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CHAPTER 281. APPLICATIONS PROCESSING

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Authority: The provisions of this Chapter 281 issued under the Texas Water Code, §5.103 and §5.105.

Cross References: This Chapter cited in 30 TAC §120.15, (relating to Responsibility for Review of Air Quality Impacts from

Existing, New, and Modified Facilities); 30 TAC §293.5, (relating to Petition to Commission); 30 TAC §293.6, (relating to Applications Processing Requirements); 30 TAC §301.37, (relating to Referral of Application to Commission); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.122, (relating to Registrations and Permits); 30 TAC §329.9, (relating to Procedures for Application); 30 TAC §330.51, (relating to Permit Application for Municipal Solid Waste Facilities); 30 TAC §335.365, (relating to Responsibility for Review of Air Quality Impacts from Existing, New, and Modified Facilities).

SUBCHAPTER A. APPLICATIONS PROCESSING

§ 281.1. Purpose

It is the intent of the Texas Natural Resource Conservation 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, except as provided by implementation of the prioritization procedure for commercial hazardous waste management facility permit applications under §§281.30-281.32 of this title (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste; Definitions; Prioritization Process).

Source: The provisions of this §281.1 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective November 7, 1994, 19 TexReg 8542.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director).

§ 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 modified or renewed industrial solid and/or municipal hazardous 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 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;

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

(10) applications for new, amended, or renewed municipal solid waste permits.

Source: The provisions of this §281.2 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987, 17 TexReg 2102; amended to be effective January 7, 1993, 17 TexReg 9124; amended to be effective November 7, 1994, 19 TexReg 8542.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.1, (relating to Purpose); 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

§ 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 Health and Safety Code, Chapter 361, 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 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, 17 TexReg 2102; amended to be effective January 7, 1993, 17 TexReg 9124.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.18, (relating to Applications Returned); 30 TAC §305.53, (relating to Application Fee); 30 TAC §330.52, (relating to Technical Requirements of Part I of the Application); 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.202, (relating to Definitions).

§ 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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §295.2, (relating to Preparation of Application).

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

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

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- (1) complete application form(s), signed and notarized, and appropriate copies provided;
- (2) the payment of fees, if applicable;
- (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; amended to be effective January 7, 1993, 17 TexReg 9124.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §330.52, (relating to Technical Requirements of Part I of the Application).

§ 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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

§ 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;

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(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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

§ 281.8. Application for Local Sponsor Designation

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
- (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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director).

§ 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 ½-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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

§ 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) or (5)-(10) 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; Applications for Solid Waste Management Permits; Applications for Plan Approval of Reclamation Projects; Applications for Weather Modification 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. Upon receipt of an application for a new, amended, or renewed injection well permit, except those filed

pursuant to §331.8 of this title (relating to Application Required for Existing Wells) for a new, amended, or renewed industrial solid waste permit or for a new or amended compliance plan as described in §281.2(3) and (4) of this title, 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 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, or for applications for a new, amended, or renewed injection well permit, except those filed pursuant to §331.8 of this title (relating to Application Required for Existing Wells), or for a new or amended compliance plan as described in §281.2(3) and (4) of this title (relating to Applicability), the notice of receipt of the application, 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, municipal solid waste, and industrial solid waste management permits.

Source: The provisions of this §281.17 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective November 5, 1990, 15 TexReg 6126; amended to be effective January 7, 1993, 17 TexReg 9124.

Cross References: This Section cited in 30 TAC §120.31, (relating to Specific Air Emissions Requirements for New, Modified, and Existing Hazardous or Solid Waste Management Facilities); 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.18, (relating to Applications Returned); 30 TAC §295.201, (relating to Filing of Instruments); 30 TAC §335.367, (relating to Specific Air Emissions Requirements for Hazardous or Solid Waste Management Facilities); 30 TAC §338.94, (relating to Applications); 30 TAC §340.37, (relating to Applications for Licenses and Renewals).

§ 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, hazardous, or municipal 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. However, if applicable, the applicant is responsible for the cost of any notice provided pursuant to §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness) and the costs of such notice shall be deducted from any filing fees submitted by the applicant prior to return of the incomplete application.

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; amended to be effective November 5, 1990, 15 TexReg 6126; amended to be effective January 7, 1993, 17 TexReg 9124.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §312.10, (relating to Permit and Registration Applications Processing); 30 TAC §330.52, (relating to Technical Requirements of Part I of the Application).

§ 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

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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 of this title (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) 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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.20, (relating to Extension); 30 TAC §312.10, (relating to Permit and Registration Applications Processing).

§ 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 necessi-

tate 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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §312.10, (relating to Permit and Registration Applications Processing).

§ 281.21. Draft Permit, Technical Summary, Fact Sheet, 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 Health and Safety Code, Chapter 361.

(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

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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 Health and Safety Code, Chapter 361; 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 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.

(e) Additional conditions for TPDES draft permits and fact sheets are as follows.

(1) TPDES draft permits shall include the information required by 40 Code of Federal Regulations (CFR) §124.6(c)-(e), as in effect on the date of TPDES program authorization, as amended, which is adopted by reference.

(2) A fact sheet shall be prepared for a TPDES permit and shall include the information required by 40 CFR §124.56, as in effect on the date of TPDES program authorization, as amended, which is adopted by reference.

Source: The provisions of this §281.21 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective October 8, 1990, 15 TexReg 5490; amended to be effective January 7, 1993, 17 TexReg 9124.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.41, (relating to Condition of Approval); 30 TAC §281.43, (relating to Consistency Determination); 30 TAC §312.10, (relating to Permit and Registration Applications Processing); 30 TAC §331.121, (relating to Class I Wells).

§ 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 permit. However, a facility may be eligible for a permit by rule or may be subject to an emergency order.

(c) After an application under this section for a permit authorizing proposed commercial hazardous waste management units providing new or previously unpermitted capacity is determined by the executive director to be technically complete, the executive director shall prepare a summary of the most recent information on the need for the proposed processing or disposal technology, including the following information:

(1) estimated current statewide capacity for the technology;

(2) projected estimated statewide demand from the most recent Needs Assessment, as defined

under §281.31 of this title (relating to Definitions);

(3) regional factors documented by the applicant if a regional need has been demonstrated; and

(4) any other waste management information deemed relevant by the executive director.

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; amended to be effective November 7, 1994, 19 TexReg 8542.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.41, (relating to Condition of Approval); 30 TAC §281.43, (relating to Consistency Determination); 30 TAC §312.10, (relating to Permit and Registration Applications Processing).

§ 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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §312.10, (relating to Permit and Registration Applications Processing); 30 TAC §321.187, (relating to Public Comments).

§ 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.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §312.10, (relating to Permit and Registration Applications Processing).

§ 281.25. Additional Facilities and Projects for Which TPDES Permits Are Required

The following regulations contained in 40 Code of Federal Regulations (CFR) Part 122, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference.

(1) Part 122, Subpart 1B—Permit Applications and Special TPDES Program Requirements, §122.23, requiring permits for concentrated ani-

mal feeding operations. The adoption of 40 CFR §122.23 does not apply to Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations) where discharges are prohibited.

(2) Part 122, Subpart B—Permit Applications and Special TPDES Program Requirements, §122.24, requiring permits for concentrated aquatic animal production facilities, except 40 CFR §122.24(c)(2).

(3) Part 122, Subpart B—Permit Applications and Special TPDES Program Requirements, §122.25, requiring permits for discharges into aquaculture projects.

(4) Part 122, Subpart B—Permit Applications and Special TPDES Program Requirements, §122.26, requiring permits for storm water discharges.

(5) Part 122, Subpart B—Permit Applications and Special TPDES Program Requirements, §122.27, requiring permits for silvicultural activities.

Source: The provisions of this §281.25 adopted to be effective October 8, 1990, 15 TexReg 5490.

§ 281.26. Applications for New Commercial Hazardous Waste Management Facility Permits

The commission shall not process an application for a permit for a new commercial hazardous waste management facility unless the applicant provides the evidence or demonstration required under §305.50(12)(C)(i) or (ii) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

Source: The provisions of this §281.26 adopted to be effective November 7, 1991, 16 TexReg 6051.

§ 281.30. Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications

(a) The following applications for permitting of new capacity at commercial hazardous waste management facilities shall be prioritized as specified in §281.32 of this title (relating to Prioritization Process):

(1) permit applications submitted after the effective date of this section; and

(2) permit applications submitted prior to the effective date of this section, except as provided under subsection (b) of this section.

(b) Prioritization in accordance with §281.32 of this title (relating to Prioritization Process) shall not be made for applications for permitting of new capacity at commercial hazardous waste management facilities for which notice under §305.100 of this title (relating to Notice of Application) has been issued prior to the effective date of this section.

(c) Sections 281.30-281.32 of this title (relating to Application Processing) do not apply to an application for permitting of unit(s) at a commercial hazardous waste management facility if the unit(s) is to be used solely for the management of wastes generated at the facility which are not the result of commercial hazardous waste management activities.

(d) Nothing in this rule shall limit the ability of the commission to prioritize any permit application.

Source: The provisions of this §281.30 adopted to be effective November 7, 1994, 19 TexReg 8542.

Cross References: This Section cited in 30 TAC §281.1, (relating to Purpose); 30 TAC §281.30, (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications).

§ 281.31. Definitions

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

Commercial hazardous waste management facility—Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

Current management practice(s)—The most commonly used technologies for processing or land disposing of targeted waste stream(s) generated in the State of Texas, as evidenced by the most recent computerized annual or monthly waste management reports submitted by waste handlers to the commission.

Needed technology—A technology included in Table 2 of the Executive Summary of the most recent publication of the Needs Assessment. Tech-

nologies on Table 2 of the Executive Summary of the Needs Assessment are demonstrated processing or disposal technologies which are needed on a statewide basis.

Needs assessment—Texas Natural Resource Conservation Commission document entitled "Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas," dated February 28, 1992, and its amendments or updates, a copy of which is available for inspection at the library of the Texas Natural Resource Conservation Commission, located at 12118 North Interstate Highway 35, Building A, Austin, Texas.

New capacity—Unpermitted volume, quantity, or rate of throughput for the management of hazardous waste at a hazardous waste management facility provided by any of the following: proposed units or systems; interim status units or systems; or modifications to permit operating conditions, such that additional quantities or types of waste would be managed.

Table 2—Table 2 of the Executive Summary of the most recent publication of the commission document entitled "Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas" dated February 28, 1992, and its amendments or updates, a copy of which is available for inspection at the library of the Texas Natural Resource Conservation Commission, located at 12118 North Interstate Highway 35, Building A, Austin, Texas.

Targeted waste stream(s)—A hazardous waste stream(s) generated in the State of Texas which will be managed by a specific technology at a specific facility. The applicant shall define targeted waste streams, by EPA hazardous waste numbers and the form of the waste, or by other identifiers approved in writing by the executive director.

Source: The provisions of this §281.31 adopted to be effective November 7, 1994, 19 TexReg 8542.

Cross References: This Section cited in 30 TAC §281.1, (relating to Purpose); 30 TAC §281.22, (relating to Referral to Commission); 30 TAC §281.30, (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications).

§ 281.32. Prioritization Process

(a) This section specifies how an application for a commercial hazardous waste management facility shall be designated as expedited.

(b) For permit applications received after the effective date of this section, prioritization will occur at the time of receipt of a Part B hazardous waste permit application.

(c) Permit applications for storage capacity at the same facility or a different facility owned by the same parent company which also offers recycling, processing, or disposal services shall have the same priority as the recycling, treatment, or disposal technology with which it is associated.

(d) Prioritization of permit applications for needed, innovative, or regional technologies shall be as follows.

(1) If the technology covered by the application is not identified on Table 2, the applicant may submit the information described under subsections (e) or (f) of this section. If all processing and/or land disposal capacity included in the permit is associated with a needed or demonstrated innovative or regional technology, then the application is designated as expedited.

(2) If more than 70% of the total maximum annual throughput capacity of recycling, processing, and disposal units or process trains covered by the application is associated with a needed or demonstrated innovative or regional technology, then the application is designated as expedited subject to the following applicable requirements.

(A) The applicant must specify whether or not each hazardous waste recycling, processing, or disposal unit is a needed or demonstrated innovative or regional technology.

(B) The applicant must specify whether or not each hazardous waste recycling, processing, or disposal unit, associated with or part of a process train, is a needed or demonstrated innovative or regional technology, based on the following:

(i) for permit applications containing multiple units functioning in series in order to recycle, process, and/or dispose of hazardous waste, the individual units shall be considered part of a process train; and

(ii) whether or not each unit is a needed, innovative or regional technology shall be evaluated based on the technology represented by the process train. A unit is considered to be a needed, innovative or regional technology if it is associated with or part of a process train which is a needed, innovative or regional technology.

(C) The applicant shall calculate the percentage figure to be used under subsection (d)(2) of this section to determine the priority for the entire application as follows:

(i) total the maximum annual throughput capacity for hazardous waste recycling, processing, and/or disposal in units or process trains covered by the application that are associated with or identified as a needed or demonstrated innovative or regional technology;

(ii) divide the total from clause (i) of this subparagraph by the total maximum annual throughput capacity of all recycling, processing, and disposal units and process trains covered by the application; and

(iii) multiply the quotient from clause (ii) of this subparagraph by 100.

(e) An application including an innovative technology to process hazardous waste shall be designated as expedited if the applicant demonstrates that the proposed innovative technology meets the requirements of subsection (d) and (e)(1) or (2) of this section, and obtains the written approval of the executive director.

(1) The proposed innovative technology must be demonstrated to be a substitute for a technology which is on Table 2. To make this demonstration, the applicant must:

(A) identify the targeted waste streams and show that the proposed innovative technology would be able to process the same types of waste streams, based on information available in the most recent Needs Assessment, as would be managed by the needed technology for which the innovative technology is proposed to be substituted; and

(B) show that use of the proposed innovative technology would not move a targeted waste stream down the state's waste management hierarchy, from the substituted needed technology to a less preferred management method, in accordance with the public policy concerning hazardous waste management under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §261.023.

(2) The proposed innovative technology must be demonstrated to implement the state's public policy on hazardous waste management as specified under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.023. To make this demonstration, the applicant shall demonstrate to the satisfaction of the executive director that the proposed innovative technology is a more preferred management method, higher in the state's waste management hierarchy, when compared to current management practices used

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for handling the targeted waste streams, and shall submit at least the following information, to the satisfaction of the executive director, for the targeted waste stream(s), whether managed in or out of the State of Texas, or managed on-site or off-site:

(A) types and quantities of targeted waste streams generated in the State of Texas;

(B) current management practice for processing or land disposing of the targeted waste stream; and

(C) a favorable comparison of the type and quantity of residuals and products generated by the innovative technology and current management practices.

(f) If no statewide need has been identified in Table 2 and if an applicant considers that there is a regional need for the proposed technology, then the applicant may submit additional information specified under paragraphs (1)-(3) of this subsection to demonstrate that the permit application should be designated as expedited, in accordance with this subsection and subsection (d) of this section. In order for the proposed regional technology to be designated as expedited, the approximate annual quantity of the targeted hazardous waste stream(s) which are generated within the region, which will be processed and/or disposed commercially, and which could not be processed or disposed by other commercial hazardous waste management facilities in the region, shall equal at least 60% of the total hazardous waste capacity of the proposed unit(s). All data used to support this analysis shall be from the Texas Natural Resource Conservation Commission hazardous and industrial waste annual or monthly waste management reports submitted by owners and operators of hazardous waste management facilities, except as noted in this subsection. The applicant will define the region, subject to the written approval of the executive director, which must consist of at least one county and shall not extend outside the State of Texas. The regional waste management analysis under this subsection must include only hazardous wastes generated in the State of Texas. Subject to the written approval of the executive director, a permit application may be designated as expedited based on regional need, in accordance with this subsection and subsection (d) of this section, and provided that the applicant submits the following information:

(1) a description of the targeted waste stream(s) by form and EPA hazardous waste

numbers, including the approximate annual quantity generated in the region that is processed or disposed at any commercial hazardous waste management facility using the same technology. If significant changes in on-site management options have occurred in the region since the preparation of the most recent Needs Assessment, the applicant may document the approximate annual quantity generated, the generator, and type of hazardous waste which will require commercial hazardous waste management, and include this quantity in the applicant's regional analysis. The applicant may also submit data, other than Texas Natural Resource Conservation Commission data, substantiating that there is a regional need, specifying waste stream type, including form and EPA hazardous waste numbers; approximate annual quantity generated; and identity of the generators and their location in the region;

(2) a map delineating the boundaries of the region, and showing the locations of the following:

(A) the facility where the new capacity is proposed; and

(B) all other existing, permitted, or interim status commercial hazardous waste management facilities that offer the same hazardous waste processing and/or disposal technologies in the State of Texas; and

(3) a comparison of the annual capacity of the proposed technology to the quantity of the targeted waste streams which:

(A) are generated within the region; and

(B) cannot be processed or disposed by other commercial hazardous waste management facilities within the region.

(g) Permit applications for hazardous waste facilities consisting of only hazardous waste storage unit(s), with no hazardous waste processing or disposal unit(s), shall not be expedited, with the following exceptions:

(1) permit applications for storage-only facilities associated with a different facility owned by the same parent company which offers recycling, processing, or disposal services using a needed technology shall be prioritized as provided in subsection (c) of this section; and

(2) permit applications for hazardous waste storage needed on a regional or statewide basis, provided that the applicant submits documentation consisting of at least one of the following,

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subject to the written approval of the executive director:

(A) an analysis of targeted waste stream(s) and commercially available waste management technologies, showing that there is no processing or disposal technology commercially available for management of the targeted waste stream(s) in the State of Texas; or

(B) a regional analysis documenting the demand for storage by the region's generators, including the distances hazardous wastes are transported for storage, the quantities transported, and a map showing the locations of commercial storage facilities in the region.

Source: The provisions of this §281.32 adopted to be effective November 7, 1994, 19 TexReg 8542.

Cross References: This Section cited in 30 TAC §281.1, (relating to Purpose); 30 TAC §281.30, (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications).

SUBCHAPTER B. CONSISTENCY WITH TEXAS COASTAL MANAGEMENT PROGRAM

§ 281.40. Purpose

The purpose of this subchapter is to identify those agency actions which are subject to review for consistency with the goals and policies of the Texas Coastal Management Program pursuant to the Coastal Coordination Act, Texas Natural Resources Code, Subchapters C and F, Chapter 33, and rules of the Coastal Coordination Council contained in 31 Texas Administrative Code, Chapters 501 and 505. This shall be accomplished by adequately identifying, addressing, and resolving consistency issues to the maximum extent practicable prior to final agency action in order to avoid the referral of an agency action to the council for review and, thus, avoid any unnecessary delay in providing a final agency action with respect to a request or application for a permit, order, or other authorization from the commission.

Source: The provisions of this §281.40 adopted to be effective May 15, 1996, 21 TexReg 3798.

§ 281.41. Condition of Approval

It is a condition of commission approval of a proposed action that such action, if applicable, must be consistent with the goals and policies of the Texas Coastal Management Program (CMP) as provided in rules of the Coastal Coordination Council contained in Chapters 501, 503, 505, and 506, Title 31, Texas Administrative Code. The exec-

utive director shall review such applications for consistency with the CMP and provide a summary of such analysis and other statements in the draft permit and technical summary or referral to commission as provided by §281.21 and §281.22 of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary and Referral to Commission).

Source: The provisions of this §281.41 adopted to be effective May 15, 1996, 21 TexReg 3798.

§ 281.42. Definitions

The following words, terms, and phrases, where used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Application—Any request for a permit, order, or other authorization from the commission or executive director.

Coastal barrier—An undeveloped area on a barrier island, peninsula, or other protected area, as designated by United States Fish and Wildlife Service Maps.

Coastal Barrier Resources System—Consists of those undeveloped coastal barriers and other areas located on the coasts of the United States that are identified and generally depicted on the maps on file with the Secretary of the Interior entitled "Coastal Barrier Resources System" as defined under Section 4 of the Coastal Barrier Improvement Act of 1990.

Coastal Coordination Council (CCC or council)—A policy making and review body established by Senate Bill 1053, Coastal Coordination Act, Chapter 295, §§37 et seq, Texas Laws (72nd Legislature 1991), codified in Texas Natural Resources Code, §33.203(20).

Coastal Natural Resource Areas—Areas as defined by Texas Natural Resource Code, §33.203(1) are as follows:

- (A) coastal barriers;
- (B) coastal historic areas;
- (C) coastal preserves;
- (D) coastal shore areas;
- (E) coastal wetlands;
- (F) critical dune areas;
- (G) critical erosion areas;
- (H) gulf beaches;
- (I) hard substrate reefs;
- (J) oyster reefs;

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- (K) submerged land;
- (L) special hazard areas;
- (M) submerged aquatic vegetation;
- (N) tidal sand or mud flats;
- (O) water of the open Gulf of Mexico; and
- (P) water under tidal influence.

Coastal waters—Waters in the open Gulf of Mexico and water subject to tidal influence.

Commission—The Texas Natural Resource Conservation Commission.

Critical area—A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat (as defined in 31 TAC §501.3).

Priority segment—Those designated stream or bay segments delineated in Chapter 307 of this title (relating to Surface Water Quality Standards) and identified as priority segments because they are within the coastal boundary and exhibit characteristics of high water quality and require protection to maintain designated uses. Segment quality determinations were made using water quality traditional scoring for segment ranking and other factors to determine the quality of water relative to designated uses. These segments are listed in Appendix B of §281.48 of this title (relating to Appendices).

Program boundary—The boundary established in Texas Natural Resources Code, §33.2053(k), as defined in Title 31, Texas Administrative Code, §503.1 (Coastal Management Program Boundary).

Texas Coastal Management Program—The plan and related goals and policies as developed by the CCC in accordance with Texas Natural Resources Code, §33.204, and codified in 31 TAC Chapters 501, 503, and 505-506.

Tidal segment—Those designated stream or bay segments listed in §281.48 of this title Appendix C. These segments were designated as tidal segments because they have measurable elevation changes due to normal tides. In the absence of tidal elevation information, tidal segments are generally considered to be waters which typically have salinities of two parts per thousand or greater in a significant portion of the water column.

Source: The provisions of this §281.42 adopted to be effective May 15, 1996, 21 TexReg 3798.

Cross References: This Section cited in 30 TAC §281.46, (relating to Actions Which May Be Referred to the Coastal Coordination Council).

30 TAC § 281.44

§ 281.43. Consistency Determination

(a) A permit or other document approving or authorizing an action listed in §281.45 of this title (relating to Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program) shall include a statement providing either a consistency determination or a determination of no adverse effect as follows:

(1) **Consistency Determination.** "The Texas Natural Resource Conservation Commission (TNRCC or commission) has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies"; or

(2) **Determination of No Adverse Effect.** "The TNRCC has reviewed this action and has found that the action will not adversely affect any applicable coastal natural resource areas (CNRA) identified in the Texas CMP."

(b) The executive director shall review applicable requests and applications for consistency with CMP goals and policies and provide a brief summary of such analysis and other statements and recommendations in the draft permit and technical summary or referral to commission as provided by §281.21 and §281.22 of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary and Referral to Commission), respectively.

(c) For actions that exceed the thresholds for possible referral to the council as provided by §281.46 of this title (relating to Actions Which May Be Referred to the Coastal Coordination Council for Review), a written explanation supporting the determination made under subsection (a) of this section shall be provided in the order, permit, or other written authorization. Such explanation shall describe the basis for the agency's determination, include a description of the action and its possible impacts on CNRAs, identify the applicable CMP goals and policies, and explain how the action is consistent with such goals and policies or why the action does not adversely affect any CNRAs.

Source: The provisions of this §281.43 adopted to be effective May 15, 1996, 21 TexReg 3798.

§ 281.44. Notice

(a) When providing notice of receipt of an application or request for an agency action subject to

consistency with the Texas Coastal Management Program (CMP) goals and policies as provided by §281.45 of this title (relating to Action Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program), the chief clerk of the Texas Natural Resource Conservation Commission (commission) shall include a statement in the notice providing that the application or requested action is subject to the CMP and must be consistent with the CMP goals and policies. All notices, whether mailed or published in a newspaper or the Texas Register, shall contain such statement. The executive director of the commission shall identify such applications or requests and assist the chief clerk in preparing the statement to be contained in the notice. The chief clerk shall include the secretary of the Coastal Coordination Council (council) on the public notice list maintained by the chief clerk for actions subject to the CMP.

(b) Upon issuance of a permit, approval, or authorization of an action listed in §281.45 of this title (relating to Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program), the chief clerk shall provide to the council secretary a one-page notice that the commission or executive director has taken or authorized an action subject to the CMP.

(c) The chief clerk shall maintain a record of all actions taken or authorized that are subject to the CMP and provide such record to the council secretary on a quarterly basis.

Source: The provisions of this §281.44 adopted to be effective May 15, 1996, 21 TexReg 3798.

§ 281.45. Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP)

(a) For purposes of this subchapter, the following is an exclusive list of actions taken or authorized by the Texas Natural Resource Conservation Commission (commission) or executive director that may adversely affect a coastal natural resource area and that must be consistent with the CMP goals and policies:

(1) For actions outside the program boundary when issuing or approving:

(A) an application for a new water right located within 200 stream miles of the coast and proposing an appropriation of 10,000 acre-feet of water per year or more;

(B) an application to amend a water right located within 200 stream miles of the coast and requesting:

(i) an increase in the annual appropriation of 10,000 acre-feet or more of water; or

(ii) a change in purpose of use to a more consumptive use of 10,000 acre-feet or more of water per year;

(C) an action under subparagraphs (A) or (B) of this paragraph shall not be considered an action subject to the CMP if it is an action taken to implement the Trans-Texas Water Program as approved in whole or in part, and found to be consistent with CMP goals and policies by the Trans-Texas Water Program Policy Management Committee, provided that the committee includes as voting members at least three members of the Coastal Coordination Council (CCC or council) or their designated representatives and a majority of those council members vote to approve and find that it is consistent with the CMP goals and policies.

(2) For actions inside the program boundary when issuing or approving:

(A) an application for:

(i) a new water right proposing an appropriation of 5,000 acre-feet of water or more per year;

(ii) an amendment to an existing water right requesting an increase in appropriation of 5,000 acre-feet of water per year or more, or a change in purpose of use to a more consumptive use of 5,000 acre-feet of water or more per year;

(B) an action under subparagraph (A) of this paragraph shall not be considered an action subject to the CMP if it is an action taken to implement the Trans-Texas Water Program as approved in whole or in part, and found to be consistent with CMP goals and policies by the Trans-Texas Water Program Policy Management Committee, provided that the committee includes as voting members at least three members of the CCC or their designated representatives and a majority of those council members vote to approve and find that it is consistent with the CMP goals and policies;

(C) the declaration of an emergency and request for an emergency release of water under Texas Water Code, §16.195;

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(D) an application for the treatment, storage, or disposal of municipal, industrial, non-hazardous or hazardous waste;

(E) a petition for the creation of a special purpose district or approval of bonds for infrastructure on coastal barriers;

(F) a refusal for approval of a levee improvement or other flood control project pursuant to Texas Water Code, §16.236, and Chapter 301 of this title (relating to Levee Improvement Districts, District Plans of Reclamation and Levees, and Other Improvements);

(G) an application for state water quality certification of a federal permit pursuant to §401 of the federal Clean Water Act;

(H) a wastewater discharge permit; and

(I) a permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters; and

(3) the promulgation of rules governing or authorizing actions listed in paragraph (1) and (2) of this subsection, including rules as listed in Appendix E of §281.48 of this title (relating to Appendices).

(b) The review and action on an application or request for agency approval provided in subsection (a)(1), (2), and (3) of this section shall not be considered an action subject to the CMP goals and policies if the action is taken pursuant to rules that the council has certified as consistent with the CMP and:

(1) for wastewater discharge permits, if the action is not a major permit modification that would increase pollutant loads to coastal waters or would result in the relocation of an outfall to a critical area;

(2) for municipal, industrial, hazardous, or non-hazardous waste permits, if the action is not a Class III modification as defined in commission rules; or

(3) for any other action under this subsection if the action only extends the time period of the existing authorization without authorizing new or additional work or activities or is not otherwise directly relevant to the policies in 31 Texas Administrative Code §501.14. Such specific actions include, but are not limited, to those listed in §281.47 of this title (relating to Actions Not Subject to Referral for Council Review).

Source: The provisions of this §281.45 adopted to be effective May 15, 1996, 21 TexReg 3798.

30 TAC § 281.46

Cross References: This Section cited in 30 TAC §281.43, (relating to Consistency Determination); 30 TAC §281.44, (relating to Notice).

§ 281.46. Actions Which May Be Referred to the Coastal Coordination Council

Except as otherwise provided under 31 TAC §505.32 (Requirements for Referral for an Individual Agency Action), only the following actions may be referred to the CCC for review for consistency with the CMP goals and policies pursuant to 31 TAC §505.26 (Council Review and Approval of Thresholds for Referral):

(1) For actions outside the program boundary when issuing or approving:

(A) an application for a new water right located within 200 stream miles of the coast and requesting an appropriation of 10,000 acre-feet of water per year or more; and

(B) an application to amend an existing water right located within 200 stream miles of the coast and seeking:

(i) to increase an annual appropriation by 10,000 acre-feet or more per year; or

(ii) to change the purpose of use of 10,000 acre-feet or more to a more consumptive use.

(2) For actions inside the program boundary when issuing or approving:

(A) an application for a new domestic wastewater discharge permit:

(i) to discharge five million gallons per day (MGD) or more into a tidally influenced segment (see Appendix C of this title (relating to Appendices)); or

(ii) to discharge one MGD or more into a priority segment (see Appendix B of §281.48 of this title);

(B) an application for an amendment to a domestic wastewater discharge permit:

(i) to increase the total discharge authorized by the permit into tidally influenced segments (Appendix C) to an amount greater than or equal to five MGD; or

(ii) to increase the discharge to one MGD or more into a priority segment (Appendix B);

(C) an application for a new industrial wastewater discharge permit to discharge effluent subject to the United States Environmental Protection Agency's categorical limits into a priority segment (Appendix B);

(D) an application for an amendment to an industrial wastewater discharge permit:

(i) to discharge effluent subject to categorical limits that increase mass loading of pollutants into priority segments (Appendix B); or

(ii) to change the point of discharge from outside into a priority segment (Appendix B);

(E) an application for a new confined animal feeding operation (CAFO) permit for a CAFO located within one mile of a critical area or coastal waters;

(F) an application for a permit for a new municipal landfill to be located within a coastal wetland or a special flood hazard area, as defined in Title 44, Code of Federal Regulations (CFR) §59.1;

(G) an application for an amendment which proposes an expansion of a municipal landfill into a coastal wetland or a special flood hazard area, as defined in 44 CFR §59.1;

(H) an application for a new permit for a commercial or industrial waste landfill to be located within a coastal wetland or special flood hazard area, as defined 44 CFR §59.1;

(I) an application for an amendment that proposes an expansion of a commercial or industrial waste landfill into a coastal wetland or a special flood hazard area, as defined in 44 CFR §59.1;

(J) an application for a new hazardous waste landfill to be located within a coastal wetland or a special flood hazard area, as defined in 44 CFR §59.1;

(K) an application for an amendment to expand a hazardous waste landfill into a coastal wetland or a special flood hazard area, as defined in 44 CFR §59.1;

(L) an application for a new water right proposing an appropriation of 5,000 acre-feet of water or more per year;

(M) an application to amend an existing water right requesting:

(i) an increase in appropriation of 5,000 acre-feet of water per year or more;

(ii) a change in purpose of use to a more consumptive use of 5,000 acre-feet of water per year or more;

(N) a certification of a federal permit for the discharge of dredge or fill material, which affects one or more acres in a critical area (as defined in §281.42 of this title (relating to

Definitions)) and authorizes the discharge of not less than 1,000 cubic yards of dredged or fill material.

(3) For actions on coastal barriers only:

(A) any application for creation of a special purpose district whose service area would encompass, or partially encompass, a Coastal Barrier Resources System Unit as defined by the United States Fish and Wildlife Service under the Federal Coastal Barrier Resources Act, 16 United States Code (USC) §3502(7); or

(B) an application for approval of a bond issue to support infrastructure projects encompassing, or partially encompassing a Coastal Barrier Resources System Unit as defined by the United States Fish and Wildlife Service under the Federal Coastal Barrier Resource Act, 16 USC §3502(7).

Source: The provisions of this §281.46 adopted to be effective May 15, 1996, 21 TexReg 3798.

Cross References: This Section cited in 30 TAC §281.43, (relating to Consistency Determination); 30 TAC §281.48, (relating to Appendices).

§ 281.47. Actions Not Subject to Referral for Council Review

The following individual agency actions are not subject to 31 Texas Administrative Code (TAC) Subchapter C, §§505.30-505.42, Consistency and Council Review of Individual State Agency Actions, providing these actions are taken pursuant to rules that the council has certified as consistent under 31 TAC Chapter 505, Subchapter B of the CMP rules (Council Certification of State Agency Rules and Approval of Thresholds for Referral):

(1) applications for renewal of domestic wastewater discharge permits;

(2) applications for renewal of industrial wastewater discharge permits;

(3) applications for renewal of confined animal feeding operation permits;

(4) applications for renewal of commercial or industrial landfill permits;

(5) applications for renewal of hazardous waste landfills permits;

(6) emergency suspension of permit conditions relating to beneficial inflows to affected bays and estuaries in accordance with Texas Water Code, §11.148;

(7) declaration of an emergency and request for an emergency release of water under Texas Water Code, §16.195; and

(8) any other actions not specifically listed under this subchapter or that do not otherwise meet

the requirements of 31 TAC §505.32 (Requirements for Referral of an Individual State Agency Action).

Source: The provisions of this §281.47 adopted to be effective May 15, 1996, 21 TexReg 3798.

Cross References: This Section cited in 30 TAC §281.45, (relating to Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP)).

§ 281.48. Appendices

(a) Appendix A. Texas Natural Resource Conservation Commission (TNRCC) Authorizations Reviewable by the Coastal Coordination Council.

Appendix A

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	THRESHOLDS
WASTEWATER PERMITS: (inside the boundary)	
Municipal, new	(1) Proposed permits to discharge into tidally influenced segments (See Appendix C) AND which would result in an authorized discharge greater than or equal to 5 MGD ¹ ; or (2) Any permit which proposes to discharge into a priority segment (See Appendix B) which would result in an authorized discharge greater than or equal to 1 MGD ² .
Municipal, amendments	(1) Amendments to increase the total discharge into tidally influenced segments to an amount greater than or equal to 5 MGD; or (2) Amendments to discharge into a priority segment AND which would result in an increase in the authorized discharge to an amount greater than or equal to 1 MGD.
Municipal, renewals	EXEMPT
Industrial, new	(1) Proposed discharge permits for new facilities which are subject to categorical limits and which discharge into a priority segment (See Appendix B).
Industrial, amendments	(1) Proposed amendments to discharge permits for facilities which are subject to categorical limits, which either increase mass loadings into a priority segment OR change the point of discharge into a priority segment.
Industrial, renewals	EXEMPT
Agriculture (CAFOs), new	Any application for a new concentrated animal feeding operation (CAFO) within one mile of a critical area (as defined by TNRCC rule Chapter 281, Subchapter B, § 281.42) or coastal water.
Agriculture (CAFOs), amendments	EXEMPT
Agriculture (CAFOs), renewals	EXEMPT
DISTRICT APPROVALS & BOND ISSUES: (on coastal barriers only)	
District creation	Any application for creation of a district whose service area would encompass, or partially encompass a Coastal Barrier Resources System Unit as defined by U.S. Fish & Wildlife Service under the federal Coastal Barrier Resources Act.
District bond issues	Any application for approval of a bond issue to support infrastructure projects encompassing, or partially encompassing a Coastal Barrier Resources System Unit as defined by U.S. Fish & Wildlife Service under the federal Coastal Barrier Resources Act.
401 CERTIFICATION: (inside the boundary)	
	Application for 401 certification of a 404 Corps of Engineer permit which affects one or more acres in a critical area (as defined in TNRCC rules Chapter 281, Subchapter B, § 281.42) and authorizes the discharge of not less than 1,000 cubic yards of dredged or fill material, all or part of which occurs in a critical area.

AUTHORIZATION	THRESHOLDS
WATER RIGHTS: (inside the boundary)	
New	Any application for a new right, except emergency permits, for an annual appropriation of 5,000 acre-feet or more of water.
Amendments	Any application to amend an existing right: (1) to increase the annual appropriation of water by 5,000 acre-feet or more; or (2) to change the purpose of use of 5,000 acre-feet or more to a more consumptive use.
Renewals (reissues)	EXEMPT
WATER RIGHTS: (outside the boundary)	
New	Any application for a new right, except emergency permits, within 200 stream miles of the coast for an annual appropriation of 10,000 acre-feet or more of water.
Amendments	Any application to amend an existing right within 200 stream miles of the coast and seeking to: (1) increase the annual appropriation of water by 10,000 acre-feet or more; or (2) to change the purpose of use of 10,000 acre-feet or more to a more consumptive use.
Renewals ("reissues")	EXEMPT
SOLID WASTE: (inside the boundary)	
Municipal, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Municipal, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Municipal, renewals	n/a (Municipal permits are issued for the life of the site.)
Commercial-Industrial, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Commercial-Industrial, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Commercial-Industrial, renewals	EXEMPT
Hazardous, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Hazardous, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Hazardous, renewals	EXEMPT
LEVEE PROJECTS: (inside the boundary) Approval of levee impoundment or flood control projects	Not applicable: Pursuant to § 16.236 of the Texas Water Code, approval of projects is delegated to local governments participating in the National Flood Insurance Program. All coastal counties participate in the program.
DECLARATION OF EMERGENCIES (pursuant to § 16.195, Texas Water Code) (inside the boundary)	EXEMPT

15 MGD is the EPA trigger level for determining pretreatment requirements.

21 MGD is the trigger which requires biomonitoring, pursuant to TNRCC rules.

(b) Appendix B. Tidal Segments Designated as TNRCC Priority Waterbodies.

APPLICATIONS PROCESSING

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APPENDIX B

TIDAL SEGMENTS DESIGNATED AS TNRCC PRIORITY WATERBODIES COASTAL MANAGEMENT PROGRAM

Segment Number	Name
2412	Sabine Lake
2411	Sabine Pass
2423	East Bay
2439	Lower Galveston Bay
0801	Trinity River Tidal
1113	Armand Bayou Tidal
2431	Moses Lake
2424	West Bay
2432	Chocolate Bay
2433	Bastrop Bay/Oyster Lake
2434	Christmas Bay
2435	Drum Bay
2442	Cedar Lakes
2441	East Matagorda Bay
2451	Matagorda Bay/Powderhorn Lake
2452	Tres Palacios Bay/Turtle Bay
2456	Carancahua Bay
2455	Keller Bay
2461	Espiritu Santo Bay
2462	San Antonio Bay/Hynes Bay/Guadalupe Bay
1801	Guadalupe River Tidal
2463	Mesquite Bay/Carlos Bay/Ayres Bay
2473	St. Charles Bay
2471	Aransas Bay
2472	Copano Bay/Port Bay/Mission Bay
2483	Redfish Bay
2482	Nueces Bay
2492	Baffin Bay/Alazan Bay/Cayo Del Grullo/Laguna Salada
2491	Laguna Madre
2493	South Bay

(c) Appendix C. TNRCC Designated Tidal Segments Located Within the CMP Boundary.

APPENDIX C

TNRCC DESIGNATED TIDAL SEGMENTS LOCATED WITHIN THE CMP BOUNDARY

Segment Number	Name
2433	Bastrop Bay/Oyster Lake
2434	Christmas Bay
2455	Keller Bay
2435	Drum Bay
2442	Cedar Lakes
2432	Chocolate Bay

Segment Number	Name
2411	Sabine Pass
2424	West Bay
2461	Espiritu Santo Bay
2472	Copano Bay/Port Bay/Mission Bay
2423	East Bay
2452	Tres Palacios Bay/Turtle Bay
2412	Sabine Lake
2203	Petonila Creek Tidal
2451	Matagorda Bay/Powderhorn Lake
2429	Scott Bay
2003	Aransas River Tidal
2463	Mesquite Bay/Carlos Bay/Ayres Bay
2441	East Matagorda Bay
2430	Burnet Bay
2431	Moses Lake
2001	Mission River Tidal
2428	Black Duck Bay
1601	Lavaca River Tidal
1105	Bastrop Bayou Tidal
2436	Barbours Cut
1111	Old Brazos River Channel
2482	Nueces Bay
1501	Tres Palacios Creek Tidal
2493	South Bay
2483	Redfish Bay
1801	Guadalupe River Tidal
2473	St. Charles Bay
2456	Carancahua Bay
1603	Navidad River Tidal
2462	San Antonio Bay/Hynes Bay/Guadalupe Bay
2471	Aransas Bay
2426	Tabbs Bay
1107	Chocolate Bayou Tidal
2439	Lower Galveston Bay
2494	Brownsville Ship Channel
0801	Trinity River Tidal
1109	Oyster Creek Tidal
2492	Baffin Bay/Alazan Bay/Cayo Del Grullo/Laguna Salada
1113	Armand Bayou Tidal
2301	Rio Grande Tidal
2425	Clear Lake
1701	Victoria Barge Canal
2438	Bayport Channel
2422	Trinity Bay
1103	Dickinson Bayou Tidal
2454	Cox Bay
2101	Nueces River Tidal
2437	Texas City Ship Channel
0703	Sabine-Neches Canal
2485	Oso Bay
1304	Caney Creek Tidal
1401	Colorado River Tidal
0508	Adams Bayou Tidal
0501	Sabine River Tidal
0901	Cedar Bayou Tidal

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NATURAL RESOURCE CONSERVATION COMMISSION

Segment Number	Name
0511	Cow Bayou Tidal
1301	San Bernard River Tidal
2491	Laguna Madre
2427	San Jacinto Bay
2484	Corpus Christi Inner Harbor
1013	Buffalo Bayou Tidal
1101	Clear Creek Tidal
1001	San Jacinto River Tidal
2481	Corpus Christi Bay
0702	Intracoastal Waterway
2421	Upper Galveston Bay
0601	Neches River Tidal
2201	Arroyo Colorado Tidal
1201	Brazos River Tidal
1005	Houston Ship Channel/San Jacinto River
2453	Lavaca Bay/Chocolate Bay
1005	Houston Ship Channel
1007	Houston Ship Channel/Buffalo Bayou

Harris-Galveston Coastal Subsidence District (1, 2)
Galveston County Navigation District # 1 (1, 2)

Legend: (1) Coastal Barrier (Coastal Barrier Resources System or "Cobras")
(2) Otherwise Protected Areas

(e) Appendix E. TNRCC Rules Relating to Actions Subject to the Coastal Management Program. All or part of the rules contained in these chapters may require certification by the council as consistent with the CMP before thresholds provided in §281.46 of this title (relating to Action Which May Be Referred to the Coastal Coordination Council) become effective. The listing of these chapters in their entirety is not intended to indicate that all these chapters or all rules in these chapters must be certified for the thresholds to become effective.

(d) Appendix D. Districts in the Coastal Barrier Resources System.

APPENDIX D

DISTRICTS IN THE COASTAL BARRIER RESOURCES SYSTEM

Nueces County

Nueces County WCID # 4 (1, 2)

San Patricio County

San Patricio MWD (2)

Aransas County

Aransas County Conservation & Reclamation District (1, 2)
Aransas County Navigation District (1, 2)

Matagorda County

Matagorda County Navigation District # 1 (1, 2)

Brazoria County

Treasure Island MUD (1)
Blud Water MUD (1)
Velasco Drainage District (1, 2)
Brazos River Harbor Navigation District (1, 2)

Galveston County

Gulf Coast Water Authority of Galveston County (1, 2)

Appendix E

TNRCC Rules Relating to Actions Subject to the Coastal Management Program

Administrative

Chapter 261 Subchapters B and C, Environmental, Social, and Economic Impact Statements

Chapter 281 Applications Processing

Water Discharge and Non-point Source Pollution

Chapter 284 *Private Sewage Facilities (Rules for Angelina and Neches River Authority)*

Chapter 285 *On-Site Wastewater Treatment*

Chapter 305 Consolidated Permits

Chapter 307 Supplemental Surface Water Quality Standards

Chapter 309 Effluent Limitations

Chapter 314 Toxic Pollutant Effluent Standards and Prohibitions

Chapter 315 Pretreatment Regulations for Existing and New Sources of Pollution

Chapter 321 Control of Certain Activities by Rule

Chapter 334 *Underground and Aboveground Storage Tanks*

Non-hazardous and Hazardous Solid Waste

Chapter 305 Consolidated Permits

Chapter 330 Municipal Solid Waste

Chapter 335 Industrial Solid Waste and Municipal Hazardous Waste

PRIVATE SEWAGE FACILITIES

Dredging, Filling, and Other Activities or Development that May Affect Critical Areas

- Chapter 279 Water Quality Certification
- Chapter 293 Water Districts
- Chapter 301 Levee Improvement Districts, District Plans of Reclamation and Levees, and other Improvements

Instream Flows, Water Rights, and Water Conservation

- Chapter 288 *Water Conservation Plans, Guidelines, and Requirements*
- Chapter 295 Water Rights, Procedural
- Chapter 297 Water Rights, Substantive

Air Emissions

- Chapter 101 General Rules
- Chapter 111 Control of Air Pollution from Visible Emissions and Particulate Matter
- Chapter 112 Control of Air Pollution from Sulfur Compounds
- Chapter 113 Control of Air Pollution from Toxic Materials

- Chapter 114 Control of Air Pollution from Motor Vehicles
- Chapter 115 Control of Air Pollution from Volatile Organic Compounds
- Chapter 116 Control of Air Pollution from Permits for New Construction or Modification
- Chapter 117 Control of Air Pollution from Nitrogen Compounds
- Chapter 118 Control of Air Pollution from Air Pollution Episodes
- Chapter 119 Control of Air Pollution from Carbon Monoxide
- Chapter 120 Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities
- Chapter 121 Control of Air Pollution from Municipal Solid Waste Facilities
- Chapter 122 Federal Operating Permits

Source: The provisions of this §281.48 adopted to be effective May 15, 1996, 21 TexReg 3798.

Cross References: This Section cited in 30 TAC §281.42, (relating to Definitions); 30 TAC §281.45, (relating to Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP)).

CHAPTER 284. PRIVATE SEWAGE FACILITIES

Subchapter A. SAM RAYBURN RESERVOIR

Section

- 284.1. Definitions.
- 284.2. Regulated Zone.
- 284.3. Discharge of Sewage within the Regulated Zone.
- 284.4. Licensing Function.
- 284.5. Licensing Requirements.
- 284.6. Approval of Subdivision Plans for Private Sewage Facilities.
- 284.7. Existing Private Sewage Facilities.
- 284.8. Connection of Private Sewage Facilities to Organized Waste Collection, Treatment, and Disposal Systems.
- 284.9. Terms and Conditions for Granting Exceptions.
- 284.10. Terms and Conditions of Appeal.
- 284.11. Cooperative Agreement.
- 284.12. Fees.
- 284.13. Enforcement.
- 284.14. Severability Clause.
- 284.15. Fee Schedule.

Subchapter B. TOLEDO BEND RESERVOIR

- 284.21. Definitions.
- 284.22. Regulated Area.
- 284.23. Discharge of Sewage within the Regulated Area.
- 284.24. Licensing Function.
- 284.25. Licensing Requirements for New Private Sewage Facilities.
- 284.26. Approval of Subdivision Plans for Private Sewage Facilities.
- 284.27. Existing Private Sewage Facilities.

Section

- 284.28. Connection of Private Sewage Facilities to Organized Waste Collection, Treatment, and Disposal Systems.
- 284.29. Terms and Conditions for Granting Exceptions.
- 284.30. Terms and Conditions for Appeal to the Executive Director and the Commission.
- 284.31. Cooperative Agreement.
- 284.32. Fees.
- 284.33. Enforcement.
- 284.34. Severability Clause.
- 284.35. Fee Schedule.

Subchapter C. LAKE TAWAKONI RESERVOIR

- 284.41. Definitions.
- 284.42. Regulated Area.
- 284.43. Discharge of Sewage Within the Regulated Area.
- 284.44. Licensing Function.
- 284.45. Licensing Requirements for New Private Sewage Facilities.
- 284.46. Approval of Subdivision Plans for Sewage Facilities.
- 284.47. Existing Private Sewage Facilities.
- 284.48. Connection of Private Sewage Facilities to Organized Waste Collection, Treatment, and Disposal Systems.
- 284.49. Terms and Conditions for Granting Exceptions.
- 284.50. Terms and Conditions of Appeal.
- 284.51. Cooperative Agreement.
- 284.52. Fees.
- 284.53. Enforcement.
- 284.54. Severability Clause.
- 284.55. Fee Schedule.