

## **SUBCHAPTER A: GENERAL RULES**

**Effective October 20, 2002**

### **§101.27. Emissions Fees.**

(a) **Applicability.** The owner or operator of each account to which this rule applies shall remit to the commission an emissions fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an emissions fee and an inspection fee, under §101.24 of this title (relating to Inspection Fees), is required to pay only the greater of the two fees. Each account will be assessed a separate emissions fee. Provisions of this section apply to all accounts, including accounts which have not been assigned specific commission identification numbers. The owner or operator of an account subject to an emissions fee requirement is responsible for contacting the commission to obtain an identification number. The commission will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full emissions fee is due. If the commission is notified in writing that the account is not and will not be in operation during that fiscal year, a fee will not be due. All regulated air pollutants, as defined in subsection (f)(3) of this section, including, but not limited to, those emissions from point and fugitive sources during normal operations with the exception of (for applicability purposes only) hydrogen, oxygen, carbon dioxide, water, nitrogen, methane, and ethane, are used to determine applicability of this section. In accordance with rules promulgated by EPA in 40 Code of Federal Regulations (CFR) Part 70, concerning the use of fugitive emissions in major source determinations, fugitive emissions shall be considered toward applicability of this section only for those source categories listed in 40 CFR §51.166(b)(1)(iii). For purposes of this section, an affected account shall have met one or more of the following conditions:

(1) the account emits or has the potential to emit, at maximum operational or design capacity, 100 tons per year (tpy) or more of any single air pollutant;

(2) the account emits or has the potential to emit, at maximum operational or design capacity, 50 tpy or more of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) and is located in any serious ozone nonattainment area listed in §101.1 of this title (relating to Definitions);

(3) the account emits or has the potential to emit, at maximum operational or design capacity, 25 tpy or more of VOC or NO<sub>x</sub> and is located in any severe ozone nonattainment area listed in §101.1 of this title;

(4) the account emits ten tpy or more of a single hazardous air pollutant, as defined in FCAA, §112;

(5) the account emits an aggregate of 25 tpy or more of hazardous air pollutants, as defined in FCAA, §112;

(6) the account is subject to the National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61) that apply to nontransitory sources;

(7) the account is subject to the control requirements or emissions limitations for New Source Performance Standards (40 CFR Part 60);

(8) the account is subject to the Prevention of Significant Deterioration (40 CFR Part 52) requirements; or

(9) the account is subject to the Acid Deposition provisions in the FCAA Amendments of 1990, Title IV.

(b) Self reported/billed information. Emissions/inspection fees information packets will be mailed to each affected account owner or operator prior to the fiscal year for which the fee is due. The completed emissions/inspection fees basis form shall be returned to the address specified on the emissions/inspection fees basis form within 60 days of the date the agency sends the emissions fees information packet. The completed emissions/inspection fees basis form shall include, at least, the company name, mailing address, site name, all Texas Commission on Environmental Quality (TCEQ) identification numbers, applicable Standard Industrial Classification (SIC) category, the emissions of all regulated air pollutants at the account for the reporting period, and the name and telephone number of the person to contact in case questions arise regarding the fee payment. If more than one SIC category can apply to an account, the category reported shall be that one with the highest associated fee as listed in §101.24 of this title. Subsequent to a review of the information submitted, a billing statement of the fee assessment will be sent to the account owner or operator.

(c) Requesting fee information packet.

(1) For fiscal year 2003, if an account which is subject to the emissions fee in this section has not received the information packet described in subsection (b) of this section by November 1, 2002, the owner or operator of the account shall notify the commission by December 1, 2002. For accounts which begin operation after November 1, the owner or operator of the account shall request an information packet within 30 days of commencing operation.

(2) For subsequent fiscal years, if an account which is subject to the emissions fee in this section has not received the information packet described in subsection (b) of this section by June 1 prior to the fiscal year in which the fee is due, the owner or operator of the account shall notify the commission by July 1 prior to the fiscal year in which the fee is due. For accounts which begin operation after September 1, the owner or operator of the account shall request an information packet within 30 days of commencing operation.

(d) Payment. Fees must be remitted by check, certified check, electronic funds transfer, or money order made payable to the TCEQ and sent to the TCEQ address printed on the billing statement.

(e) Due date. Payment of the emissions fee is due within 30 days of the date the agency sends a statement of the assessment to the facility owner or operator. If an account commences or resumes operation during the fiscal year in which the fee is assessed, the full emissions fee will be due prior to commencement or resumption of operations.

(f) Basis for fees.

(1) The fee shall be based on allowable levels and/or actual emissions at the account during the last full calendar year preceding the beginning of the fiscal year for which the fee is assessed. For purposes of this section, the term "allowable levels" are those limits as specified in an enforceable document such as a permit or Commission Order which are in effect on the date the fee is due. Under no circumstances shall the fee basis be less than the actual emissions at the account. The fee applies to the regulated pollutant emissions at the account, including those emissions from point and fugitive sources. The fee basis shall include emissions during all operational conditions. The basis for calculating fees for emissions from upset events and scheduled or unscheduled maintenance, startup, or shutdown activities shall include all such events and all quantities of emissions, whether reportable or recordable under rule in Chapter 101, Subchapter F of this title. Although certain fugitive emissions are excluded for applicability determination purposes under subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations. The fee for each fiscal year is set at the following rates.

**Emissions Fee Schedule**

<b>Fiscal Year</b>	<b>Rate Per Ton</b>	<b>Minimum Fee</b>
1992	\$3	
1993	\$5	\$25
1994	\$25	\$25
1995 - 2002	\$26	\$26

For fiscal year 2003 and subsequent years, the rate per ton shall be calculated using the following formula. The minimum fee shall be equal to the rate per ton.

$$\text{Rate per ton} = \$25.00 \times (1 - \text{CO}) \times (1 + \{(\text{CPI} - 122.15)/122.15\})$$

Where:

**CO** = carbon monoxide fraction of the fee basis, for all emissions fee payers for the previous fiscal year; and

**CPI** = average of the consumer price index for the 12 months preceding the fiscal year for which the fee is assessed (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100).

(2) The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels and/or actual emissions for individual emission points or process units at the account rounded up to the nearest whole number, as follows.

(A) Where there is an enforceable document, such as a permit or Commission Order, establishing allowable levels, actual emissions may be used only if a completed Emissions Inventory Questionnaire for the account is submitted with the fee payment. For stacks or vents, the inventory must include verifiable data based on continuous emission monitor measurements, other continuously monitored values, such as fuel usage and fuel analysis, or stack testing performed during normal operations using EPA-approved methods and quality-assured by the executive director. All measurements, monitored values, or testing must have been performed during the basis year as defined in paragraph (1) of this subsection or if not performed during the basis year, must be representative of the basis year as defined in paragraph (1) of this subsection. Actual emission rates may be based upon calculations for fugitive sources, flares, and storage tanks. Actual production, throughput, and measurement records must be submitted, along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations. If the actual emission rate submitted for fee purposes is less than 60% of the allowable emission rate, an explanation of the discrepancy must be submitted. Where inadequate or incomplete documentation is submitted, the executive director may direct that the fee be based on allowable levels. Where a complete and verifiable inventory is not submitted, allowable levels shall be used.

(B) Where there is not an enforceable document, such as a permit or a Commission Order, establishing allowable levels actual emissions shall be used. Actual production, throughput, or measurement records must be submitted along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations.

(3) For purposes of this section, the term "regulated pollutant" shall include any VOC, any pollutant subject to FCAA, §111, any pollutant listed as a hazardous air pollutant under FCAA, §112, each pollutant for which a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under commission rules, regulations, permits, orders of the commission, or court orders.

(g) Nonpayment of fees. Each emissions fee payment must be paid at the time and in the manner and amount provided by this subchapter. Failure to remit the full emissions fee by the due date shall result in enforcement action under Texas Water Code, §7.178. The provisions of this section, as first adopted and amended thereafter, are and shall remain in effect for purposes of any unpaid fee assessments, and the fees assessed in accordance with such provisions as adopted or as amended remain a continuing obligation.

(h) Late payments. The agency shall impose interest and penalties on owners or operators of accounts who fail to make payment of emissions fees when due in accordance with Chapter 12 of this title (relating to Payment of Fees).