

The Texas Commission on Environmental Quality (TCEQ or 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 the Federal Clean Air Act (FCAA) Title V as required by Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.0621, Operating Permit Fee. THSC, §382.0621 states the commission shall collect an annual fee based on emissions for each source that is subject to the FCAA Title V. The fee is based on the amount of emissions from Title V sources. The revenue collected from the emissions fee is deposited in the Operating Permits Fees Account 5094, as required by THSC, §382.0622(b)(1).

As part of its air program activities, the commission implements an United States Environmental Protection Agency (EPA)-approved federal operating permit program (Title V). In order to obtain this approval, FCAA, §7661a(b)(3)(A) provides that state law must require sources subject to the operating permit program pay an annual fee "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements." Additionally, this fee must be dedicated for use only on Title V activities. These activities include, but are not limited to the costs for preparing applicable regulations; reviewing and issuing permits, ambient

monitoring, modeling, implementing any Title IV or V permits, and preparing emissions inventories. These requirements in state law are reflected in THSC, §382.0621 and §382.0622.

In direct support of the Title V program, the commission conducts investigations at Title V sites or in-office file reviews to determine whether the entity is operating in accordance with applicable rules, permits, or orders of the commission or applicable state enforceable federal rules. Investigations include citizen complaint response and scheduled and unscheduled investigations at sources subject to Title V in order to assist in the development and enforcement of Title V permits. The staff complete on-site reviews to characterize ambient conditions of an area and operates stationary and photochemically reactive ambient monitoring stations throughout the state in order to establish compliance with the National Ambient Air Quality Standards (NAAQS), conduct monitoring around Title V sources, and verify conditions are as represented in permit applications.

All permitting activity at a major account is considered to be Title V permitting activity. Office of Permitting and Registration staff supports revising, amending, and altering permits due to state implementation plan (SIP) changes, rule changes, and new source review (NSR) activities. Staff also coordinate notice and comment hearings and support rule development efforts that affect Title V sources.

In support of the Title V program, commission staff also collect, assess, and report emissions inventory information from Title V sites, implement the Title V fee program, perform data analysis, and complete modeling of emission inventory data in support of nonattainment and near-nonattainment area control strategy development for SIP planning and submittal. The commission is also responsible for developing the SIP, submitting the SIP revisions to the EPA, and strategies to attain and maintain the NAAQS. These revisions include regulations affecting Title V source activities.

Legal staff provide support with enforcement cases, Title V and NSR permitting activities, and with rulemaking. Legal staff prepare cases for administrative enforcement, participate in SIP rules and demonstrations, and enforcement with Title V issues. Legal staff also provide legal support for all Title V permitting activities, and provide legal advice and briefings on matters related to permitting.

The existing rule language in §101.27 structures the emissions fees as a billed system. The emissions fee rate per ton is based on a base rate of \$25 per ton modified by the rate of change of the consumer price index (CPI) and percentage of the carbon monoxide (CO) fraction of total emissions assessed a fee the previous year. This fee is commonly referred to as the air emissions fee (AEF) rate and, by calculation, using the aforementioned parameters, is currently set at \$33.58 per ton for Fiscal Year (FY) 2011, down from \$33.71 in FY 2010. Fees are due on all regulated pollutants emitted from the

site during the last full calendar year preceding the beginning of the fiscal year that a fee is due. Therefore, FY 2011 fees are based on Calendar Year 2009 emissions. Emissions in excess of 4,000 tons per pollutant at a site are currently excluded from being assessed a fee.

Beginning in FY 2009, annual expenditures, i.e., funds used to administer the Title V permit program in Texas, exceeded annual revenue in the form of emissions fees. Revenue was \$32.7 million and the total Title V obligation was \$34.7 million. Fund surpluses will keep the fund balance positive until FY 2012. Beginning in FY 2012, emissions fee revenue based on FY 2011 projections, in conjunction with the fund balance, will be insufficient to adequately fund the operating costs associated with the Title V program. The FY 2011 projected cost to administer the Title V program is \$34.7 million while the revenues are expected to be \$26.2 million based on October 2011 invoices. This shortfall is expected to continue unless the commission pursues a rule change to revise how emissions fees are calculated.

The AEF revenue has declined as a result of emissions decreasing at an average rate of 5% annually over the past eight fiscal years. Although CPI has increased by a average rate of change of 3% over the past eight fiscal years, the CPI increased by only 0.19% for FY 2009 and 1.47% for FY 2010. Additionally, all categories of emissions have decreased annually since 2001; the reductions have been most notable in emissions

other than CO largely because of regulations targeted on other criteria pollutants such as ozone precursors. Consequently, the CO fraction has increased from 22.0% to 24.47% over the last eight fiscal years, further reducing the annual revenue. Thus, in spite of a slight increase in the recent CPI, revenue has fallen from \$35.5 million in FY 2007 and \$32.7 million in FY 2009 to a projected \$26.2 million in FY 2011, based on October 2011 invoices.

Although revenue has declined, the Title V operating obligation has not. Despite the decline in emissions, for example, Title V permits must be renewed every five years. Existing Title V sites revise their operating permits frequently due to changes in operations and equipment or changes to applicable state or federal requirements. The number of emissions inventories reviewed has remained consistent since 2004. The modeling for SIP revisions is more detailed in the nonattainment counties, and that number has not changed since 2004. Mobile monitoring resource allocation has remained nearly constant since 2004. Regulatory and non-regulatory stationary ozone monitors are not funded by Title V. However, the number of ozone monitors has increased since 2004 from 98 to 128, and the data from these monitors are used in Title V activities.

As a portion of the whole combined salary and operating costs (excluding fringe and indirect), Title V salary costs have increased slightly from \$22.3 million in FY 2004 to

\$24.5 million in FY 2010. Over a similar time-period, budgeted full-time staff was 472 in FY 2006 and fell slightly to 464 in FY 2010. Despite staff reduction, a 9.5% increase in cost over a seven year period is attributable to an increase in staff costs including state mandated cost of living pay increases.

New sites may become subject to Title V as a result of the impending revision to the federal ozone standards. The impact of incorporating these sources into the Title V program is not yet known but may increase the Title V budget. However, these sources are not expected to be large emitters nor would the revenue based on their emissions be sufficient to make up the budget shortfall.

The commission proposes adjusting the base rate to \$35 per ton or the rate necessary to collect at least \$35 million in FY 2012 and incorporating the flexibility to adjust the rate annually as needed up to a set cap. In order to adequately fund the Title V program, the proposed rate of \$35 per ton for FY 2012 may be revised when a more current CPI is issued in 2011 and as the emissions estimate is refined. The proposed flexibility in the base rate will also enable the commission to incorporate any new workload in its budget as a result of changing federal standards. Advantages to the proposed adjustable base rate also include the flexibility to compensate for fluctuating CPI, declining emissions rates, new regulations, and variations in the CO fraction.

Section Discussion

The commission proposes amending §101.27(f) to revise the base fee amount, deleting the fixed \$25 base amount and in its place setting a base rate of \$35 per ton or as necessary to collect at least \$35 million for FY 2012 and providing flexibility to adjust the rate up to a maximum base rate amount that could be assessed in subsequent years. The proposed base rate and maximum amount are an increase above the fixed dollar amount currently in the rule. The proposed change in §101.27(f) will increase the base rate from \$25 per ton to a projected \$35 per ton in FY 2012. The budget to administer the Title V program is estimated to be \$35.3 million while the revenues are expected to be \$26.2 million in FY 2011 based on October 2010 (FY 2011) invoices. If adopted, the proposed increased base rate of \$35 per ton is expected to generate an additional \$9 million in revenue in FY 2012. The proposed base rate of \$35 per ton for FY 2012 may be revised as a more current CPI is issued in January 2011 and emissions estimates are refined. A base rate must be selected to adequately fund the Title V program. The commission is soliciting comments on the proposed base rate for FY 2012.

Because emissions are expected to continue to decline and the rate of increases in the CPI is not known in subsequent years, additional proposed language allows the commission to annually adjust the base rate, as required, to generate adequate revenue to fund the Title V program. For example, if emissions continue to decline at the current

average rate of 5% per year and the CPI increases at 2% per year, a base rate of \$45 per ton may be required to generate \$35.3 million in revenue by FY 2018.

An adjustable base rate will allow the agency flexibility to adjust to changes in the program that affect the fee revenue or obligations. Changes could include the fluctuating CPI, variations in the CO fraction, legislative mandates, and changes in staffing patterns. The commission is soliciting comments on the proposed \$45 per ton cap for the base rate.

No standard agency practice exists for determining what percentage of the anticipated expenditures constitutes an adequate or appropriate fee amount. A common accounting practice is to generate revenue sufficient to have enough cash per year to account for 105% of expected expenditures. The 5% should cover the additional unknown expenditures of the account. Thus, starting in FY 2013, the commission will adjust the base rate to cover 105% of the expected obligation for the fiscal year. Any surplus in the fund balance from a previous year's revenue will be included in estimating the adjustment. The estimate will be made in the spring when the commission sends the billing notices to the Title V companies. In addition to eliminating the negative fund balance starting in FY 2012, this proposed practice should maintain smaller positive fund balances in future fiscal years than experienced historically. As recently as FY 2008, the fund balance surplus was \$15.1 million with a \$31.7 million total Title V

obligation. Conversely, a \$8.3 million deficit and a \$35 million total obligation is predicted for FY 2012. The commission is soliciting comments on this practice and on the adequacy of a 5% margin given fluctuations of the CO fraction and the CPI.

The commission is also soliciting comment on the appropriateness of removing the CO fraction from the equation. The CO fraction in the current rule provides a discount on emissions fees based on the amount of CO in the previous year's inventory. For FY 2011, the CO fraction is 24.68%, and the fee is \$33.58 per ton (up to 4,000 tons per pollutant). Thus, if the CO fraction were removed and the base remained at \$25 per ton, the fee rate would increase to the presumptive federal minimum outlined in 40 Code of Federal Regulations §70.9. This amount is \$44.45 per ton for FY 2011. Fees would still be assessed on actual CO emissions at a site but the initial base rate could be set lower to offset the removal of the CO fraction. If the CO fraction were removed and the base rate remained at \$25 per ton, revenue estimates are \$35.3 million for FY 2012. However, because emissions are projected to continue to decline, revenue would be insufficient starting in FY 2013 with an anticipated revenue of \$34.3 million. The revenue is anticipated to continue to decrease in subsequent years because of the declining emissions. Thus, removal of the CO fraction is not a long-term solution and an increase in the base rate would be required to provide sufficient revenue in subsequent years.

Fiscal Note: Costs To State And Local Government

Jeff Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rule is in effect, significant fiscal implications are anticipated for the commission in the form of increased revenue collections. The anticipated increase in revenue would be used to fund and operate the agency's Title V Federal Operating Permit Program. Units of state or local government that own or operate facilities with Title V permits can expect to pay higher fees. Based on a base rate of \$35 per ton, additional fees are expected to range from less than \$200 per year to \$160,000 each year from two utilities that provide electric service.

The commission implements a federally approved Operating Permit Program authorized under the Title V, as part of its air program activities. In order to maintain federal approval, the commission is required to demonstrate that the fees collected from Title V sources are sufficient to support the Title V program.

The annual emissions fee revenue has been declining over the past eight fiscal years at an average rate of 5% annually, resulting in a declining fund balance in Account 5094 as expenditures have remained at a fairly consistent level. Beginning in FY 2012, the fund balance is projected to be insufficient to adequately fund the operating costs associated with the Title V program. The FY 2011 budget to administer the Title V program is

estimated to be \$35.3 million (including employee benefits) while the revenues are expected to be \$26.2 million.

In order to comply with federal requirements and in order to maintain current levels of funding for the Title V program, the commission is proposing this rulemaking. The proposed rulemaking would revise the calculation method of the Title V emissions fee by adjusting the base fee amount. The proposed rule would remove the fixed \$25 per ton base amount and replace it with an adjustable base rate with a cap of \$45. The proposed adjustable base rate would not come into effect until FY 2012. In FY 2012, it would be equal to \$35 per ton or the level necessary to cover program costs, with the potential to be adjusted annually thereafter up to a cap of \$45 per ton.

The fee is based upon allowable levels or actual emissions at an account. Emissions in excess of 4,000 tons per pollutant are excluded. The rate per ton multiplied by the emissions tonnage for a specific account is used to determine the fee. The rate per ton takes into account the base rate, a CO fraction or discount, and the change in the CPI from the 1989 levels. The proposed rule would change the projected base rate to \$35 per ton beginning in FY 2012. The initial base rate of \$35 per ton may change, as necessary, to collect at least \$35 million based upon the latest CPI and emissions estimate. This change is expected to result in an increase in revenue of approximately \$9 million based on a FY 2011 fee rate that assumes a 5% decrease per year in emissions

from FY 2010, no change in the CO fraction, and no change in the CPI. As proposed, the rate would be adjusted as necessary thereafter to provide flexibility to adjust the base rate to compensate for decreasing emissions, fluctuations in the CO fraction, or changes in the CPI for the fiscal years following FY 2012. Program staff anticipates that the fee base rate would be adjusted in the following fiscal years to collect sufficient revenue to maintain the fund balance in Account 5094 at approximately \$35.3 million in order to fund the agency's Title V program. Additional revenue collected above FY 2010 amounts is estimated to be between \$9 and \$13 million for FY 2012 and each following fiscal year.

Governmental entities that own or operate facilities with Title V permits will be affected by the proposed rules. These facilities include power plants providing electrical service, university utilities, local landfills, and pumping plants for local water supplies. It is estimated that there are 28 local and governmental entities that would be impacted. Five facilities are owned by the federal government and include military bases and research centers. Seven are electric generating services. These 28 sources will have to pay an estimated \$496,000 in additional fees beginning in FY 2012. Additional fees are expected to range from less than \$200 per year from four sources to \$142,000 and \$160,000 from two utilities that provide electric service. The average increase is \$17,800 and the median increase is \$1,085. Ninety-five percent of the anticipated

increase in revenue from governmental entities will come from ten electric services utilities.

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 changes seen in the proposed rule will be compliance with FCAA requirements and the continued protection of human health and the environment through adequate funding of the state's Title V Operating Permit Program.

Fiscal implications are anticipated for businesses that own or operate emission sources with Title V permits. No direct fiscal implications are anticipated for individuals.

The owner or operator of an emissions source that is required to obtain a Federal Operating Permit as described in 30 TAC Chapter 122 is subject to an emissions fee each fiscal year. If the owner or operator is also subject to an inspection fee, only the higher of the two fees is paid. However, each fee is directed to different General Revenue Dedicated Accounts. Inspection fees are deposited to the Clean Air Account 151. Emission fee revenue is deposited into Operating Permits Fees Account 5094.

In FY 2010, 1,241 sources were required to obtain a Federal Operating Permit and to submit either an inspection fee or an emission fee. Of these sources, 853 paid emissions fees and 408 paid an inspection fee. The proposed rule will not require any additional sources to apply for a permit. Sources already subject to the fee are major sources of air pollutants as defined in §122.10. These sources include electric generating plants, refineries, chemical plants, cement plants, and natural gas compressor stations.

The revenue increase for the commission in FY 2012 is estimated to be approximately \$9 million. Of this amount, approximately \$500,000 will come from additional fees paid by governmental entities. Therefore, it is estimated that approximately 825 Title V sources owned by business and industry will pay an additional \$8.5 million in fees. The average fee rate increase is estimated to be \$10,486 with a median of \$2,674 per emissions account. The maximum fee increase is estimated to be \$171,500 for an electric utility. The average increase in fee rate for each entity is estimated to be 35%. The 40% increase in base rate is offset by an estimated 5% decrease in emissions. On average, the fee amount paid by each source in each fiscal year after FY 2012 will remain approximately the same as for FY 2012, even if the fee rate increases because base rate increases offset decreasing emissions and fluctuations in the CPI. The fee rate will be determined based on the revenue required to fund the Title V program.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. No small businesses are listed as a major source of emissions in the State of Texas Air Reporting System database and the major sources of emissions subject to the rule have indicated on their annual emissions inventory statement that they are not small businesses.

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 a component of the state's plan to protect the environment and reduce risks to human health from environmental exposure to air pollutants, and the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

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 Texas Government Code, §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 §101.27 are not intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants. These changes are specifically intended to adjust the base rate for assessing fees from Title V sources and to provide future flexibility in assessing these fees.

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. By federal and state statute, emission fees are to be assessed and collected from Title V sources sufficient to fund the Title V permitting program.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 4) 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 FCAA, Title V (42 United States Code (USC), §§7661 - 7661f), which includes issuance of acid rain permits under FCAA, Title IV (§§7651 - 7651o). The emissions fee is also required by state law, THSC, §382.0621 and §382.0622, to be sufficient to support the Title IV and 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 commission but was specifically developed and authorized under TCAA, §§382.011, 382.017, 382.0621, and 382.0622.

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 sufficient funding of the Title V permit program as required under federal and state law. 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, §§7661 - 7661f. The emissions fee is also required by state law, THSC, §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 Texas 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

Owners and operators of Title V sites may be required to pay higher annual emissions fees. The emissions fee is required under federal law to be sufficient to support the permit program under Title V. The emissions fee is also required by state law, THSC,

§382.0621 and §382.0622, to be sufficient to support the Title V programs. The intent of this proposed amendment is to collect sufficient revenue to support the permit program under Title V.

Announcement of Hearings

The commission will hold public hearings on this proposal in Houston on April 4, 2011, at 1:00 p.m. at the Houston-Galveston Area Council, Room A, 3555 Timmons and in Austin on April 7, 2011, at 2:00 p.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearings are 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 hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Comments may be submitted to Charlotte Horn, 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.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-006-101-EN. The comment period closes April 11, 2011.

Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Kathy Pendleton, Emissions Assessment Section, 512-239-1936.

SUBCHAPTER A: GENERAL RULES

§101.27

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §§5.102, concerning General Powers, 5.103, concerning Rules, and 5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.011, which authorizes the commission to administer the requirements of the TCAA; THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and THSC, §382.0621, which authorizes the commission to adopt, charge, and collect an annual fee from regulated entities subject to the permitting requirements of the Federal Clean Air Act Title V.

The proposed amendment implements TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.011, 382.017, and 382.0621.

§101.27. Emission Fees.

(a) **Applicability.** The owner or operator of an account that is required to obtain a federal operating permit as described in Chapter 122 of this title (relating to Federal

Operating Permits Program) 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. 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 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.

(b) Self reported/billed information. Emissions/inspection fees information packets will be mailed to each account owner or operator prior to the fiscal year that a fee is due. The completed emissions/inspection fees basis form must 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 include, at least, the company name, mailing address, site name, all commission 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 be the 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.

(d) Payment. Fees must be remitted by check, certified check, electronic funds transfer, or money order and sent to the 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 owner or operator.

(f) Basis for fees.

(1) The fee must be based on allowable levels or actual emissions at the account. For purposes of this section, allowable levels are those limits as specified in an enforceable document such as a permit, certified registration of emissions, or Commission Order that 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. Under no circumstances may 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 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). 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

For Fiscal Year 2003 through fiscal year 2011 [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.

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

For Fiscal Year 2012 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.

Rate per ton = $\$AdjBaseRate \times (1 - CO) \times (CPI/122.15)$

Where:

AdjBaseRate = an adjustable base rate, equal to \$35 for Fiscal Year 2012, and adjusted annually thereafter up to a maximum cap of \$45.

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

CPI = average of the consumer price index for the 12 months preceding the Fiscal Year [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

122.15 = average consumer price index for Fiscal Year [fiscal year] 1989.

(2) The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels 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.

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