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TCEQ REGULATORY GUIDANCE

Small Business and Environmental Assistance

RG-335 (Revised)

May 2005

How to Apply for Regulatory Flexibility

This guide explains the requirements and processes for participating in the Texas Commission on Environmental Quality's (TCEQ's) Regulatory Flexibility Program. For approved, proposed alternatives by eligible applicants, the program issues an exemption from state regulations regarding the control or abatement of pollution. This exemption is referred to as a Regulatory Flexibility Order. While this guide is not a comprehensive explanation of the law and rules, it is intended to clarify issues and answer questions regarding procedures.

What this guide covers

- What is the Regulatory Flexibility Program?
- How does regulatory flexibility impact environmental protection?
- Who is eligible to participate?
- How do I apply for regulatory flexibility?
- How does regulatory flexibility affect permitting?
- How do I change, renew, or terminate a Regulatory Flexibility Order?
- Where do I get technical assistance?

What is the Regulatory Flexibility Program?

The Texas Water Code (Chapter 5, Section 758) authorizes the TCEQ to exempt from state requirements applicants who propose an alternative method or standard to control or reduce (abate) pollution if their alternative:

- is more protective of the environment and the public health than the method or standard required by the state, and
- remains consistent with federal environmental laws.

This program is completely voluntary and approved applicants receive the exemption in the form of a Regulatory Flexibility Order.

Texas Commission on Environmental Quality • PO Box 13087 • Austin, Texas • 78711-3087

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How does regulatory flexibility impact environmental protection?

The TCEQ recognizes that existing environmental laws and regulations play a critical role in protecting the environment. However, the agency finds that it can further enhance environmental protection by using innovative regulatory methods.

The TCEQ promotes regulatory methods that:

- encourage facility owners and operators to assess the pollution they emit or cause, directly and indirectly, to the air, water, and land;
- encourage facility owners and operators to innovate, set measurable and verifiable goals, and implement the most effective pollution prevention, source reduction, or other pollution reduction strategies for their particular facilities, while complying with verifiable and enforceable pollution limits;
- encourage superior environmental performance and continuous improvement toward sustainable levels of resource usage and minimization of pollution discharges;
- reward facility owners and operators who reduce pollution to levels below what is required by applicable law;
- reduce the time and money spent by agencies and facility owners and operators on paperwork and other administrative tasks that do not benefit the environment;
- increase public participation and encourage stakeholder consensus in the development of innovative environmental regulatory methods and in monitoring the environmental performance of projects under this program;
- encourage facilities and communities to work together to reduce pollution levels below what is required by applicable law;
- provide reasonable technical assistance to facilitate meaningful stakeholder participation; and
- increase levels of trust and communication among agencies, regulated parties, and the public.

Who is eligible to participate?

You are eligible for regulatory flexibility if you are subject to any TCEQ regulation that is related to pollution control or abatement. However, those aspects of regulation related to storing, handling, or disposing of low-level radioactive materials are not eligible for regulatory flexibility.

Because the legislation is a mechanism to test innovative pollution prevention and control methods, you will receive primary consideration if you have demonstrated a willingness to comply with environmental

requirements. This consideration does not necessarily exclude applicants with a less-than-perfect compliance record.

You are **not** eligible if you are:

- a person with a poor compliance history;
- a person who has been referred to the Texas or United States Attorney General or has incurred a judgment;
- a person who has been convicted of willfully or knowingly committing an environmental crime.

These restrictions apply for three years from the date of the judgment or conviction.

How do I apply for Regulatory Flexibility?

Applying for regulatory flexibility involves these five stages:

- submitting an application
- submitting an initial fee
- undergoing the application review process
- giving public notice
- getting approval from TCEQ commissioners

Preparing the application

TCEQ does **not** have a prescribed application form for regulatory flexibility requests. However, the TCEQ recommends that you closely follow the application requirements detailed in 30 Texas Administrative Code (30 TAC 90.10(b)), which include these required elements:

- ***A narrative summary of the proposal.*** The summary should briefly define the proposal, identify where the facility is located, and provide a brief description of how the proposed alternative will be more protective of the environment and the public health than the applicable method or standard that the state currently prescribes. The summary should include the specific statute or rule for which an exemption is being requested. This summary may be used to meet the public notice requirement by submitting the summary to a local newspaper, provided that the summary also explains where and how people can obtain additional information about the proposal. (See a sample template for a proposal in Appendix 3: Sample Documents.)
- ***A detailed explanation,*** or demonstration where applicable or available, ***that the proposed alternative is more protective*** than the applicable statute or TCEQ rule ***and is consistent with federal law.*** Although the legislation encourages testing of innovative approaches,

the applicant should furnish sufficient information to allow the TCEQ to determine that the alternative is reasonably likely to provide superior protection.

- **An *implementation schedule*** that clearly defines important dates or key milestones. The implementation schedule should include, at a minimum, the project start date, monitoring or measurement schedules, and project completion date. The application should also describe how records that demonstrate compliance with the Regulatory Flexibility Order will be maintained, and how and when results will be reported to the TCEQ. See a sample implementation schedule in Appendix 3: Sample Documents to assist you in planning your project and in ensuring proper reporting to the TCEQ.
- **An *identification of pollutants***, if any, ***that will be transferred*** as a result of the proposed alternative. Transfers of pollutants from one

Examples of Pollutant Transfers

- **Air-to-Waste:** A baghouse can be installed on the exhaust stack of a combustion process to reduce the amount of particulates released into the air. While this type of installation reduces air emissions, it transfers the burden to the waste medium. Installation and use of baghouses also increases energy usage.
- **Waste-to-Water:** Operations that use solvent-based parts cleaners can change to aqueous-based cleaners. A change to aqueous-based cleaners reduces or eliminates waste, waste-handling, and waste disposal associated with solvent-based cleaners. However, the change transfers a potential burden to wastewater treatment facilities.
- **Water-to-Air:** In plating operations, evaporators may be used to reduce the amount of waste by evaporating water out of the waste stream (the chromic acid can then be returned to the plating bath). Use of evaporators reduces the amount of waste that must be disposed of, but potentially results in increased air emissions.
- **Air-to-Air:** In the petrochemical industry, flares are commonly used to destroy combustible organics. While use of flares reduces combustible organics released to the air, it potentially increases emissions of carbon monoxide and nitrogen oxide.

Note: In many cases, the examples given above result in desirable outcomes. However, it is important to factor in all considerations when proposing a transfer of waste from one medium to another.

medium to another are not discouraged. However, please describe the transfer, the specifics of the change (such as increased/decreased energy usage, and increased/decreased waste disposal costs), the benefit of the transfer (such as environmental or economic), and the impact the proposed alternative will have on facility-wide emissions.

- □ ***A description of local community participation in the development of the proposal.*** Include a description of how you involved the local community in the development of your proposal. Your description should provide information such as:
 - □ how you identified the stakeholders;
 - □ how you notified the public, including any early public notice efforts;
 - □ what measures you used to ensure open participation and attendance;
 - □ how you communicated and conducted meetings at regular intervals; and
 - □ what mechanisms you used to promote two-way communication.

Examples of Public Participation

- □ **Citizen Advisory Panel:** You could establish or continue the use of a citizen advisory panel to gain input from the local community. The panel could also serve as a regulatory flexibility application development team.
- □ **Regulatory Flexibility Workshops:** You could hold regulatory flexibility workshops early in the development process to ensure the local community understands the technical aspects of your proposal, has ample opportunity to make suggestions or recommendations, and understands the regulatory flexibility application and public participation process.
- □ **Public Meeting:** You could invite local elected officials, city or county administrators, and the local community to participate in a public meeting. During the meeting, you could present regulatory flexibility goals, environmental improvement objectives, and technical innovations.
- □ **Technical Review Team:** You could appoint technical professionals to serve on an independent review team to review your regulatory flexibility proposal. They could then report to the local community on the technical and environmental merits of the proposal.

■ **Additional information.** Include any supplemental information that would have a bearing in the TCEQ's decision, including the following items:

- TCEQ or EPA identification numbers, permit numbers, and/or registration numbers
- case studies, environmental impact analyses, cost/benefit analyses, or other documentation that verifies your proposal will be at least as protective of the environment and public health as current requirements
- other measures or programs your company has implemented that illustrate your commitment to environmental performance and compliance (for example, environmental management systems, employee pollution prevention workgroups, or citizen advisory panels)

See the mandated requirements in Appendix 1: Rules and Regulations for the Regulatory Flexibility Program under 30 TAC, Chapter 90, Innovative Programs, Subchapter A.

Paying the initial fee

The \$250 application fee is due when you submit the application. If additional fees are required to recover the costs of processing your application, the TCEQ will notify you of those additional costs when it receives your application and fee (see the next section for information on cost recovery). The TCEQ will not review your application until it receives the initial application fee.

TCEQ Cost Recovery

The TCEQ is authorized to recover any costs over the initial application fee for processing applications that are significant and complex. If the TCEQ determines that your application is significant and complex, it will notify you, discuss the cost-recovery process and the hourly rate at which costs will be recovered, and provide you an estimate of the total cost of processing the application before technical review begins.

Submitting the application and fee

Mail the application and fee as follows:

1. an original and two copies of the application, and the \$250 to the TCEQ main office at:

Regulatory Flexibility Program
Texas Commission on Environmental Quality
Cashier's Office, MC-214
P.O. Box 13087
Austin Texas 78711-3087

2. a copy of the application to the appropriate TCEQ regional office (see Appendix 4: TCEQ Regional Offices—Map and Contact Information).

Undergoing the application review process

The following stages describe the application process, and there is a flowchart of it in the appendix.

How will my application be processed?

Administrative review and oversight—upon receipt, a screening/oversight committee reviews the application for completeness and forwards it to the appropriate program staff for review. If the application lacks any of the required elements, you will be notified and given an opportunity to submit additional information or, in some cases, to revise and re-submit your application. Applications not meeting minimum requirements will not be processed. After a technical and legal review, TCEQ staff prepares draft Regulatory Flexibility Orders for presentation to the commissioners.

Technical and legal review—program and legal staff will review the proposal for technical and legal accuracy, soundness, and consistency. Following this review, the application will be returned to the oversight committee. If the proposal is likely to provide equal or better protection, and is consistent with federal law or any other agreements the TCEQ has with other federal or state agencies, the TCEQ's Legal Office drafts a Regulatory Flexibility Order for presentation to the commissioners, who will consider it during a regularly scheduled commission meeting (see the **Getting approval from TCEQ commissioners** section in this guide).

Note: Prior to the commission's meeting, applicants should provide to the community public notice depending on the statute or rule that applies to their proposal (see the **Giving Public Notice** section in this guide).

What issues are considered when reviewing?

Applications will be reviewed to determine if the proposed alternative is more protective of the environment and public health than current requirements, and is not inconsistent with federal law. The TCEQ will also consider compliance history, as well as your efforts to involve the local community and gain its support in developing the application.

The TCEQ also considers these issues:

- proposed improvements in the efficient use of raw materials, energy, water, or other resources;
- use of planning processes or techniques to identify source reduction and product stewardship opportunities;
- use of training and incentives to encourage employees to identify opportunities for environmental improvement;

- □ protection and enhancement of natural resources;
- □ proposed information and reporting systems to track progress toward goals and document improvements (goals are verifiable and enforceable);
- □ use of a regulatory impact analysis or cost/benefit analysis to demonstrate that the alternative method or alternative standard is more protective of the environment and public health; and
- □ demonstration that the alternative method or standard may serve as a model to other regulated entities.

What if my application contains confidential information?

The TCEQ suggests that you do not submit confidential information in your application. However, if this cannot be avoided, describe the confidential information in general, non-confidential terms throughout the application, as best as possible. You can submit the confidential information as an **attachment** and mark each page "CONFIDENTIAL."

Reasons for confidentiality include trade secrecy and other related legal concepts that give businesses the right to preserve the confidentiality of business information to obtain or retain advantages resulting from the content of the information.

While the TCEQ will maintain information marked as confidential in a separate file, it is subject to review by the Texas Attorney General under the Public Information Act, Texas Government Code Chapter 552.

How long will it take to process my application?

The TCEQ's goal is to process applications within two to six months. However, processing time may vary depending on the complexity of the proposed alternative and the completeness of the application.

You can expedite the review process by specifically addressing each of the requirements detailed in the Regulatory Flexibility Program rules (state "not applicable" if it does not apply to you). Provide complete and detailed information that will allow the TCEQ to determine whether the proposed alternative is at least as protective as applicable requirements and is consistent with federal law. Be specific and detailed regarding the benefits of your proposed alternative such as how it improves efficiency in the use of raw materials or how it serves as a model to other regulated entities.

Giving Public Notice

Applicants are required to complete the specific public notice depending on the statute or rule that applies to their proposal.

This requirement is satisfied in one of three ways:

- **Existing notice requirements.** If the statute or rule for which you are seeking an exemption requires public notice and opportunity for comment or hearing, you should provide public notice according to the requirements in the original statute or rule.
- **No existing notice requirements.** If the statute or rule for which you are seeking an exemption does not require public notice and opportunity for comment or hearing, you should publish notice in a newspaper of general circulation and provide for a 30-day public comment period.
- **Alternative notice.** You may propose an alternative to the public notice requirements if it is likely to provide greater public notice and opportunity for participation than those in the statute or rule.

Examples of Alternative Notice

You may determine that the examples listed below might provide better public notice than those currently required.

- **Flyers:** Mail or hand-deliver one-page flyers that describe the proposal.
- **PSAs:** Run public service announcements (PSAs) on radio or television.
- **Internet:** Post information on your Web site that describes your proposal, and announce the Web address in the advertising section of the newspaper.
- **Public Meeting:** Hold a public meeting and announce the meeting through flyers, public service announcements, and/or radio or newspaper advertising.

Note: These are *only examples* of other means of notifying stakeholders. You are responsible for demonstrating that your proposed alternative will result in *greater* public notice than the requirement that would otherwise apply.

What should I include in my notice?

For the first two notices above, you should, at a minimum, include:

- a brief description or summary of the proposal, a description of the business conducted at the facility, and a summary of the activity to which the proposed alternative applies so the public understands the current process or activity and the potential impact of the proposed alternative;
- the name and address of the applicant, and, if different, the location of the facility for which regulatory flexibility is being requested so the public has the opportunity to request additional information about the proposal;
- the name and address of the TCEQ so the public understands where to send comments on the proposal;
- the name, address, and telephone number of TCEQ's contact in the Regulatory Flexibility Program who can provide additional information or answer questions;
- a brief description of the public comment procedures, and the time and place of any public meeting or public hearing; and
- the TCEQ deadline for submitting comments or requests for a hearing.

Getting approval from TCEQ commissioners

Once your application is reviewed, and you have provided public notice, the TCEQ commissioners review the draft Regulatory Flexibility Order for your proposal at an agenda meeting.

Once you receive formal notification that your proposal is approved, you can begin the implementation process. If your proposal is not approved, you may revise and re-submit it (starting application process from the beginning).

Items scheduled for the Commission Agendas are on the TCEQ Web page at www.tceq.state.tx.us/comm_exec/agendas/comm/comm_agendas.html (You can also search for the keyword "agendas"). Marked agendas contain the decisions made at the meeting.

What you need to know about your Regulatory Flexibility Order

Now that you have a Regulatory Flexibility Order, you need to know how it may impact your status as a regulated entity.

The terms of a Regulatory Flexibility Order

Terms of Regulatory Flexibility Orders (authorizations) vary. The TCEQ will determine an appropriate length of time necessary to demonstrate the effectiveness of an alternative means of pollution control or abatement. The terms will not exceed existing permits or other authorizations.

How does regulatory flexibility affect permitting?

In most cases, Regulatory Flexibility Orders will supersede provisions in permits or other authorizations. Therefore, existing permits or authorizations will not need to be amended or modified. In the event a Regulatory Flexibility Order changes the requirements for an existing permit, you are required to comply with the order and all provisions of the permit that remain unchanged by the order.

How do I change, renew, or terminate a Regulatory Flexibility Order?

To change or amend the authorization

If you need to amend your Regulatory Flexibility Order, submit a request in the same manner that you would submit a new application. Your request should include, at a minimum:

- a brief explanation and justification for the change;
- the impact the change will have on the alternative method being used;
- any changes to information submitted in the original application (for example, changes to the implementation schedule); and
- a \$250 application fee.

To renew the authorization

Submit a renewal application in the same manner that you submit a new application (including the \$250 application fee). Doing this at least **180 days prior** to the expiration date of your original Regulatory Flexibility Order allows you to continue operating under the existing order until the TCEQ makes a determination on your renewal request.

To terminate the authorization

You may terminate the authorization order if you determine the alternative method or standard does not meet the compliance criteria (for example, it is not more protective of the environment or public health) or for any other reason you choose.

Ensure that you will be in compliance with all applicable statutes, rules, and pre-existing permit or authorization terms at the time your Regulatory Flexibility Order is terminated.

What happens if the TCEQ finds the alternative unsuccessful?

If the TCEQ determines the alternative is unsuccessful or the terms of the Regulatory Flexibility Order are being violated, the agency may notify you of an intent to void the order.

If you disagree with the decision to rescind the order, you have 30 days to request a show-cause hearing to contest it before the commission. If the commission decides to void the order, the executive director may provide a transition period to allow you to come into compliance with all applicable statutes, TCEQ rules, and pre-existing permit/authorization terms.

Is the order automatically terminated if I have a violation?

Instances of violation will be evaluated on a case-by-case basis according to standard agency inspection and enforcement procedures, and do not automatically result in termination.

Where do I get technical assistance?

The TCEQ offers assistance to applicants for preparing applications.

Get help preparing your application

The TCEQ recommends you schedule a **pre-submittal conference** to help clarify application requirements, applicable standards, fees, public notice requirements, and potential opposition to the proposal.

Request a pre-submittal conference by contacting the Regulatory Flexibility Program at:

By mail:

Regulatory Flexibility Program
Small Business and Environmental Assistance, MC-112
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

By E-mail: regflex@tceq.state.tx.us

By Telephone: 512/239-3100

Get technical assistance designed for small businesses

If your facility is a small business (100 employees or less), the TCEQ's Small Business Assistance Program can help you understand and navigate through the application process. Small Business Assistance staff may be reached at 1-800-447-2827 or by going to www.sblga.info on the Internet.

Get technical assistance on pollution prevention

To help industry identify pollution prevention opportunities, the TCEQ's Engineering and Technical Assistance Team in the Pollution Prevention and Industry Assistance Program helps facilities reduce waste, reduce costs, and establish a permanent pollution prevention program. Contact the team at 512/239-3100.

Appendixes

Appendix 1

Rules and Regulations of the Regulatory Flexibility Program

- Texas Water Code (Chapter 5)
- Texas Administrative Code (30 TAC Chapter 90)

Appendix 2

Flowchart of the Application Process

Appendix 3

Sample Documents

- Template for a Proposal Summary
- Template for an Implementation Schedule

Appendix 4

Map and Contact Information for TCEQ Regional Offices

Appendix 1: Rules and Regulations of the Regulatory Flexibility Program

The Regulatory Flexibility Program is governed by the Texas Water Code (Chapter 5) and the Texas Administrative Code (30 TAC Chapter 90). Following is a copy of these codes.

Texas Water Code, Chapter 5, Section 5.758

Added by Acts 1997, 75th Leg., ch. 1203, § 1, eff. Sept. 1, 1997.
Renumbered from § 5.123 and amended by Acts 2001, 77th Leg., ch. 965, § 4.02, eff. Sept. 1, 2001.

Regulatory Flexibility

- The commission by order may exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is:
 - (1) more protective of the environment and the public health than the method or standard prescribed by the statute or commission rule that would otherwise apply; and
 - (2) not inconsistent with federal law.
- The commission may not exempt an applicant under this section unless the applicant can present to the commission documented evidence of benefits to environmental quality that will result from the project the applicant proposes.
- The commission by rule shall specify the procedure for obtaining an exemption under this section. The rules must provide for public notice and for public participation in a proceeding involving an application for an exemption under this section.
- The commission's order must provide a specific description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.
- The commission by rule may establish a reasonable fee for applying for an exemption under this section.
- A violation of an order issued under this section is punishable as if it were a violation of the statute or rule from which the order grants an exemption.
- This section does not authorize exemptions to statutes or regulations for storing, handling, processing, or disposing of low-level radioactive materials.
- In implementing the program of regulatory flexibility authorized by this section, the commission shall:

- (1) market the program to businesses in the state through all available appropriate media;
- (2) endorse alternative methods that will clearly benefit the environment and impose the least onerous restrictions on business;
- (3) fix and enforce environmental standards, allowing businesses flexibility in meeting the standards in a manner that clearly enhances environmental outcomes; and
- (4) work to achieve consistent and predictable results for the regulated community and shorter waits for permit issuance.

30 TAC, Chapter 90, Innovative Programs

SUBCHAPTER A: Purpose, Applicability, and Eligibility

Effective July 31, 2002

§90.1. Purpose

Adopted July 10, 2002, Effective July 31, 2002

The purpose of this chapter is to implement the commission's authority under Texas Water Code, §5.758, to provide regulatory flexibility to an applicant who proposes an alternative method or alternative standard to control or abate pollution; §5.127, relating to Environmental Management Systems; and §5.131, relating to Environmental Management Systems.

§90.2. Applicability and Eligibility

Adopted November 20, 2001, Effective December 16, 2001

- (a) Subchapter B of this chapter applies to any statute or commission rule regarding the control or abatement of pollution, except that it does not apply to requirements for storing, handling, processing, or disposing of low-level radioactive materials.
- (b) Subchapter C of this chapter applies to any site that has an environmental management system (EMS) that meets the minimum standards in §90.32 of this title (relating to Minimum Standards for Environmental Management Systems).
- (c) Except as provided in subsection (e) or (f) of this section, a person whose EMS for a specific site meets the minimum standards of §90.32 of this title may be eligible to receive regulatory incentives under this chapter.
- (d) Except as provided in subsection (g) or (h) of this section, any person subject to any statute or commission rule regarding the control or abatement of pollution may be eligible to receive a regulatory flexibility order (RFO).

- (e) A person who has been referred to the Texas or United States attorney general and has incurred a judgment against the site for which the person is requesting regulatory incentives, is ineligible to receive regulatory incentives at that site for using an EMS for a period of three years from the date the judgment was final.
- (f) A person who has been convicted of willfully or knowingly committing an environmental crime regarding the site for which the person is requesting regulatory incentives is ineligible to receive regulatory incentives for using an EMS for a period of three years from the date of the conviction.
- (g) A person who has been referred to the Texas or United States attorney general, and has incurred a judgment, is ineligible to receive an RFO for a period of three years from the date the judgment was final.
- (h) A person who has been convicted of willfully or knowingly committing an environmental crime in this state, or any other state, is ineligible to receive an RFO for a period of three years from the date of the conviction.

SUBCHAPTER B: General Provisions

§§90.10, 90.12, 90.14, 90.16, 90.18, 90.20, Effective July 31, 2002

§90.10. Application for a Regulatory Flexibility Order

Adopted July 10, 2002, Effective July 31, 2002

- (a) An application for a Regulatory Flexibility Order (RFO) must be submitted to the executive director.
- (b) The application must, at a minimum, include:
 - (1) a narrative summary of the proposal, including the specific statutes or commission rules for which an exemption is being sought;
 - (2) a detailed explanation, including a demonstration as appropriate, that the proposed alternative is:
 - (A) more protective of the environment and the public health than the method or standard prescribed by the statute or commission rule that would otherwise apply; and
 - (B) not inconsistent with federal law, including any requirement for a federally approved or authorized program;

- (3) documented evidence of the benefits to environmental quality that will result from the proposal;
 - (4) an implementation schedule which includes a proposal for monitoring, recordkeeping, and/or reporting, where appropriate, of environmental performance and compliance under the RFO;
 - (5) an identification, if applicable, of any proposed transfers of pollutants between media;
 - (6) a description of efforts made or proposed to involve the local community and to achieve local community support;
 - (7) an application fee of \$250; and
 - (8) any other information requested from the applicant by the executive director during the application review period.
- (c) The application must be signed by the applicant or its duly authorized agent and must certify that all information is true, accurate, and complete to the best of that person's knowledge.
 - (d) The applicant shall submit an original and two copies of the signed application to the executive director for review, and shall send one additional copy to the commission's regional office for the region in which the facility is located.

§90.12. Additional Fees; Cost Recovery

Adopted August 26, 1998, Effective September 20, 1998

- (a) The executive director may determine that the application for a Regulatory Flexibility Order constitutes a significant and complex application for which the recovery of all reasonable costs for review and approval by the commission is appropriate. Upon notice to the applicant of such finding, the applicant shall execute a cost recovery agreement in a form approved by the executive director.
- (b) Final consideration of an application by the commission is contingent on the applicant's agreement to pay the reasonable costs of review, as determined by the executive director.
- (c) If an application is withdrawn prior to the commission's consideration of the application, the executive director may void the cost recovery agreement and retain the initial application fee.
- (d) The executive director shall determine the commission's costs to administer this chapter, establish rates to recover those costs, and

publish the rates in the Texas Register. The rates established under this section shall not exceed the rates established by the commission under Health and Safety Code, §361.613 or Chapter 333 of this title (relating to Voluntary Cleanup Programs).

§90.14. Commission Action on Application

Adopted August 26, 1998, Effective September 20, 1998

- (a) Commission action on an application under this chapter shall be consistent with the provisions set forth in Chapter 50, Subchapter B of this title (relating to Action by the Commission), as applicable.
- (b) The commission may consider in its decision, among other factors, the applicant's compliance history and efforts made to involve the local community and achieve local community support.

§90.16. Public Notice, Comment, and Hearing

Adopted August 26, 1998, Effective September 20, 1998

- (a) The applicant shall comply with all public notice, comment, and hearing requirements associated with the statute or commission rule for which the applicant is seeking an exemption, except as provided in subsection (b) or (c) of this section.
- (b) If the statute or commission rule for which an applicant is seeking flexibility does not require public notice, or an opportunity for comment or hearing, the following requirements shall apply.
 - (1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The notice shall be published within 30 days after submittal of the application. Notice under this section shall not be smaller than that normally used in the newspaper's classified advertising section.
 - (2) The commission shall accept public comment for 30 days after the last publication of the notice of application.
- (c) Alternative public notice.
 - (1) An applicant may request to provide public notice and an opportunity for comment or hearing in an alternative manner to the requirements of subsection (a) or (b) of this section.
 - (2) The executive director may authorize alternative public notice and participation opportunities if he determines that the alternative is

reasonably likely to provide greater public notice and opportunity for participation than subsection (a) or (b) of this section.

(d) Notice under this section shall, at a minimum, include:

- (1) a brief description of the proposal and of the business conducted at the facility or activity described in the application;
- (2) the name and address of the applicant and, if different, the location of the facility for which regulatory flexibility is sought;
- (3) the name and address of the commission;
- (4) the name, address, and telephone number of a commission contact person from whom interested persons may obtain further information;
- (5) a brief description of the public comment procedures, and the time and place of any public meeting or public hearing; and
- (6) the date by which comments or requests for hearing must be received by the commission.

§90.18. *Amendment/Renewal.*

Adopted August 26, 1998, Effective September 20, 1998

- (a) An application for amendment or renewal of a Regulatory Flexibility Order (RFO) may be filed in the same manner as an original application under this subchapter.
- (b) If renewal procedures have been initiated at least 180 days prior to the RFO expiration date, the existing RFO will remain in effect, and will not expire until commission action on the application for renewal is final.

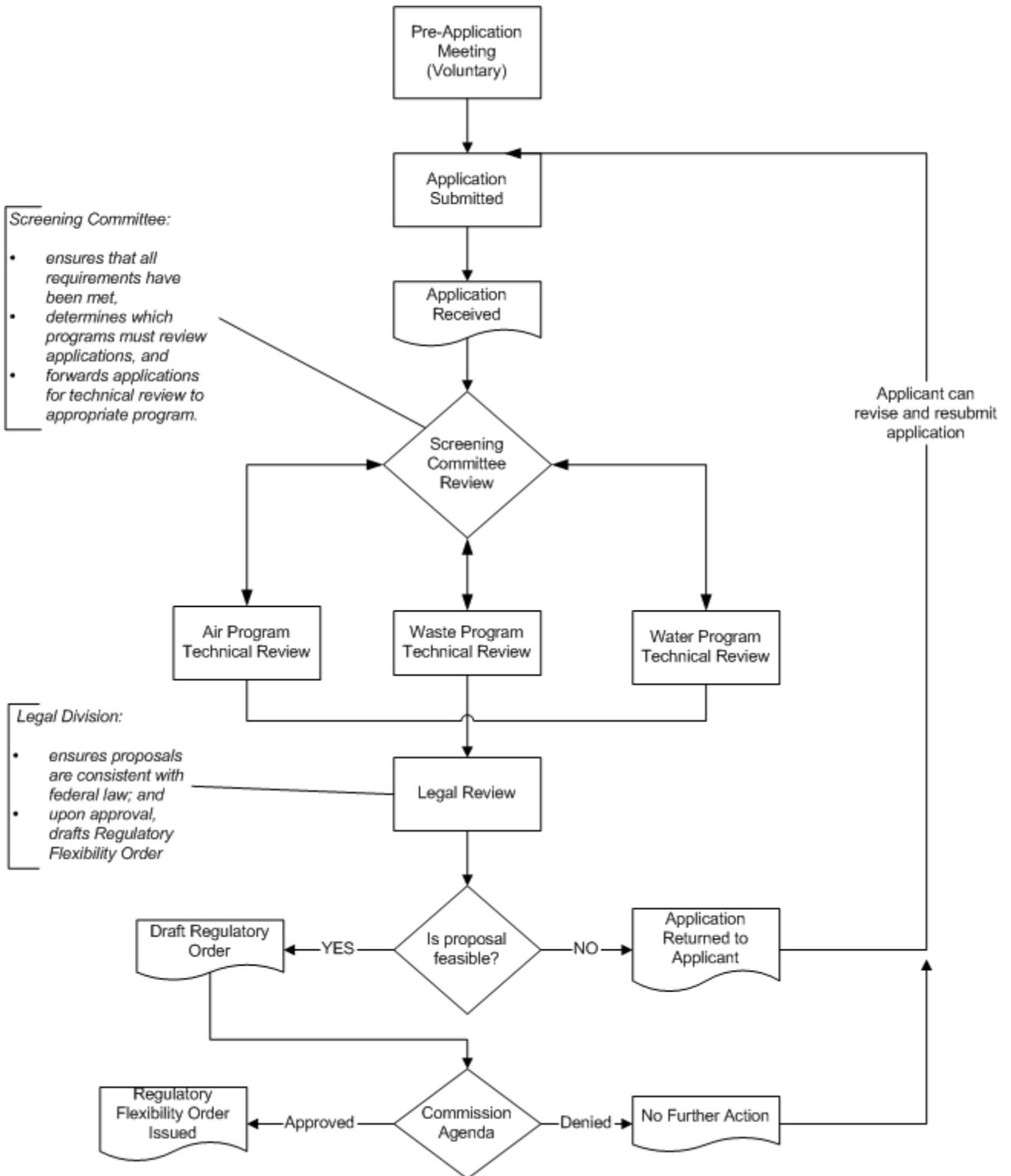
§90.20 *Termination*

Adopted August 26, 1998, Effective September 20, 1998

- (a) By the recipient.
 - (1) A recipient of a Regulatory Flexibility Order (RFO) may terminate the RFO at any time by sending a notice of termination to the executive director by certified mail.

- (2) The recipient must be in compliance with all existing statutes or commission rules at the time of termination.
- (b) By the commission.
- (1) Noncompliance with the terms and conditions of an RFO, Texas Water Code, §5.123, or any provision of this chapter, may result in the RFO being voided, except that the recipient of the RFO shall be given written notice of the noncompliance and provided an opportunity not less than 30 days from the date the notice was mailed to show cause why the RFO should not be voided. Procedures for requesting a show cause hearing before the commission shall be included in the written notice.
 - (2) In the event an RFO becomes void, the executive director may specify an appropriate and reasonable transition period to allow the recipient to come into full compliance with all existing commission requirements, including time to apply for any necessary agency permits or other authorizations.

Appendix 2: Flowchart of the Application Process



Appendix 3: Sample Documents

Template for a Proposal Summary

When summarizing your request for regulatory flexibility, you should address all of the items listed below. You may include any other information you believe is important, but please remember to be brief.

Name of the Facility

Include the facility name that is commonly known in the local community as well as the facility name used to report information to the TCEQ.

Location of the Facility

This should be the actual mailing address or physical location of the facility, not a P.O. Box or other central mailing address.

Brief Description of the Proposal

Briefly describe how your proposal changes the current operations of your facility.

Statute or Rule

Identify the specific statute(s) or TCEQ rule(s) for which you are requesting an exemption.

Brief Description of How the Proposal Meets Minimum Criteria

Briefly describe how your proposal will be more protective of the environment and public health than the current statute or TCEQ rule.

Important Note Regarding Public Notice

If you are subject to specific public notice requirements under current rules or statutes, this summary **does not** supersede those requirements.

If you plan to use this summary for public notice purposes, you must provide information on how interested persons can learn more about your proposal. For example, you could include the name, title, and telephone number of your company's contact person.

Template for an Implementation Schedule

Regulatory Flexibility Project Implementation Schedule		
	Start Date	Completion Date
Project Description/Start Briefly describe the project and estimate start date.		
Key Milestones Briefly identify and describe key milestones and target dates.		
Monitoring/Measurement Schedule Outline monitoring and measurement start and completion dates.		
Results Reporting Describe procedures and dates to report results to the TCEQ.		



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000

REGIONAL OFFICES

1 – AMARILLO	2 – LUBBOCK	3 – ABILENE
<p>Regional Director - Brad Jones 3918 Canyon Dr. Amarillo, TX 79109-4933 806/353-9251 FAX: 806/358-9545</p> <hr/> <p>Perryton Office 511 South Main, Perryton, TX 79070 806/435-8059 FAX: 806/434-8443</p>	<p>Regional Director - Randy Ammons 4630 50th St., Ste. 600 Lubbock, TX 79414-3520 806/796-7092 FAX: 806/796-7107</p>	<p>Regional Director - Winona Henry 1977 Industrial Blvd. Abilene, TX 79602-7833 325/698-9674 FAX: 325/692-5869</p>
4 – DALLAS/FORT WORTH	5 – TYLER	6 – EL PASO
<p>Regional Director - Frank Espino 2309 Gravel Dr. Fort Worth, TX 76118-6951 817/588-5800 FAX: 817/588-5700</p> <hr/> <p>Stephenville (Confined Animal Feeding Operations) 580-D W. Lingleville Rd., Stephenville, TX 76401 254/965-9200 or 1-800-687-7078</p>	<p>Regional Director - Leroy Biggers 2916 Teague Dr. Tyler, TX 75701-3756 903/535-5100 FAX: 903/595-1562</p>	<p>Regional Director - Archie Clouse 401 E. Franklin Ave., Ste. 560 El Paso, TX 79901-1206 915/834-4949 FAX: 915/834-4940</p>
7 – MIDLAND	8 – SAN ANGELO	9 – WACO
<p>Regional Director - Jed Barker 3300 North A St., Bldg. 4-107 Midland, TX 79705-5451 432/570-1359 FAX: 432/570-4795</p>	<p>Regional Director - Ricky Anderson 622 S. Oakes, Ste. K San Angelo, TX 76903-7013 325/655-9479 FAX: 325/658-5431</p>	<p>Regional Director - Anna Dunbar 6801 Sanger Ave., Ste. 2500 Waco, TX 76710-7826 254/751-0335 FAX: 254/772-9241</p>
10 – BEAUMONT	11 – AUSTIN	12 – HOUSTON
<p>Regional Director - Georgie Volz 3870 Eastex Fwy. Beaumont, TX 77703-1892 409/898-3838 FAX: 409/892-2119</p>	<p>Regional Director - Patty Reeh 1921 Cedar Bend Dr., Ste. 150 Austin, TX 78758-5336 512/339-2929 FAX: 512/339-3795</p>	<p>Regional Director - Don A. Thompson 5425 Polk Ave., Ste. H Houston, TX 77023-1486 713/767-3500 FAX: 713/767-3520</p>
13 – SAN ANTONIO	14 – CORPUS CHRISTI	15 – HARLINGEN
<p>Regional Director - Richard Garcia 14250 Judson Rd. San Antonio, TX 78233-4480 210/490-3096 FAX: 210/545-4329</p> <hr/> <p>South Texas Watermaster Office 210/490-3096 FAX: 210/545-4329 1-800-733-2733</p>	<p>Regional Director - Buddy Stanley NRC Bldg., Ste. 1200 6300 Ocean Dr., Unit 5839 Corpus Christi, TX 78412-5839 361/825-3100 FAX: 361/825-3101</p>	<p>Regional Director - Carlos Rubinstein 1804 West Jefferson Ave. Harlingen, TX 78550-5247 956/425-6010 FAX: 956/412-5059</p> <hr/> <p>Rio Grande Watermaster Office 956/430-6056 or 1-800-609-1219 FAX: 956/412-5059</p> <hr/> <p>Eagle Pass Office 1152 Ferry St., Ste. H, Eagle Pass, TX 78852 830/773-5059 FAX: 830/773-4103</p>
16 – LAREDO		
<p>Regional Director - Carlos Rubinstein (acting) 707 East Calton Rd., Ste. 304 Laredo, TX 78041-3638 956/791-6611 FAX: 956/791-6716</p>		

WORLD WIDE WEB

TCEQ rules, publications, agendas and highlights of Commission meetings and other environmental information are available from the convenience of your computer by accessing the TCEQ World Wide Web Home Page over the Internet at: www.tceq.state.tx.us



TCEQ REGIONS

(including counties in each region)

Region 1 - Amarillo
806/353-9251

Armstrong	Hemphill
Briscoe	Hutchinson
Carson	Lipscomb
Castro	Moore
Childress	Ochiltree
Collingsworth	Oldham
Dallam	Parmer
Deaf Smith	Potter
Donley	Randall
Gray	Roberts
Hall	Sherman
Hansford	Swisher
Hartley	Wheeler

Region 2 - Lubbock
806/796-7092

Bailey	King
Cochran	Lamb
Crosby	Lubbock
Dickens	Lynn
Floyd	Motley
Garza	Terry
Hale	Yoakum
Hockley	

Region 3 - Abilene
325/698-9674

Archer	Kent
Baylor	Knox
Brown	Mitchell
Callahan	Montague
Clay	Nolan
Coleman	Runnels
Comanche	Scurry
Cottle	Shackelford
Eastland	Stephens
Fisher	Stonewall
Foard	Taylor
Hardeman	Throckmorton
Haskell	Wichita
Jack	Wilbarger
Jones	Young

Region 4 - DFW
817/588-5800

Collin	Johnson
Cooke	Kaufman
Dallas	Navarro
Denton	Palo Pinto
Ellis	Parker
Erath	Rockwall
Fannin	Somervell
Grayson	Tarrant
Hood	Wise
Hunt	

Region 5 - Tyler
903/535-5100

Anderson	Marion
Bowie	Morris
Camp	Panola
Cherokee	Rains
Cass	Red River
Delta	Rusk
Franklin	Smith
Gregg	Titus
Harrison	Upshur
Henderson	Van Zandt
Hopkins	Wood
Lamar	

Region 6 - El Paso
915/834-4949

Brewster	Hudspeth
Culberson	Jeff Davis
El Paso	Presidio

Region 7 - Midland
432/570-1359

Andrews	Martin
Borden	Midland
Crane	Pecos
Dawson	Reeves
Ector	Terrell
Gaines	Upton
Glasscock	Ward
Howard	Winkler
Loving	

Region 8 - San Angelo
325/655-9479

Coke	Menard
Concho	Reagan
Crockett	Schleicher
Irion	Sterling
Kimble	Sutton
Mason	Tom Green
McCulloch	

Region 9 - Waco
254/751-0335

Bell	Limestone
Bosque	Lampasas
Brazos	Leon
Burleson	Madison
Coryell	McLennan
Falls	Milam
Freestone	Mills
Grimes	Robertson
Hamilton	San Saba
Hill	Washington

Region 10 - Beaumont
409/898-3838

Angelina	Polk
Hardin	Sabine
Houston	San Augustine
Jasper	San Jacinto
Jefferson	Shelby
Nacogdoches	Trinity
Newton	Tyler
Orange	

Region 11 - Austin
512/339-2929

Bastrop	Hays
Blanco	Lee
Burnet	Llano
Caldwell	Travis
Fayette	Williamson

Region 12 - Houston
713/767-3500

Austin	Harris
Brazoria	Liberty
Chambers	Matagorda
Colorado	Montgomery
Fort Bend	Walker
Galveston	Waller
	Wharton

Region 13 - San Antonio
210/490-3096

Atascosa	Karnes
Bandera	Kendall
Bexar	Kerr
Comal	Medina
Edwards	Real
Frio	Uvalde
Gillespie	Wilson
Guadalupe	

Region 14 - Corpus Christi
361/825-3100

Aransas	Kleberg
Bee	Lavaca
Calhoun	Live Oak
De Witt	Nueces
Goliad	Refugio
Gonzales	San Patricio
Jackson	Victoria
Jim Wells	

Region 15 - Harlingen
956/425-6010

Brooks	Kenedy
Cameron	Starr
Hidalgo	Willacy
Jim Hogg	

Region 16 - Laredo
956/791-6611

Dimmit	McMullen
Duval	Val Verde
Kinney	Webb
La Salle	Zapata
Maverick	Zavala

