposes of this section, an attempted transfer of an application shall constitute an amendment requiring additional notice.

Source: The provisions of this §281.23 adopted to be effective May 28, 1986, 11 TexReg 2312.

§ 281.24. Effect of Rules

The time limits set out in these rules are not jurisdictional.

Source: The provisions of this §281.24 adopted to be effective May 28, 1986, 11 TexReg 2312.

CHAPTER 285. PRIVATE SEWAGE FACILITIES

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