

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §101.24, Inspection Fees, and §101.27, Emissions Fees.

The proposed amendments are to be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission collects annual inspection fees to cover a portion of the cost of air programs as required by Texas Health and Safety Code (THSC), Texas Clean Air Act, (TCAA), §382.062, Application, Permit, and Inspection Fees. The commission also collects annual fees from sources that are subject to the permitting requirements of Title IV or V of the Federal Clean Air Act Amendments of 1990 (Federal Clean Air Act (FCAA), Titles IV and V, hereinafter referred to as “Title V”) as required by TCAA, §382.0621, Operating Permit Fee. The existing rule language in §101.24 and §101.27 structures the inspection fees and the emissions fees to be self-paid by the affected accounts.

To maintain consistency with other commission fee programs and in response to the Sunset Commission recommendations, the commission is proposing to convert the inspection fees and emissions fees to a billed system.

The commission is proposing to adjust inspection fees for inflation and the emissions fees to meet the EPA presumptive minimum for the commission’s Title V program. Additionally, the commission is proposing to assess a new fee on new permit by rule (PBR) registrations received on or after November

1, 2002 in a concurrent 30 TAC Chapter 106 rulemaking as well as proposing to increase air permit, air permit renewal, and air permit amendment fees in a concurrent 30 TAC Chapter 116 rulemaking.

The Clean Air Fund 151 is the source of funding for essentially all air program related activities of the commission. This fund supports a wide range of activities including permitting, inspections, enforcement, air quality planning, mobile source program, emissions inventory, and monitoring in addition to agency functions which support these activities. Revenues deposited to the fund are from several different fees collected from point sources and mobile sources as well as the general public. Over the last several years, the fund has carried a balance in the account which has allowed the agency to collect revenues below the annual budgeted expenditures. However, the fund balance is close to being depleted. Additionally, due to decreases in emissions, the revenue from fees which are assessed based upon emission levels has declined by an average of approximately 3% per year in recent years. The revenue estimates for Clean Air Fund 151 reveal that there are insufficient funds to support the fiscal year (FY) 2003 appropriated level.

As part of its air program activities, the commission implements an approved Title V program. As part of that approval, the commission was required to demonstrate that the fees collected from Title V sources are sufficient to support the Title V program. Currently under state law, this fee must be dedicated for use only on Title V activities. This fee is commonly referred to as the air emissions fee and is currently set at \$26 per ton. However, the fee demonstration submitted to EPA in August 2001 showed that the fee would need to be increased beginning in FY 2003 to provide sufficient support for the Title V program.

Activities which are not considered to be Title V activities must be supported through the remaining fees that are not reserved for other uses. Essentially, these fees generally include permit, renewal, and amendment fees; inspection fees; and a portion of the motor vehicle safety inspection fee (as set by statute, THSC, §382.0622).

Given the declining availability of funds in Clean Air Fund 151, the commission reviewed the air fees which it has the authority to change. Most of the air permit, renewal, and amendment fees have not been increased since the early 1990s. The air emissions fee has not been increased since 1995 and the air inspection fee since 1992. The vehicle inspection maintenance fee has been set recently to cover the cost of that program. Several other funding sources are dedicated for specific uses. In an effort to match fee revenue collections more closely with related expenditures, the commission also reviewed potential sources for new fees. After a review of the commission's existing air program related activity fees, the commission is proposing revisions to the emissions fee, inspection fee, permit, renewal, and amendment fees, as well as proposing a new fee for review of registrations for PBR.

SECTION BY SECTION DISCUSSION

There are several proposed revisions which change the agency name from Texas Natural Resource Conservation Commission (TNRCC) to reflect the new name of Texas Commission on Environmental Quality (TCEQ).

Section 101.24

Section 101.24(a), concerning applicability, would improve the readability of this subsection and correct an improper cross-reference. References to account numbers are being changed to identification numbers to reflect the commission's new Central Registry system.

Proposed new §101.24(b), concerning self-report/billed information, would state that emissions/inspection fee information packets will be mailed to each affected account owner or operator. The emissions/inspection fee basis form will be required to be remitted within 60 days of the date on the emissions/inspection fee packet. All subsequent subsections would be relettered accordingly. This proposed amendment would also specifically state that the completed emissions/inspection fee basis form shall include, at least, the company name, mailing address, site name, all TCEQ identification numbers, the applicable Standard Industrial Classification (SIC) category, and the name and telephone number of a contact person. In the event that more than one SIC category is applicable at the account, the form should specify the applicable SIC category with the highest fee rate. The new language also includes a requirement to include additional information necessary to assess the fee. For example, this would include information such as relative plant size when necessary to determine which fee rate would apply within the SIC category. The intent of this proposed amendment is to allow the review of the self-reported information prior to issuing a statement of the fee assessment to the account.

Proposed new §101.24(c), concerning requesting a fee information packet, would provide a procedure for those account owners or operators who do not receive the fee information packet described in proposed subsection (b). It would set a date by which every account owner or operator should have received the packet and it requires notification to the commission by those account owners or operators which have not received the packet. The language also includes a provision for new account owners or operators who begin operation sometime during the FY. Those accounts would be required to request a packet within 30 days of beginning operation.

Section 101.24(d), concerning payment, would be relettered from subsection (b) and currently states that the fee payment shall accompany a completed fee return form. The proposed amendment would add the payment options of certified check and electronic funds transfer. Additionally, this proposed amendment would change the collection of the inspection fee from a self report/self pay system to a self report/billed system. Finally, language would be removed which is duplicative of the new language in proposed subsection (b).

Section 101.24(e), concerning due date, would be relettered from §101.24(c) and currently states that the fee payment must be received or postmarked no later than November 1 of the FY in which the fee is assessed. This proposed amendment would state that the payment of the inspection fee is due within 30 days of the date the agency sends a statement of the assessment to the facility owner or operator. The intent of this proposed amendment is to change the due date to be consistent with a billed system.

Section 101.24(f), concerning inspection fee schedule, would be relettered from subsection (d).

Currently, the inspection fee rate has been unchanged since FY 1992. The proposed amendment would reformat the inspection fee schedule and include a step increase in the inspection fees to adjust for inflation. The initial increase raises the fee approximately 33.8%. For FYs following 2003, the proposed amendment would provide a mechanism to annually adjust the fee for inflation in accordance with the consumer price index (CPI) (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100). The intent of this proposed amendment is to generate revenue to help fund, at appropriated levels, the commission's air program related activities.

Section 101.24(g), concerning nonpayment of fees, would be relettered from subsection (e) and currently states that the failure to remit the full inspection fee by the due date would result in an enforcement action. The proposed amendment would state that each inspection fee payment must be paid at the time and in the manner and amount provided in the section. The intent of this amendment is to establish language consistent with other program fees collected within the agency. This subsection has also been amended to reflect the correct citation for enforcement for failure to pay fees. The enforcement provisions previously cited have been consolidated with other enforcement requirements into Texas Water Code (TWC), Chapter 7.

Section 101.24(h), concerning late payments, would be relettered from subsection (f) and currently states that the owner or operator of an account failing to make payment of inspection fees when due are assessed late payment penalties and interest. The proposed amendment would state that the agency shall

impose interest and penalties on owners or operators of an account who fail to make payment of inspection fees when due. The intent of this amendment is to establish language consistent with other program fees collected within the agency.

Section 101.27

Section 101.27(a), concerning applicability, would correct the relettering of subsections which are being referenced. This proposed amendment would also state that the account will trigger the emissions fee if it emits or if it has the potential to emit over the specified levels of air contaminants. The intent of this proposed amendment is to improve the readability of this subsection. References to account numbers are being changed to identification numbers to reflect the commission's new Central Registry system.

Proposed new §101.27(b), concerning self-reported/billed information, would state that emissions/inspection fee information packets will be mailed to each affected account owner or operator. The emissions/inspection fee basis form will be required to be remitted within 60 days of the date on the emissions/inspection fee packet. All subsequent subsections would be relettered accordingly. This proposed amendment would also specifically state that the completed emissions/inspection fee basis form shall include, at least, the company name, mailing address, site name, all TCEQ identification numbers, the applicable SIC category, and the name and telephone number of a contact person. In the event that more than one SIC category is applicable at the account, the form should specify the applicable SIC category with the highest fee rate. The new language also includes a requirement to include additional information necessary to assess the fee. For example, this would include information such as capacity when necessary to determine which fee rate would apply within the SIC category. The

intent of this proposed amendment is to allow the review of the self-reported information prior to issuing a statement of the fee assessment to the account.

Proposed new §101.27(c), concerning requesting a fee information packet, would provide a procedure for those accounts which do not receive the fee information packet described in proposed subsection (b). It would set a date by which every account owner or operator should have received the packet and it requires notification to the commission by those account owners or operators which have not received the packet. The language also includes a provision for new account owners or operators which begin operation sometime during the FY. Those account owners or operators would be required to request a packet within 30 days of beginning operation.

Section 101.27(d), concerning payment, would be relettered from subsection (b) and currently states that the fee payment shall accompany a completed fee return form. The proposed amendment would add the payment option of certified check. The completed fee basis form is discussed in proposed subsection (b); therefore, the reference to the completed fee return form in this subsection was deleted. The intent of this proposed amendment is to change the collection of the emissions fee from a self-report/self-pay system to a self-report/billed system.

Proposed new §101.27(e), concerning due date, currently states that the fee payment must be received or postmarked no later than November 1 of the FY in which the fee is assessed. This proposed amendment would state the 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. The intent of this revision is to

change the due date to be consistent with a billed system. Due to the relettering of the subsections, existing subsection (d) was deleted.

Section 101.27(f), concerning basis for fees, would increase the current per ton emissions fee from \$26 to a level equivalent with the EPA presumptive minimum for the commission's Title V program. The emissions fee rate would be adjusted each year by the CPI (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100). This increase is necessary to collect sufficient funding for the commission's Title V programs. Setting the per-ton emission fee at the EPA presumptive minimum provides the presumption that the fee rate meets the EPA's funding adequacy requirements. In addition, subsection (f) would be relettered from subsection (c). Subsection (e)(1) would be relettered from subsection (c)(1). Subsection (c)(2) is obsolete and would be deleted. Subsection(c)(3) would be relettered to subsection (f)(2). Subsection (c)(4) would be relettered to subsection (f)(3).

Section 101.27(g), concerning nonpayment of fees, would be relettered from subsection (c) and currently states that the failure to remit the full emissions fee by the due date would result in an enforcement action. The proposed amendment would state that each emissions fee payment must be paid at the time and in the manner and amount provided in the section. The intent of this amendment is to establish language consistent with other program fees collected within the agency. This subsection has also been amended to reflect the correct citation for enforcement for failure to pay fees. The enforcement provisions previously cited have been consolidated with other enforcement requirements into TWC, Chapter 7.

Section 101.27(h), concerning late payments, would be relettered from subsection (f) and currently states that the owner or operator of an account failing to make payment of emissions fees when due shall be assessed late payment penalties and interest. This proposed amendment would state that the agency shall impose interest and penalties on owners or operators of an account who fail to make payment of emissions fees when due. The intent of this proposed amendment is to establish language consistent with other program fees within the agency.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that the proposed rulemaking will generate approximately \$5.7 million in additional revenue for the commission in FY 2003 due to the adjustment of air emissions and air inspection fee rates. The fee rate increases proposed in this rulemaking are intended to help generate sufficient revenue to fund the commission's air programs at appropriated levels. The commission does not anticipate significant fiscal implications for other units of state and local government affected by the proposed amendments.

To generate sufficient revenue to fund the commission's Title V program as required by the FCAA, the proposed rulemaking would increase the per-ton air emissions fee from the current rate of \$26 to the EPA presumptive minimum rates, which are currently estimated to be \$29.11 in FY 2003, \$29.98 in FY 2004, \$30.88 in FY 2005, \$31.81 in FY 2006, and \$32.76 in FY 2007, assuming a 3% increase per annum. Air emissions fees are assessed on the annual emissions tonnage of regulated air pollutants as defined in rule; by state statute the fee is not assessed on emissions in excess of 4,000 tons per pollutant. The proposed rulemaking also would increase the air inspection fee by approximately 33.8%

in FY 2003, and for inflation in each subsequent FY. The air inspection fee increases are generally intended to help fund the commission's regulation of sources not subject to Title V. Air inspection fees are based on the SIC category generating the highest fee at the site.

The proposed amendments will affect all new or existing Title V sites in Texas. The commission estimates that there are 1,866 Title V accounts in Texas. Sites under these accounts have the potential to emit: more than 100 tons per year (tpy) of any single air pollutant, or; 25 tpy of nitrogen oxides or volatile organic compounds in a severe ozone nonattainment area, or; 50 tpy of nitrogen oxides or volatile organic compounds in a serious ozone nonattainment area, or; 10 tpy of any single hazardous air pollutant, or; 25 tpy of any combination of hazardous air pollutants, or; certain sites subject to new source performance standards or national emissions standards for hazardous air pollutants.

The proposed rulemaking would affect approximately 60 units of state and local government, including river authorities and state universities, that operate facilities subject to emissions or inspection fees, such as municipally-owned power plants and landfills. While the aggregate effect of the rulemaking on state and local government is estimated at approximately \$128,000 in FY 2003 up to approximately \$234,000 in FY 2005 and thereafter, the rulemaking is not expected to cost any single entity more than an additional \$72,000. The average annual emissions fee increase for the majority of affected units of government is estimated to increase from approximately \$2,300 in FY 2003 to approximately \$5,400 in FY 2005. The preceding estimates assume a decrease in emissions of 5% per annum. The average annual inspection fee for the majority of affected units of government is estimated to increase by approximately \$2,200. The commission anticipates that net revenues to the agency derived from the

revised annual emissions fee from units of government and industry will increase by approximately \$4.0 million in FY 2003 up to approximately \$5.8 million in FY 2005. The additional emissions fee revenue will be used to fund the agency's existing Title V program. The commission anticipates that net revenues to the agency derived from the revised annual inspection fee from units of government and industry will increase by approximately \$1.7 million in FY 2003 up to approximately \$2.0 million in FY 2005. The additional inspection fee revenue will generally be used to fund the commission's regulation of sources not subject to Title V.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of implementing the amendments will be the generation of revenue to help support the commission's air programs.

The fee rate increases proposed in this rulemaking are intended to generate revenue to help fund, at appropriated levels, the commission's air programs. To generate sufficient revenue to fund the commission's Title V program as required by the FCAA, the proposed rulemaking would increase the per-ton air emissions fee from the current rate of \$26 to the EPA presumptive minimum rates, which are currently estimated to be \$29.11 in FY 2003, \$29.98 in FY 2004, \$30.88 in FY 2005, \$31.81 in FY 2006, and \$32.76 in FY 2007, assuming a 3% increase per annum. Air emissions fees are assessed on the annual emissions tonnage of regulated air pollutants as defined in rule; by state statute the fee is not assessed on emissions in excess of 4,000 tons per pollutant. The proposed rulemaking also would increase the air inspection fee by approximately 33.8% in FY 2003, and for inflation in each subsequent

FY. The air inspection fee increases are generally intended to help fund the commission's regulation of sources not subject to Title V. Air inspection fees are based on the SIC category generating the highest fee at the site.

Commission data indicates that there are 1,833 existing accounts operated by private companies that would be affected by the proposed change to the emissions fee rate, while 1,556 existing accounts operated by private companies would be affected by the proposed change to inspection fees. An undetermined number of these accounts are operated by the same parent company. The total emissions fee for each account is expected to increase by approximately 12% to 19%, depending upon the rate of inflation and the extent of anticipated emissions reductions actually realized. Fewer than 1% of payees are expected to experience emissions fee increases greater than \$100,000. When the fees for all of a company's accounts are combined, power generators and a petrochemical company account for the five largest fee increases, estimated at \$325,000, \$283,000, \$217,000, \$175,000 and \$139,000 in FY 2003 up to approximately \$456,000, \$398,000, \$305,000, \$246,000, and \$196,000 in FY 2005, respectively. The average annual emissions fee for the majority of affected businesses is estimated to increase by approximately \$2,200 in FY 2003 up to approximately \$3,100 in FY 2005. The average annual inspection fee for the majority of affected businesses is estimated to increase by approximately \$1,300.

The total annual cost to private businesses due to the proposed increased emissions and inspection fees is estimated to be approximately \$5.7 million beginning in FY 2003 up to approximately \$7.8 million in FY 2005 and thereafter.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses as a result of adoption of the proposed amendments, which are intended to revise the commission's air emissions and inspection fees to help generate sufficient revenue to fund the commission's air programs.

Commission data indicate that there are 1,833 existing accounts operated by private companies that would be affected by the proposed change to the emissions fee rate, while 1,556 existing accounts operated by private companies would be affected by the proposed change to inspection fees. An undetermined number of these accounts are operated by the same parent company. Small and micro-businesses are estimated to comprise approximately 3% (60) of the accounts subject to the emissions fee and approximately 6% (95) of the accounts subject to the inspection fee. The commission anticipates that all of the small and micro-businesses affected by the proposed amendments will pay approximately \$500 or less to comply with the proposed amendments.

The following is an analysis of the costs per employee for small and micro-businesses that may be affected by the proposed rule changes. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. The proposed increase to emissions and inspection fees would cost up to an additional \$5.00 per employee for a small business, and up to an additional \$25 per employee for a micro-business.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 101 are not, themselves, intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants. Therefore, the commission finds that they are not major “environmental” rules. Additionally, the fees collected under the proposed revisions to Chapter 101 generally should not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These proposed revisions will be spread through most sectors of the economies of the state as they generally apply to most stationary sources of air pollution. When viewed in conjunction with the amounts of revenues flowing through the sectors, the incremental fee increase is not material.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, or; adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.”

Specifically, the emissions fee, and to some extent inspection fee are required under federal law to be sufficient to support the permit program under Titles IV and V of the FCAA (42 United States Code (USC), §§7651 *et seq.* and §§7661 *et seq.*). The emissions fees are also required by state law, THSC, TCAA, §382.0621 and §382.0622, to be sufficient to support the Titles IV and V programs. The inspection fee is required by state law to be sufficient to support a portion of commission activities related to the overall air quality program (TCAA, §382.062). This rulemaking does not exceed an express requirement of federal or state law. The rulemaking does not exceed a requirement of a delegation agreement, but revision to the emissions fee is specifically required by EPA’s approval of the Title IV and V programs to the commission. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed and authorized under TCAA, §§382.011, 382.017, 382.062, 382.0621, 382.0622, and generally under TCAA, §§382.001 *et seq.*

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact evaluation for these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to raise the emissions and inspection fees to maintain funding, at appropriated levels, sufficient to support the Titles IV and V programs and a portion of the overall air quality program.

Promulgation and enforcement of the rules will not burden private, real property because they are fee rules which support air quality programs of the commission. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, the increase in emissions fee does fulfill a federal mandate under 42 USC, §§7651 *et seq.* and §§7661 *et seq.* The emissions fee is also required by state law, THSC, TCAA, §382.0621 and §382.0622, to be sufficient to support the Titles IV and V programs. The inspection fee is required by state law to be sufficient to support a portion of commission activities related to the overall air quality program (TCAA, §382.062). Consequently, the exemption which applies to these rules is that of an action reasonably taken to fulfill an obligation mandated by federal and state law. Therefore, this rulemaking action will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program or will affect an action/authorization identified in §505.11(a)(6), and will, therefore, require that goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because the rulemaking is a fee rule which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on August 12, 2002, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle.

The hearing is structured for the receipt of oral or written comments by interested persons. Individuals

may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-041-116-AI. Comments must be received by 5:00 p.m., August 12, 2002. Comments received prior to this publication have been considered and will be formally addressed in the RESPONSE TO COMMENTS section of the adoption preamble publication and are not required to be resubmitted. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

SUBCHAPTER A: GENERAL RULES

§101.24, §101.27

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections; §382.0621, concerning Operating Permit Fee, which requires the commission to collect fees for sources subject to Titles IV or V of the FCAA; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq.*), which provides authority for all of the air quality programs which the fees are necessary to support.

The proposed amendments implement TCAA, §§382.011, 382.017, 382.062, 382.0621, 382.0622, and TCAA, §§382.001 *et seq.*

§101.24. Inspection Fees.

(a) Applicability. The owner or operator of each account to which this rule applies shall remit to the commission an inspection 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 inspection fee and [an] emissions fee, under §101.27 of this title (relating to Emissions Fees), is required to pay only the greater of the two fees. Each account will be assessed a separate inspection fee. The inspection fee shall apply to each account which contains one or more of the types of plants, facilities, and/or processes described in subsection (f) [(d)] of this section, including permitted and non-permitted facilities. References for the industrial categories used are provided in the *Standard Industrial Classification (SIC) Manual* (Executive Office of the President, Office of Management and Budget, 1987). If more than one SIC category can apply to an account, the fee assessed shall be the highest fee listed for the applicable classifications in the fee schedule. Provisions of this section apply to all accounts, including accounts which have not been assigned specific commission identification [account] numbers. The owner or operator of an account subject to an inspection fee [requirement] is responsible for contacting the [appropriate] commission [regional office] to obtain an identification [account] 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 inspection fee is due. If the commission is notified in writing that the account [plant] is not and will not be in operation during that fiscal year, a fee will not be due.

(b) Self report/billed information. Emissions/Inspection fee information packets will be mailed to each affected account prior to the fiscal year for which the fee is due. The completed emissions/inspection fee 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/inspection fee information packet. The completed emissions/inspection fee basis form shall include, at least, the company name, mailing address, site name, all Texas Commission on Environmental Quality (TCEQ) identification numbers, the applicable SIC category, any additional information necessary to assess the fee, and the name and telephone number of the person to contact in case questions arise regarding the emissions/inspection fee basis form. Subsequent to a review of the information submitted, a billing statement of the fee assessment will be sent to the account during the fiscal year in which the fee is due.

(c) Requesting fee information packet. If an account which is subject to the inspection fee in this section has not received the information packet described in subsection (b) of this section by September 1 of the fiscal year in which the fee is due, the owner or operator of the account shall notify the commission by October 1 of 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) [(b)] Payment. Fees must [shall] be remitted by check, certified check, electronic funds transfer, or money order made payable to the TCEQ [TNRCC] and sent to the TCEQ [TNRCC] address printed on the billing statement [fee return form. A completed fee return form shall accompany

fees remitted. The fee return form shall include, at least, the company name, mailing address, site name, OAQ account number, the SIC category on which the fee was determined, and the name and telephone number of the person to contact in case questions arise regarding the fee payment].

(e) [(c)] Due date. Payment of the inspection fee is due within 30 days of the date the agency sends a statement of the assessment to the facility owner or operator [Fee payments shall be made annually and must be received by the TNRCC or postmarked no later than November 1 of the fiscal year in which the fee is assessed]. If an account commences or resumes operation during [after November 1 of] the fiscal year in which the fee is assessed, the full inspection fee will be due prior to commencement or resumption of operations.

(f) [(d)] Inspection fee schedule. The inspection fee schedule is as follows. For fiscal years after 2003, the fiscal year 2003 fee schedule shall apply as adjusted for inflation using the Consumer Price Index (CPI). The CPI adjustment factor shall be the average of the CPI 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).

Figure: 30 TAC §101.24(f)

[Figure: 30 TAC §101.24(d)]

SIC CODE - DESCRIPTION

FEE

Fiscal Year

Fiscal Year

1992 - 2002

2003

1311, 1321 - Natural Gas Processing

Gas processing and treatment operations with a rated inlet capacity or highest average daily inlet volume for one of the last three years of at least 5 million standard cubic feet per day (scf/day), but less than 25 million scf/day

1311 - Natural Gas Sweetening	\$ 1,250.00	<u>\$ 1,675.00</u>
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1321 - Natural Gas Liquids Processing	\$ 2,875.00	<u>\$ 3,850.00</u>
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Gas processing and treatment operations with a rated inlet capacity or highest average daily inlet volume for one of the last three years of at least 25 million scf/day

1311 - Natural Gas Sweetening	\$ 2,500.00	<u>\$ 3,345.00</u>
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1321 - Natural Gas Liquids Processing	\$ 5,750.00	<u>\$ 7,695.00</u>
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Compression with total horsepower (HP) of at least 10,000 HP from fossil fuel-fired engines	\$ 2,875.00	<u>\$ 3,850.00</u>
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1459 - Fuller's Earth Processing

Material processing capacity of at least 25 tons per hour (tph)	\$ 5,625.00	<u>\$ 7,530.00</u>
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1479 - Sulfur Mining

Material processing capacity of at least 1 ton per day (tpd), but less than 10 tpd [tons per day]	\$ 6,000.00	<u>\$ 8,030.00</u>
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Material processing capacity of at least 10 tpd [tons per day]	\$ 12,000.00	<u>\$ 16,060.00</u>
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day]

2061 - Cane Sugar Manufacturing

Processing capacity of at least 1,000 pounds per hour (lbs/hr)	\$ 6,875.00	<u>\$ 9,200.00</u>
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2074 - Cottonseed Oil Mills

Processing capacity equal to or greater than 100 <u>tpd</u> [tons per day], but less than 425 <u>tpd</u> [tons per day]	\$ 1,250.00	<u>\$ 1,674.00</u>
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Processing capacity equal to or greater than 425 <u>tpd</u> [tons per day], but less than 850 <u>tpd</u> [tons per day]	\$ 1,875.00	<u>\$ 2,510.00</u>
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Processing capacity equal to or greater than 850 <u>tpd</u> [tons per day]	\$ 4,000.00	<u>\$ 5,355.00</u>
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2082 - Malt Beverages

Capacity of at least 1 million barrels per year	\$ 3,375.00	<u>\$ 4,520.00</u>
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2435, 2436, 2493 - Veneer, Plywood, Particle board and Fiberboard

Capacity equal to or greater than 50 million square feet per year (ft ² /year), but less than 125 million ft ² /year 3/8" basis	\$ 2,185.00	<u>\$ 2,925.00</u>
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Capacity equal to or greater than 125 million ft ² /year, but less than 350 million ft ² /year 3/8" basis	\$ 4,375.00	<u>\$ 5,855.00</u>
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Capacity equal to or greater than 350 million ft ² /year 3/8" basis	\$ 8,750.00	<u>\$ 11,710.00</u>
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2611, 2621 - Pulp and Paper Mills

Capacity of at least 100 <u>lbs/hr</u> [pounds per hour] , but less than 1,000 <u>lbs/hr</u> [pounds per hour]	\$ 7,875.00	<u>\$ 10,540.00</u>
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Capacity of at least 1,000 <u>lbs/hr</u> [pounds per hour]	\$ 15,750.00	<u>\$ 21,075.00</u>
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2812 - Alkalies and Chlorine

Capacity of at least 1 million pounds per year (lbs/yr), but \$ 2,625.00 \$ 3,515.00

less than 10 million lbs/yr [pounds per year]

Capacity of at least 10 million lbs/yr [pounds per year], \$ 5,250.00 \$ 7,025.00

but less than 100 million lbs/yr [pounds per year]

Capacity of at least 100 million lbs/yr [pounds per year] \$ 10,500.00 \$ 14,050.00

2813 - Industrial Gases

Capacity of at least 1 million lbs/yr [pounds per year], but \$ 1,875.00 \$ 2,510.00

less than 10 million lbs/yr, and heat input capacity on-site

of at least 250 million British thermal units (Btu) per hour

Capacity of at least 10 million lbs/yr [pounds per year], \$ 3,750.00 \$ 5,020.00

but less than 100 million lbs/yr [pounds per year], and heat

input capacity on-site of at least 250 million Btu per hour

Capacity of at least 100 million lbs/yr [pounds per year], \$ 7,500.00 \$ 10,035.00

and heat input capacity on-site of at least 250 million Btu

per hour

2819 - Inorganic Chemicals

Capacity of at least 1 million lbs/yr [pounds per year], but \$ 3,750.00 \$ 5,020.00

less than 10 million lbs/yr [pounds per year]

Capacity of at least 10 million lbs/yr [pounds per year], \$ 7,500.00 \$ 10,035.00

but less than 100 million lbs/yr [pounds per year]

Capacity of at least 100 million lbs/yr [pounds per year] \$ 15,000.00 \$ 20,070.00

2821 - Plastics, Minerals and Resins

Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 3,500.00	<u>\$ 4,685.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 7,000.00	<u>\$ 9,370.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 14,000.00	<u>\$ 18,735.00</u>
2822 - Synthetic Rubber		
Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 3,375.00	<u>\$ 4,520.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 6,750.00	<u>\$ 9,035.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 13,500.00	<u>\$ 18,065.00</u>
2834 - Pharmaceutical Preparations		
Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 1,685.00	<u>\$ 2,255.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 3,375.00	<u>\$ 4,520.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 6,750.00	<u>\$ 9,035.00</u>
2841 - Soap and Other Detergents		
Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 750.00	<u>\$ 1,005.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 1,500.00	<u>\$ 2,010.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 3,000.00	<u>\$ 4,015.00</u>
2861 - Gum and Wood Chemicals		

Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 2,310.00	<u>\$ 3,095.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 4,625.00	<u>\$ 6,190.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 9,250.00	<u>\$ 12,380.00</u>

2865 - Cyclic Crudes and Intermediates

Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 3,625.00	<u>\$ 4,855.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 7,250.00	<u>\$ 9,705.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 14,500.00	<u>\$ 19,405.00</u>

2869 - Organic Chemicals

Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 3,750.00	<u>\$ 5,020.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 7,500.00	<u>\$ 10,035.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 15,000.00	<u>\$ 20,070.00</u>

2873 - Nitrogenous Fertilizers

Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 1,560.00	<u>\$ 2,090.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 3,125.00	<u>\$ 4,185.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 6,250.00	<u>\$ 8,365.00</u>

2874 - Phosphatic Fertilizers

Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 2,560.00	<u>\$ 3,430.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 5,125.00	<u>\$ 6,860.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 10,250.00	<u>\$ 13,715.00</u>
2879 - Agricultural Chemicals		
Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 2,310.00	<u>\$ 3,095.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 4,625.00	<u>\$ 6,190.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 9,250.00	<u>\$ 12,380.00</u>
2895 - Carbon Black		
Capacity of at least 6 million <u>lbs/yr</u> [pounds per year], but less than 50 million <u>lbs/yr</u> [pounds per year]	\$ 7,750.00	<u>\$ 10,370.00</u>
Capacity of at least 50 million <u>lbs/yr</u> [pounds per year]	\$ 15,500.00	<u>\$ 20,740.00</u>
2899 - Chemical Preparations		
Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 1,000.00	<u>\$ 1,340.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 2,000.00	<u>\$ 2,680.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 4,000.00	<u>\$ 5,355.00</u>

2911 - Petroleum Refining

Capacity of at least 10,000 barrels per day (bbl/day), but \$ 9,375.00 \$ 12,545.00
 less than 100,000 bbl/day

Capacity of at least 100,000 bbl/day \$ 18,750.00 \$ 25,090.00

2951 - Asphalt Paving Mixtures \$ 875.00 \$ 1,175.00

2952 - Asphalt Felts and Coatings

Capacity of at least 1 million lbs/yr [pounds per year], but \$ 4,250.00 \$ 5,690.00
 less than 50 million lbs/yr [pounds per year]

Capacity of at least 50 million lbs/yr [pounds per year] \$ 8,500.00 \$ 11,375.00

2992 - Waste Oil Re-Refining

Capacity of at least 200,000 gallons per year \$ 3,750.00 \$ 5,020.00

2999 - Petroleum and Coal Products

Capacity of at least 1 million lbs/yr [pounds per year], but \$ 5,125.00 \$ 6,860.00
 less than 50 million lbs/yr [pounds per year]

Capacity of at least 50 million lbs/yr [pounds per year] \$ 10,250.00 \$ 13,715.00

3011 - Tires and Inner Tubes

Capacity of at least 5 million lbs/yr [pounds per year], but \$ 7,125.00 \$ 9,535.00
 less than 10 million lbs/yr [pounds per year]

Capacity of at least 10 million lbs/yr [pounds per year] \$ 14,250.00 \$ 19,070.00

3211 - Flat Glass

Capacity of at least 10 million lbs/yr [pounds per year], \$ 5,875.00 \$ 7,865.00
 but less than 200 million lbs/yr [pounds per year]

Capacity of at least 200 million lbs/yr [pounds per year] \$ 11,750.00 \$ 15,725.00

3221 - Glass Containers

Capacity of at least 10 million lbs/yr [pounds per year], \$ 3,375.00 \$ 4,520.00

but less than 200 million lbs/yr [pounds per year]

Capacity of at least 200 million lbs/yr [pounds per year] \$ 6,750.00 \$ 9,035.00

3229 - Pressed and Blown Glass

Capacity of at least 10 million lbs/yr [pounds per year], \$ 6,750.00 \$ 9,035.00

but less than 200 million lbs/yr [pounds per year]

Capacity of at least 200 million lbs/yr [pounds per year] \$ 13,500.00 \$ 18,065.00

3241 - Cement, Hydraulic

Capacity of at least 10 million lbs/yr [pounds per year], \$ 7,250.00 \$ 9,705.00

but less than 500 million lbs/yr [pounds per year]

Capacity of at least 500 million lbs/yr [pounds per year] \$ 14,500.00 \$ 19,405.00

3251 - Brick and Structural Clay Tile

Capacity of at least 10 million lbs/yr [pounds per year], \$ 2,375.00 \$ 3,180.00

but less than 200 million lbs/yr [pounds per year]

Capacity of at least 200 million lbs/yr [pounds per year] \$ 4,750.00 \$ 6,360.00

3259 - Structural Clay Products

Capacity of at least 10 million lbs/yr [pounds per year], \$ 6,250.00 \$ 8,365.00

but less than 200 million lbs/yr [pounds per year]

Capacity of at least 200 million lbs/yr [pounds per year] \$ 12,500.00 \$ 16,725.00

3261 - Vitreous Plumbing Fixtures

Capacity of at least 10 million lbs/yr [pounds per year], \$ 3,375.00 \$ 4,520.00

but less than 200 million lbs/yr [pounds per year]

Capacity of at least 200 million lbs/yr [pounds per year] \$ 6,750.00 \$ 9,035.00

3273 - Ready-Mixed Concrete

Capacity to produce for delivery at least 10 cubic yards \$ 625.00 \$ 840.00
(yd³) per hour (20,000 yd³ per year)

3274 - Lime

Capacity of at least 1 million lbs/yr [pounds per year], but \$ 7,375.00 \$ 9,870.00
less than 50 million lbs/yr [pounds per year]
Capacity of at least 50 million lbs/yr [pounds per year] \$ 14,750.00 \$ 19,740.00

3275 - Gypsum Products

Capacity of at least 10 million lbs/yr [pounds per year], \$ 3,875.00 \$ 5,185.00
but less than 200 million lbs/yr [pounds per year]
Capacity of at least 200 million lbs/yr [pounds per year] \$ 7,750.00 \$ 10,370.00

3292 - Asbestos Products

Capacity of at least 10 million lbs/yr [pounds per year], \$ 1,250.00 \$ 1,675.00
but less than 200 million lbs/yr [pounds per year]
Capacity of at least 200 million lbs/yr [pounds per year] \$ 2,500.00 \$ 3,345.00

3295 - Minerals, Ground or Treated

Capacity of at least 1 million lbs/yr [pounds per year], but \$ 3,375.00 \$ 4,520.00
less than 50 million lbs/yr [pounds per year]
Capacity of at least 50 million lbs/yr [pounds per year] \$ 6,750.00 \$ 9,035.00

3296 - Mineral Wool

Capacity of at least 10,000 lbs/yr [pounds per year], but \$ 7,375.00 \$ 9,870.00
less than 1 million lbs/yr [pounds per year]
Capacity of at least 1 million lbs/yr [pounds per year] \$ 14,750.00 \$ 19,740.00

3312 - Blast Furnaces and Steel Mills

Capacity of at least 50 million <u>lbs/yr</u> [pounds per year], but less than 1 billion <u>lbs/yr</u> [pounds per year]	\$ 7,000.00	<u>\$ 9,370.00</u>
Capacity of at least 1 billion <u>lbs/yr</u> [pounds per year]	\$ 14,000.00	<u>\$ 18,735.00</u>

3321 - Gray Iron Foundries

Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 3,125.00	<u>\$ 4,185.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 6,250.00	<u>\$ 8,365.00</u>

3331 - Primary Copper Smelting and Refining

Smelting capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 9,375.00	<u>\$ 12,545.00</u>
Smelting capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 18,750.00	<u>\$ 25,090.00</u>
Refining capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 5,250.00	<u>\$ 7,025.00</u>
Refining capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 10,500.00	<u>\$ 14,050.00</u>

3334 - Primary Aluminum

Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 6,875.00	<u>\$ 9,200.00</u>
Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 13,750.00	<u>\$ 18,400.00</u>

3339 - Primary Nonferrous Metals

Capacity of at least 10 million <u>lbs/yr</u> [pounds per year], but less than 100 million <u>lbs/yr</u> [pounds per year]	\$ 3,625.00	<u>\$ 4,855.00</u>
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Capacity of at least 100 million <u>lbs/yr</u> [pounds per year]	\$ 7,250.00	<u>\$ 9,705.00</u>
3341 - Secondary Nonferrous Metals		
Capacity of at least 1 million <u>lbs/yr</u> [pounds per year], but less than 20 million <u>lbs/yr</u> [pounds per year]	\$ 6,625.00	<u>\$ 8,865.00</u>
Capacity of at least 20 million <u>lbs/yr</u> [pounds per year]	\$ 13,250.00	<u>\$ 17,730.00</u>
3354 - Aluminum Extruded Products		
Capacity of at least 500,000 <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 2,250.00	<u>\$ 3,015.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year]	\$ 4,500.00	<u>\$ 6,025.00</u>
3355 - Aluminum Rolling and Drawing		
Capacity of at least 500,000 <u>lbs/yr</u> [pounds per year], but less than 10 million <u>lbs/yr</u> [pounds per year]	\$ 4,750.00	<u>\$ 6,360.00</u>
Capacity of at least 10 million <u>lbs/yr</u> [pounds per year]	\$ 9,500.00	<u>\$ 12,715.00</u>
3411 - Metal Cans		
Capacity of at least 10 million cans per year, but less than 50 million cans per year	\$ 5,875.00	<u>\$ 7,865.00</u>
Capacity of at least 50 million cans per year	\$ 11,750.00	<u>\$ 15,725.00</u>
3585 - Refrigeration and Heating Equipment		
Accounts with more than 500 employees	\$ 6,875.00	<u>\$ 9,200.00</u>
3624 - Carbon and Graphite Products		
Accounts with more than 1,000 employees	\$ 5,125.00	<u>\$ 6,860.00</u>
3661 - Telephone and Telegraph Apparatus		
Accounts with more than 1,000 employees	\$ 4,250.00	<u>\$ 5,690.00</u>
3663, 3669 - Communications Equipment		
Accounts with more than 1,000 employees	\$ 5,625.00	<u>\$ 7,530.00</u>

3674 - Semiconductors and Related Devices

Accounts with more than 1,000 employees \$ 5,125.00 \$ 6,860.00

3711 - Motor Vehicles

Capacity of at least 1,000 vehicles per year, but less than 10,000 vehicles per year \$ 5,250.00 \$ 7,025.00

Capacity of at least 10,000 vehicles per year \$ 10,500.00 \$ 14,050.00

3721 - Aircraft Manufacturing Plants

Accounts with at least 200 but less than 1,000 employees \$ 1,875.00 \$ 2,510.00

Accounts with at least 1,000 but less than 5,000 employees \$ 5,625.00 \$ 7,530.00

Accounts with at least 5,000 employees \$ 11,250.00 \$ 15,055.00

3743 - Railroad Equipment

Accounts with more than 25 employees \$ 5,875.00 \$ 7,865.00

4226 - Storage and Terminal Facilities for Petroleum and Chemical Products

Capacity of at least 50,000 gallons tankage and 20,000 gallons per day (gpd) throughput \$ 7,250.00 \$ 9,705.00

4491 - Marine Cargo Handling

Capacity of at least 25 tpd [tons per day] of product \$ 4,500.00 \$ 6,025.00

4789 - Transportation Services

Railcar repair, cleaning or painting accounts with at least 25 employees \$ 2,875.00 \$ 3,850.00

Truck cleaning and painting accounts with at least 25 employees \$ 4,375.00 \$ 5,855.00

Independent pipeline terminals with throughput of at least 20,000 gallons per day, but less than 200,000 <u>gpd</u> [gallons per day] for all petroleum liquids except crude oil	\$ 3,625.00	<u>\$ 4,855.00</u>
Independent pipeline terminals with throughput of at least 200,000 <u>gpd</u> [gallons per day] for all petroleum liquids except crude oil	\$ 7,250.00	<u>\$ 9,705.00</u>
4911 - Electric Services		
Capacity of at least 25 megawatts, but less than 100 megawatts (includes cogeneration units)	\$ 5,000.00	<u>\$ 6,690.00</u>
Capacity of at least 100 megawatts	\$ 10,000.00	<u>\$ 13,380.00</u>
4922, 4923, 4924, 4925 - Natural Gas Transmission/Distribution		
Capacity of at least 10,000 horsepower from fossil fuel-fired engines	\$ 2,875.00	<u>\$ 3,850.00</u>
4952 - Sludge Drying and Incineration		
Capacity of at least 5 tons per hour drying or 500 pounds per hour incineration (wet basis)	\$ 3,750.00	<u>\$ 5,020.00</u>
4961 - Steam Supply		
Capacity of at least 250 million Btu per hour	\$ 7,500.00	<u>\$ 10,035.00</u>
5093 - Scrap Metal Reclamation		
Capacity of at least 1 ton per day metal reclamation by incineration or melting	\$ 3,750.00	<u>\$ 5,020.00</u>
Metal reclamation by shredding	\$ 625.00	<u>\$ 840.00</u>
5169 - Distribution of Chemicals and Allied Products		
Throughput of at least 20,000 <u>gpd</u> [gallons per day]	\$ 3,375.00	<u>\$ 4,520.00</u>

5171 - Petroleum and Petroleum Product Bulk Stations and Terminals

Throughput of at least 20,000 gpd [gallons per day], but \$ 3,625.00 \$ 4,855.00
less than 200,000 gpd [gallons per day] for all petroleum
liquids except crude oil. Crude oil facilities with tankage
of at least 5,000 but less than 10,000 barrel capacity and
no floating roof for control of emissions, or tankage of at
least 100,000 but less than 200,000 barrel capacity with
floating roof controls

Throughput of at least 200,000 gpd [gallons per day] for \$ 7,250.00 \$ 9,705.00
all petroleum liquids except crude oil. Crude oil facilities
with tankage of at least 10,000 barrel capacity with no
floating roof for control of emissions, or tankage of at least
200,000 barrel capacity with floating roof controls

9711 - Defense Plants and Military Bases

Defense plants with at least 100 employees, or military \$ 9,875.00 \$ 13,215.00
bases with more than 1,000 employees

(g) [(e)] Nonpayment of fees. Each inspection fee payment must be paid at the time and in the manner and amount provided by this subchapter [received by the due date specified in subsection (c) of this section]. Failure to remit the full inspection fee by the due date shall result in enforcement action under Texas Water Code, §7.178 [the Texas Clean Air Act, Texas Health and Safety Code, §382.082 or §382.088. In addition, the Texas Clean Air Act, Texas Health and Safety Code, §382.091(a)(2),

makes it a criminal offense to intentionally or knowingly fail to pay a required fee]. The provisions of this section, as first adopted and as amended thereafter, are and shall remain in effect for purposes of any unpaid fee assessments, and the fees assessed pursuant to such provisions as adopted or as amended remain a continuing obligation.

(h) [(f)] Late payments [payment penalties]. The agency shall impose interest and penalties on owners or operators of accounts who fail [owner or operator of an account failing] to make payment of the inspection fees when due [shall be assessed late payment penalties and interest] in accordance with Chapter 12 of this title (relating to Payment of Fees).

§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 [account] numbers. The owner or operator of an account subject to an emissions fee requirement is responsible for contacting the [appropriate] commission [regional office] to obtain an identification [account] 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 [plant] 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) [(c)(4)] 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 [at] 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 [at] 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_x) 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_x 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 [the] FCAA, §112;

(6) the account is subject to the National Emission Standards of 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. 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. If an account owner or operator who is subject to the inspection fee in this section has not received the information packet described in subsection (b) of this section by September 1 of the fiscal year in which the fee is due, the owner or operator of the account shall notify the commission by October 1 of 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) [(b)] Payment. Fees must [shall] be remitted by check, certified check, electronic funds transfer, or money order made payable to the TCEQ [Texas Natural Resource Conservation Commission (TNRCC)] and sent to the TCEQ [TNRCC] address printed on the billing statement [fee return form. A completed fee return form shall accompany fees remitted. The fee return form shall include, at least, the company name, mailing address, site name, air emissions inventory account number, Standard Industrial Classification (SIC) category, the allowable levels and/or actual 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].

(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) [(c)] Basis for fees.

(1) The [emissions] 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 [tonnage of] regulated pollutant emissions at the account, including those emissions from point and fugitive sources. The fee basis shall include emissions during all operational conditions. For upset, maintenance, start-up, and shutdown conditions, the basis shall include all events and all quantities. 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 [except as provided in paragraph (2) of this subsection]. The fee for each fiscal year is set at the following rates.

Figure: 30 TAC §101.27(f)(1)

[Figure: 30 TAC §101.27(f)(1)]

Emissions Fee Schedule

Fiscal Year	Rate Per Ton	Minimum Fee
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. [The rate of \$26 per ton will remain effective for future fiscal years until amended. If the fee is applicable, the company responsible for the account shall pay the calculated emissions fee or the minimum fee, whichever is greater.]

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

Where:

CO = carbon monoxide fraction of the fee basis, for all emission 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) On and after September 1, 2001, a grandfathered facility, as defined in §116.10(6) of this title (relating to General Definitions) that does not have a permit application pending under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall use all emissions, including emissions in excess of 4,000 tons per pollutant, for fee calculations. For the first 4,000 tons per pollutant, the rate in paragraph (1) of this subsection shall apply. For emissions in excess of 4,000 tons per pollutant, the rate will be \$78 per ton for fiscal year 2002 and will triple, each fiscal year thereafter.]

(2) [(3)] 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 [emissions] 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) [(4)] For purposes of this section, the term "regulated pollutant" shall include any VOC, any pollutant subject to [the] FCAA, §111, any pollutant listed as a hazardous air pollutant under [the] 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.

[(d) Due date. Fee payments shall be made annually and must be received by the TNRCC or postmarked no later than November 1 of the fiscal year in which the fee is assessed. If an account

commences or resumes operation after November 1 of the fiscal year in which the fee is assessed, the full emissions fee will be due prior to commencement or resumption of operations.]

(g) [(e)] Nonpayment of fees. Each emissions fee payment must be paid at the time and in the manner and amount provided by this subchapter [received by the due date specified in subsection (d) of this section]. Failure to remit the full emissions fee by the due date shall result in enforcement action under Texas Water Code, §7.178 [the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.082 or §382.088. In addition, the TCAA, §382.091(a)(2), makes it a criminal offense to intentionally or knowingly fail to pay a required fee]. 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 pursuant to such provisions as adopted or as amended remain a continuing obligation.

(h) [(f)] Late payments [payment penalties]. The agency shall impose interest and penalties on owners or operators of accounts [owner or operator] of an account who fail [failing] to make payment of emissions fees when due [shall be assessed late payment penalties and interest] in accordance with Chapter 12 of this title (relating to Payment of Fees).