

The Texas Commission on Environmental Quality (commission) proposes an amendment to §101.27.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission collects annual fees from sources that are subject to the permitting requirements of Title IV or V of the 1990 Federal Clean Air Act Amendments (FCAAA) as required by Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.0621, Operating Permit Fee. The existing rule language in §101.27 structures the emissions fees as a billed system and the emissions fee rate per ton is adjusted annually based on the rate of change of the consumer price index (CPI). The revenue collected from the emissions fee is deposited in the Operating Permits Fees Account 5094.

As part of its air program activities, the commission implements an approved federal operating permit program (FCAAA, Titles IV and V, hereinafter referred to as "Title V"). As part of that approval, the commission is required to demonstrate that the fees collected from Title V sources are sufficient to support the Title V program. Additionally, 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 \$33.71 per ton for Fiscal Year 2010.

Since the air emissions fees are to be collected from Title V sources to support the Title V program, the commission is proposing to require only the owners or operators of Title V sources to be assessed an air emissions fee. Approximately 400 entities that are not Title V sources are paying an air emissions fee because they satisfy the criteria in the existing rule language to be assessed an air emissions fee. Federal regulations have been promulgated requiring certain emission sources such as municipal solid waste landfills and air curtain incinerators to obtain Title V permits; however, there are approximately 456 of

these types of entities that do not meet the criteria in the existing rule language to be assessed an air emissions fee.

SECTION DISCUSSION

In addition to the proposed amendment associated with this rulemaking, various stylistic non-substantive changes are included to update rule language to current Texas Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

The proposed revision to §101.27(a), concerning applicability, would require the owners or operators of Title V sources to be subject to an air emissions fee and improve the readability of this subsection. The proposed rule revision would delete the nine applicability requirements in the current rule language and include a requirement for the owner or operator of an account that must obtain a Title V permit to be subject to an emissions fee. The intent of this proposed language is to require only the owners or operators of Title V sources to be subject to an emissions fee.

The proposed revision to §101.27(b), concerning self reported/billed information, would improve the readability of this subsection. The intent of this proposed amendment is to clarify that the completed emissions/inspection fees basis form must be returned to agency within 60 calendar days of the date the agency sends the emissions/inspection fees information packet.

The proposed revision to §101.27(c), concerning requesting an emissions/inspection fees 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). The intent of this proposed amendment is to set a date by which every account owner or operator that did not receive an emissions/inspection fees information packet by June 1 is to notify the commission and request a fee information packet. The language would also include a provision for new account owners or operators who begin operation during the fiscal year to request a packet within 30 calendar days of beginning operation.

The proposed revision to §101.27(d), concerning payment, would improve the readability of this subsection by clarifying the different methods of payment that are accepted by the commission.

The proposed revision to §101.27(e), concerning due date, would improve the readability of this subsection by clarifying that the payment of the entire emissions fee amount is due within 30 calendar days of the date of the invoice.

The proposed revision to §101.27(f), concerning basis for fees, would improve the readability of this subsection. Section 101.27(f) currently states that the emissions fee is based on the allowable levels and/or actual emissions at the account. This proposed revision would include certified registered emissions in a site's allowable levels, would define the allowable levels as those that are in effect when the fee is due, and would define the actual emissions as the emissions from all regulated pollutants emitted at the site during the last full calendar year preceding the beginning of the fiscal year that a fee is due. This proposed rule revision would clarify that the basis for the emissions fee should include the emissions from all operating conditions, including all emissions from emissions events and maintenance, startup, and shutdown activities. The proposed rule language would allow the owner or operator of an

account to use all of the actual emissions from the site in lieu of the allowable levels in determining the basis for the emissions fee as long as a complete and verifiable emissions inventory was submitted; however, if a complete and verifiable emissions inventory was not submitted, the emissions fee would be based on all of the allowable levels. The intent of this proposed rule language is to clarify how the basis for the emissions fee is determined.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rulemaking would simplify the emissions fee applicability requirements and the basis for determining the emissions fee. The intent of the proposed rulemaking is to align the commission's rule with THSC, §382.0621 and 40 Code of Federal Regulations (CFR) §70.9 requiring the owner and/or operator of a Title V source to pay annual fees that are sufficient to cover all direct and indirect costs for administering the federal operating permit program.

Current agency rules require the owner or operator of a regulated entity to be assessed an emissions fee if the regulated entity is operated at any time during the fiscal year for which the fee is assessed, and if one or more of nine specific conditions are met. The conditions allow the emissions fee to be assessed to more entities than just those who operate under a Title V permit. The proposed rule would remove these conditions. If adopted, this change will reduce the number of regulated entities assessed an emissions fee

by approximately 400 regulated entities. These entities would include rock crushers, asphalt plants, compressor stations, and others.

There will also be an increase in the number of entities subject to the emissions fee due to recent federal regulations that now require certain emission sources such as municipal solid waste landfills and incinerators to obtain Title V permits. Because federal rules also require the owner and/or operator of a Title V source to pay annual fees sufficient to cover all direct and indirect costs for administering the federal operating permit program, these entities will also be subject to the emissions fee.

Overall, the proposed rule is expected to result in an increase and decrease in agency emissions fee revenue. The net effect of the proposed rule is anticipated to be a loss of revenue for the agency, but this loss is not expected to be significant.

The emissions fee for each applicable regulated entity is based on their actual emissions and/or their potential to emit levels for each regulated pollutant. A maximum of 4,000 tons for each regulated pollutant is used in determining the basis for the emissions fee. The emissions fee rate per ton is adjusted each fiscal year by the rate of change of the CPI as published by the United States Bureau of Labor and Statistics in accordance with 40 CFR Part 70. The average used to predict the increase of the CPI is 3% each fiscal year. The actual increase of the CPI is likely to be slightly lower than 3%, but this number is used for budgeting purposes for regulated entities subject to the fee.

It is projected that if the proposed rulemaking is adopted, approximately 400 regulated non-Title V entities will no longer be assessed an emissions fee, resulting in a loss of agency revenue. Since the

emissions fee rate per ton is adjusted annually based on the rate of change of the CPI, the expected overall loss is predicted to increase by 3% each year. However, there are an estimated 405 air curtain incinerators and 51 municipal solid waste facilities that will be assessed the emissions fee because they are now subject to the Title V permitting requirements due to recent federal changes. This change will result in additional fee revenue. The overall fiscal implications are reflected in Figure 1 of this preamble. The revenue loss to the Operating Permit Fees Account 5094 for the first five years the proposed rule is in effect is not anticipated to be significant. Total revenue from the operating permit emissions fees exceeds \$30 million each year.

Figure 1: 30 TAC Chapter 101 - Preamble

Projected Impact to Revenue for Operating Permit Fees Account 5094

Account 5094	Year 1	Year 2	Year 3	Year 4	Year 5
Anticipated Revenue Gain	\$496,800	\$511,704	\$527,115	\$542,982	\$559,356
Anticipated Revenue Loss	-\$600,000	-\$618,000	-\$636,540	-\$655,636	-\$675,305
Net Change in Revenue	-\$103,200	-\$106,296	-\$109,425	-\$112,654	-\$115,949

Local Government Costs

There are estimated to be 31 governmental entities that own or operate a municipal solid waste landfill and five governmental entities that own or operate air curtain incinerators that will be subject to Title V permitting requirements. Based on an average of 50 tons per year of non-methane organic compounds at municipal solid waste landfills, the estimated emissions fee assessed for the first year for each landfill is estimated to be approximately \$1,800. Adjusting the fee rate per ton by the expected increase of the CPI of 3% per year, the emissions fee assessed for the next four years is expected to be \$1,854, \$1,910, \$1,967, and \$2,026 for each landfill.

Based on 30 tons of actual emissions from air curtain incinerators, the estimated emissions fee assessed for the first year for each incinerator is estimated to be \$1,000. Adjusting the fee rate per ton by the expected increase of the CPI of 3% per year, the emissions fee assessed for the next four years is expected to be \$1,030, \$1,061, \$1,093, and \$1,126 for each incinerator. Total estimated costs to units of local government for additional emissions fees are reflected in Figure 2 of this preamble and are not anticipated to be significant.

Figure 2: 30 TAC Chapter 101 - Preamble

Projected Costs to Units of Local Government for Emissions Fees

Local Government	Year 1	Year 2	Year 3	Year 4	Year 5
Landfills (31)	\$55,800	\$57,474	\$59,210	\$60,977	\$62,806
Incinerators (5)	\$5,000	\$5,150	\$5,305	\$5,465	\$5,630
Totals	\$60,800	\$62,624	\$64,515	\$66,442	\$68,436

PUBLIC BENEFITS AND COSTS

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the change seen in the proposed rule will be a potential reduction in air emissions from municipal solid waste landfills and air curtain incinerators as well as more simple and clear rules regarding the assessment of emissions fees to support the Title V permitting program.

In general, no significant fiscal implications are anticipated for businesses or individuals as a result of the implementation or enforcement of the proposed rule.

The proposed rule is anticipated to reduce the number of regulated entities that will be assessed an emissions fee as approximately 400 regulated entities not required to obtain a Title V permit will no longer be assessed an emissions fee. It is anticipated that 20 privately owned municipal solid waste landfills will be subject to Title V requirements and thus an emissions fee, and that 400 privately owned air curtain incinerators will be subject to Title V requirements and thus an emissions fee.

Based on the average of 50 tons per year of non-methane organic compounds at municipal solid waste landfills, the emissions fee assessed for the first year is approximately \$1,800 per regulated landfill. Adjusting the fee rate per ton by the expected increase of the CPI of 3% per year, the emissions fee assessed for the next four years is expected to be \$1,854, \$1,910, \$1,967, and \$2,026. Based on 30 tons of actual emissions from air curtain incinerators, the emissions fee assessed for the first year is approximately \$1,000 per regulated incinerator. Adjusting the fee rate per ton by the expected increase of the CPI of 3% per year, the emissions fee assessed for the next four years is expected to be \$1,030, \$1,060, \$1,093, and \$1,126. Total estimated costs to privately owned landfills and incinerators for additional emissions fees as well as estimated savings to facilities no longer subject to the emissions fees are reflected in Figure 3 of this preamble. The net impact of the proposed rule to all privately owned entities would be a reduction in fees.

Figure 3: 30 TAC Chapter 101 - Preamble

Projected Costs to Businesses for Emissions Fees

Privately Owned	Year 1	Year 2	Year 3	Year 4	Year 5
Landfill Fee Costs (20)	\$36,000	\$37,080	\$38,200	\$39,340	\$40,520
Incinerators Fee Costs (400)	\$400,000	\$412,000	\$424,400	\$437,200	\$450,400
Total Costs	\$436,000	\$449,080	\$462,600	\$476,540	\$490,920

Fee Reduction*	-\$600,000	-\$618,000	-\$636,540	-\$655,636	-\$675,305
Net Impact (Cost Savings)	-\$164,000	-\$168,920	-\$173,920	-\$179,096	-\$184,385

* For 400 entities that will no longer be assessed the emissions fee

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Overall, no adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation or administration of the proposed rule. The proposed rule is expected to affect approximately 800 small or micro-businesses overall, with 400 of them estimated to be owners or operators of air curtain incinerators. The other 400 are assumed to be those non-Title V entities that will no longer be assessed an emissions fee. Owners or operators of air curtain incinerators are anticipated to realize an increase in costs due to the emissions fee assessment, but those costs could be mitigated through the use of alternative methods in lieu of using an air curtain incinerator since the fee is based upon the total actual emissions and/or its potential to emit levels for each regulated pollutant. It is also assumed that the owners and operators of the air curtain incinerators will raise their fees to customers in order to recoup their costs.

Cost savings are anticipated for those non-Title V entities that will no longer be assessed an emissions fee. These businesses include rock crushers, asphalt plants, and compressor stations. The overall impact of the proposed rulemaking is a reduction in fees assessed to small or micro-businesses as illustrated in Figure 4 of this preamble.

Figure 4: 30 TAC Chapter 101 - Preamble

Impact to Small or Micro-Businesses

Small or Micro-business	Year 1	Year 2	Year 3	Year 4	Year 5
Incinerators Fee Costs (400)	\$400,000	\$412,000	\$424,400	\$437,200	\$450,400
Fee Reduction (400)	-\$600,000	-\$618,000	-\$636,540	-\$655,636	-\$675,305
Net Impact (Fee Reduction)	-\$200,000	-\$206,000	-\$212,140	-\$218,436	-\$224,905

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is necessary to comply with federal law and are consistent with the public health, safety, environmental, and economic welfare of the state. Federal rules require entities permitted under Title V requirements to remit annual fees to support the Title V permit program. Any proposed alternative to reduce or remove the fee would not be consistent with the environmental and economic welfare of the state because there would not be an incentive to reduce the level of emissions released into the atmosphere or to recover agency costs associated with the Title V program.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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 proposed 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 amendment to Chapter 101 is not intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants. Therefore, the commission finds that it is not a "major environmental rule". Additionally, the fee collected under the proposed revision 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. The proposed rule change will simplify the rule requirements and ensure that only Title V sources are required to pay the emissions fee. The proposed change will also require Title V sources that have not been included in the rule previously to pay the Title V emissions fee.

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 is required under federal law to be sufficient to support the permit program under Title V of the FCAAA (42 United States Code (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 Title V programs. This proposed rulemaking does not exceed an express requirement of federal or state law. The proposed rulemaking does not exceed a requirement of a delegation agreement, but the emissions fee is specifically required by EPA's approval of the Title V programs to the commission. The proposed rulemaking was not developed solely under the general powers of the agency but was specifically developed and authorized under TCAA, §§382.011, 382.017, 382.0621, and 382.0622, and generally under TCAA, §§382.001 *et seq.*

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. 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 conducted a takings impact evaluation for the proposed rule in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed rulemaking is to ensure that all Title V sources are required to pay the emissions fee, and that non-Title V sources are not required to pay the emissions fee. Promulgation and enforcement of the proposed rule will not burden private, real property because this is a fee rule that supports air quality programs of the commission. Although the proposed rule revision does not directly prevent a nuisance or prevent an immediate threat to life or property, the change in the emissions fee requirements 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 Title V programs. Consequently, the proposed change to the fee

requirements is an action reasonably taken to fulfill an obligation mandated by federal and state law.

Therefore, this proposed rulemaking action will not constitute a taking 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 rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the 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 amendment is 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 amendment 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.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The emissions fee is required under federal law to be sufficient to support the permit program under Title

V of the FCAAA. The emissions fee is also required by state law, THSC, TCAA, §382.0621 and §382.0622, to be sufficient to support the Title V programs. This proposed rulemaking does not exceed an express requirement of federal or state law. The intent of this proposed amendment is to require only the owner or operator of a regulated entity that must obtain a federal operating permit as described in 30 TAC Chapter 122 to remit to the commission an emissions fee each fiscal year.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 15, 2010, 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 prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Mr. Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments

should reference Rule Project Number 2008-025-101-EN. The comment period closes January 25, 2010.

Copies of the proposed rulemaking can be obtained from the commission's Web site at

http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Mr.

Michael De La Cruz, Air Quality Division, (512) 239-0259.

SUBCHAPTER A: GENERAL RULES

§101.27

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties; under TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA). The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.0621, concerning Operating Permit Fee, which requires the commission to collect fees for sources subject to Titles IV or V of the Federal Clean Air Act Amendments; §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 amendment implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.0621, and 382.0622.

§101.27. Emissions Fees.

(a) Applicability. The owner or operator of an [each] account that is required to obtain a federal operating permit as described in Chapter 122 of this title (relating to Federal Operating Permits Program) [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. Each account will be assessed a separate emissions fee. 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 that a [for which the] fee is being 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_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 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 that a [for which the] fee is due. The completed emissions/inspection fees basis form must [shall] be returned to the address specified on the emissions/inspection fees basis form within 60 calendar days of the date the agency sends the emissions fees information packet. The completed emissions/inspection fees basis form must [shall] include, at least, the company name, mailing address, site name, all commission [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 must [shall] be the [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. If an account owner or operator has not received the fee information packet described in subsection (b) of this section by June 1 prior to the fiscal year that a fee is due, the owner or operator of the account shall notify the commission by July 1 prior to the fiscal year

that a fee is due. For accounts that begin or resume operation after September 1, the owner or operator of the account shall request an information packet within 30 calendar days prior to commencing operation.

[(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 calendar days of the date the agency sends a statement of the assessment to the account [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 must [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, allowable levels [the term "allowable levels"] are those limits as specified in an enforceable document such as a permit, certified registration of emissions, or Commission Order that [which] are in effect during the fiscal year that a fee is due and actual emissions are the emissions of all regulated pollutants emitted from the account during the last full calendar year preceding the beginning of the fiscal year that a fee is due [on the date the fee is due]. Under no circumstances must [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 must [shall] include emissions during all operational conditions, including all emissions from emissions events and maintenance, startup, and shutdown activities as described in Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities). [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.

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
<p>For fiscal year 2003 and subsequent years, the rate per ton must be calculated using the following formula. The minimum fee must be equal to the rate per ton.</p> <p>Rate per ton = $\\$25.00 \times (1 - CO) \times (CPI / 122.15)$</p> <p>Where:</p> <p>CO = carbon monoxide fraction of the fee basis, for all emissions fee payers for the previous fiscal year;</p> <p>CPI = average of the consumer price index for the 12 months preceding the fiscal year that a fee is being assessed (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100); and</p> <p>122.15 = average consumer price index for fiscal year 1989 (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100).</p>		

(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, certified registration of emissions, or a Commission Order establishing allowable levels for individual emission points or process units, the actual emissions from all individual emission points and process units at the account may be used to calculate the fee basis only if a complete and verifiable emission inventory for the account is submitted as described in §101.10 of this title (relating to Emissions Inventory Requirements). Where a complete and verifiable emissions inventory is not submitted, the executive director may direct that the fee be based on all of the allowable levels for the account. [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, certified registration of emissions, or a Commission Order[,] establishing allowable levels for individual emissions points or process units; actual emissions from all individual emission points and process units must [shall] be used to calculate the fee basis. 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 emission factors used in such calculations.

(3) For purposes of this section, the term "regulated pollutant" must [shall] include any volatile organic compound [VOC], any pollutant subject to Federal Clean Air Act (FCAA) [FCAA], §111, any pollutant listed as a hazardous air pollutant under FCAA, §112, each pollutant that [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 must [shall] result in enforcement action under Texas Water Code, §7.178. The provisions of this section, as first adopted and amended thereafter, are and must [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).