

**SUBCHAPTER C: REGULATORY INCENTIVES FOR USING ENVIRONMENTAL
MANAGEMENT SYSTEMS**

§§90.30, 90.32, 90.34, 90.36, 90.38, 90.40, 90.42, 90.44

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§90.30. Definitions.

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

(1) **Assessment**--On-site review of the environmental management system by an independent assessor.

(2) **Certified**--For purposes of this subchapter, a documented decision that the environmental management system meets either the minimum standards of this subchapter or another recognized environmental management system standard which is substantively equivalent to the minimum standards.

(3) **Environmental aspect**--Element of a person's activities, products, or services that can interact with the environment.

(4) **Environmental impact**--Any change to the environment, whether adverse or beneficial, wholly or partially resulting from a person's activities, products, or services regarding a specific site.

(5) **Environmental management system**--A documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(6) **Independent assessor**--A person or team of people, at least one of whom has appropriate professional credentials and experience to review an environmental management system. The assessor(s) must not have contributed to the development of the system being assessed.

(7) **Site**--For purposes of this subchapter, any individual location or contiguous location of a person.

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§90.32. Minimum Standards for Environmental Management Systems.

A person may be eligible to receive regulatory incentives under this chapter if the site's environmental management system (EMS), at a minimum:

- (1) includes a written environmental policy directed toward continuous improvement;
- (2) identifies the environmental aspects at the site;
- (3) prioritizes these environmental aspects by the significance of the impacts at the site;
- (4) sets the priorities, goals, and targets for continuous improvement in environmental performance and for ensuring compliance with applicable environmental laws, regulations, and permit conditions;
- (5) assigns clear responsibility for implementation, training, monitoring, and taking corrective action and for ensuring compliance with applicable environmental laws, regulations, and permit conditions;
- (6) requires written documentation of the implementation procedures and the results of so doing; and
- (7) requires a written evaluation, on a routine schedule, of the refinement to the EMS to demonstrate how attainment of the priorities, goals, and targets of the system has improved.

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§90.34. Regulatory Incentives.

Regulatory incentives may include, but are not limited to:

- (1) on-site technical assistance;
- (2) accelerated access to program information;
- (3) modification of state or federal regulatory requirements that do not change emission or discharge limits;
- (4) consideration of a person's implementation of an EMS regarding a specific site in scheduling and conducting compliance inspections; and
- (5) inclusion of the use on an EMS in a site's compliance history and compliance summaries.

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§90.36. Review of an Environmental Management System by the Executive Director.

(a) A person must submit written documentation of the person's environmental management system (EMS) for a specific site as part of a written request for approval of the site's EMS to the executive director to be eligible to receive regulatory incentives under this subchapter. The documentation must include:

(1) the environmental policy statement as required in §90.32(1) of this title (relating to Minimum Standards for Environmental Management Systems);

(2) scope of the EMS (programmatic, geographic area, sites, facilities, or units included in the EMS);

(3) the prioritized environmental aspects for the site as required in §90.32(2) and (3) of this title;

(4) environmental improvement goals and targets for continuous improvement in environmental performance as required in §90.32(4) of this title;

(5) environmental performance indicators that the person measures to demonstrate the effectiveness of the EMS at the site including continuous improvement goals and audit functions;

(6) list of any independent certifications that have been completed on the EMS;

(7) main point of contact on the EMS;

(8) a description of the regulatory incentives of interest to the person regarding that site;

(9) any other information requested by the executive director during the review period; and

(10) signature of the requestor or the duly authorized agent, that certifies that all information is true, accurate, and complete to the best of that person's knowledge.

(b) The executive director will determine, based on risk, if an on-site verification visit shall be conducted by the executive director to assure that all requirements have been met.

(c) If the request for regulatory incentives is solely to request additional incentives under the EMS regulatory incentive program for an EMS that has already been approved by the executive director, the person is exempt from the submittal requirements of subsection (a) of this section. The executive director will act on the request in accordance with the time frames in §90.40(d) of this title (relating to Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System). The person must instead submit the following information:

- (1) a description of the additional regulatory incentives requested for the site;
- (2) main point of contact for the EMS; and
- (3) any additional information requested by the executive director to evaluate the regulatory incentive request including demonstration of reasonable progress toward attainment of environmental performance improvement goals or targets.

(d) Within 90 days of submission of the request for review of an EMS, the executive director shall notify the requestor in writing of whether the information provided is complete or whether additional information must be submitted to the executive director.

(e) The executive director will notify the person who submitted the request for review of whether the EMS qualifies for regulatory incentives under this subchapter. If the EMS does not qualify for regulatory incentives under this subchapter, the executive director will send the person who requested a review of the EMS a notice detailing where the EMS does not meet the standards in §90.32 of this title.

(f) If the person makes no formal response within 90 days to the executive director's request regarding areas where the EMS does not meet the standard in §90.32 of this title, the EMS review will be placed on inactive status and the person may be required to submit additional information to demonstrate compliance with this subchapter.

(g) If a person receives regulatory incentives under this subchapter for a specific site, the executive director will require an additional independent reassessment of the EMS at least every three years from the date of the initial assessment. Results of this reassessment must be provided to the executive director. Regulatory incentives granted prior to the three-year reassessment will remain in effect until such time as the executive director terminates them under §90.42 of this title (relating to Termination of Regulatory Incentives under an Environmental Management System).

(h) Any areas in which an independent assessor finds the EMS does not meet the standards in §90.32 of this title during the reassessment shall be corrected in accordance with the schedule required by the independent assessor. If the deficiencies are not corrected within the time frame allowed or are of such a nature to indicate the EMS no longer meets the standards of this subchapter, the regulatory incentives may be terminated under §90.42 of this title.

(i) In order for the executive director to approve the use of an independent assessor, the following criteria shall be considered by the executive director:

- (1) independence of the assessor from the implementation of the EMS;
- (2) credentials of the independent assessor;

- (3) method of assessment to confirm performance of the EMS; and
- (4) any other information the executive director deems necessary to verify the capability of the assessor to complete the assessment process.

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§90.38. Requests for Modification of State or Federal Regulatory Requirements.

(a) Persons who request modifications of state or federal regulatory requirements which cannot be authorized by any other approval method except a commission order must follow the requirements of Subchapter B of this chapter.

(b) Persons who request modification of federal regulatory requirements under this subchapter must also meet the standards for the EPA's National Environmental Performance Track (NEPT) Program in order to receive federal regulatory incentives.

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§90.40. Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System.

(a) Executive director action on regulatory incentives authorized by rule is not required. Regulatory incentives authorized by rule may be implemented as soon as the person is notified that its environmental management system (EMS) meets the requirements of §90.32 of this title (relating to Minimum Standards for Environmental Management Systems).

(b) Where approval by the executive director is required under this subchapter, the executive director shall consider, among other factors:

- (1) the compliance history of the person who submitted the EMS;
 - (2) the efforts made by the person to include stakeholder involvement and environmental reporting of the person's EMS internal and external to the site with consideration of the size, resources, compliance history, environmental impact, and other operational factors of the specific site;
 - (3) the person's participation in voluntary programs for environmental improvement;
- and
- (4) if the request is specifically for additional incentives after the review of the EMS has been completed and approved, or for reconsideration of granting an incentive that was previously denied, the progress made at a site toward the environmental improvement goals and compliance assurance targets listed in the site's EMS will be considered in granting further regulatory incentives.

(c) When considering regulatory incentives which modify state or federal requirements, the executive director shall consider the steps the person has taken at the site to establish and make progress toward environmental performance improvement goals beyond or outside of regulatory requirements.

(d) Where approval by the executive director is required under this subchapter, the executive director shall act within 60 days of notifying the person that the EMS meets the standards outlined in this subchapter. If a request for additional regulatory incentives is submitted under §90.36(c) of this title (relating to Review of an Environmental Management System by the Executive Director), the executive director shall act on the request within 60 days of its submission. These time frames may be extended at the request of the person or the executive director to allow additional approval time for incentives that require approval by the EPA for implementation or adoption by rule.

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§90.42. Termination of Regulatory Incentives under an Environmental Management System.

(a) Termination by the recipient.

(1) A person who receives regulatory incentives for a site through the use of an environmental management system (EMS) that meets the standards in this subchapter may terminate the regulatory incentives at any time by sending a notice of termination to the executive director by certified mail.

(2) Once a regulatory incentive is terminated, the site for which a person has requested incentives must be in compliance with all permits, existing statutes, or commission rules affected by the regulatory incentives granted at the time of termination except as otherwise provided in this section.

(3) If the regulatory incentives approved involve the use of an order, the person who received the regulatory incentives shall comply with the applicable provisions of §90.20 of this title (relating to Termination).

(b) Termination by the executive director.

(1) Noncompliance with the terms and conditions of the regulatory incentives, Texas Water Code, §5.127 or §5.131, or this chapter, may result in the regulatory incentives being terminated.

(2) If a person who is approved to use regulatory incentives for a specific site under this subchapter is found by the executive director or an independent assessor to no longer meet the requirements of this subchapter, the executive director shall notify the person in writing of the deficiencies found.

(3) Any areas in which the executive director or an independent assessor finds the EMS does not meet the standards in §90.32 of this title (relating to Minimum Standards for Environmental

Management Systems) based on a reassessment shall be corrected in accordance with the schedule required by the executive director. If the deficiencies are not corrected within the time frame allowed or are of such a nature to indicate the EMS no longer meets the standards of this subchapter, the regulatory incentives will be terminated under this section.

(4) In the event regulatory incentives are terminated under this section, the executive director may specify an appropriate and reasonable transition period to allow the site previously operating under regulatory incentives to come into full compliance with all existing commission requirements, including time to apply for any necessary permits or other authorizations.

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§90.44. Motion to Overturn.

Any person who has requested approval of an environmental management system (EMS) and whose EMS was denied approval, any person who has been notified by the executive director that the approval for the person's system has been terminated, any person who has been denied regulatory incentives that the executive director is authorized to approve under §90.40 of this title (relating to Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System), any person who has been notified by the executive director that a regulatory incentive has been terminated, or any other person may file with the chief clerk a motion to overturn the executive director's decision. A motion must be filed within 23 days after the date the commission mails notice of the executive director's decision to the person. Timely motions are subject to §50.139(e) - (g) of this title (relating to Motion to Overturn Executive Director's Decision).

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