REVISED BACK-UP for January 11, 2023 Agenda

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 6, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

From: Richard C. Chism, Director
Office of Air

Docket No.: 2017-0574-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants
Municipal Solid Waste Landfills §111(d) State Plan and Rule Updates
Rule Project No. 2017-014-113-AI
Yellow Highlight Version

The attached documents contain revisions to the Executive Summary to include information detailing the Texas Commission on Environmental Quality's (commission) Public Involvement Plan and Alternative Language Requirements for this project. The documents also contain a revision to the location of the scheduled Public Hearing to be held in Austin on February 23, 2023, at 10:00 a.m. at the commission's central office located at 12100 Park 35 Circle. The location is being changed from Building E, Room 201S, to Building D, Room 191. Back-up material for this rulemaking project was filed on December 21, 2022.

CHANGES TO THE EXECUTIVE SUMMARY

- On page 3 of the Executive Summary, a section titled "Public Involvement Plan" was added detailing the public involvement process the commission is implementing.
- On page 3 of the Executive Summary, a section titled "Alternative Language Requirements" was added detailing the language access considerations the commission is implementing to meet the agency's alternative language standards and how the public will have access to these additional materials.

CHANGES TO THE PREAMBLE LANGUAGE

- The Announcement of Hearing section on page 37 should be revised to replace Building E, Room 201S to Building D, Room 191 and should read: "The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on February 23, 2023, at 10:00 a.m. in Building D, Room 191, at the commission's central office located at 12100 Park 35 Circle."

CHANGES TO THE PROPOSED §111(d) STATE PLAN REVISION DOCUMENT

- The Announcement of Hearing section on page 20 should be revised to replace Building E, Room 201S to Building D, Room 191 and should read: "The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on February 23, 2023, at 10:00 a.m. in Building D, Room 191, at the commission's central office located at 12100 Park 35 Circle."

Attachments

- Executive Summary pg. 3
- Proposed §111(d) State Plan Revision Document (in Section II.G.8) pg. 20
- Proposal Preamble pg. 37

cc: Chief Clerk, 7 copies

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** December 21, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Samuel Short, Acting Director
Office of Air

Docket No.: 2017-0574-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants
Municipal Solid Waste Landfills §111(d) State Plan and Rule Updates
Rule Project No. 2017-014-113-AI

Background and reason(s) for the rulemaking:
On August 29, 2016, the United States Environmental Protection Agency (EPA) issued new emission guidelines (EG) for existing municipal solid waste landfills (MSWLF) (the 2016 EG rule) and published an updated New Source Performance Standard for new and modified MSWLF. The 2016 EG rule (40 Code of Federal Regulations (CFR) Part 60, Subpart Cf) effectively superseded the EPA's original emission guidelines for MSWLF which were promulgated in 1996. On May 21, 2021, the EPA published a federal plan rule for MSWLF under 40 CFR Part 62, Subpart OOO, which regulates existing MSWLF located in states without an approved state plan to implement the 2016 EG. Under the Federal Clean Air Act (FCAA), Texas is required to submit a revised state plan to implement the 2016 EG. The current Texas state plan for existing MSWLF is implemented through regulations in 30 Texas Administrative Code (TAC) Chapter 113, Subchapter D, Division 1, and was approved by the EPA in 1999. This plan is now out-of-date because it does not address the 2016 EG. Rulemaking is needed to revise the Texas state plan and corresponding Chapter 113 MSWLF rules to conform to the EPA's 2016 EG. The proposed rulemaking would also allow MSWLF which are currently subject to EPA's Subpart OOO federal plan to instead comply with substantially equivalent state rules under the authority of the Texas Commission on Environmental Quality (TCEQ or commission), rather than the federal plan being administered by the EPA, after EPA approval of the revised state plan.

Scope of the state plan and rulemaking:
The proposed rules would establish a new Chapter 113, Subchapter D, Division 6 containing requirements to implement the 2016 EG. The proposed rules also include transitional language in Subchapter D, Division 1, to establish when landfills would be required to begin complying with the new Division 6 rules. A separate §111(d) state plan document with supporting documentation has also been prepared for concurrent proposal with the rule changes to Chapter 113.

A.) Summary of what the state plan and rulemaking would do:
The proposed rules would implement the 2016 EG by incorporating the relevant 40 CFR Part 60 Subpart Cf requirements by reference into Chapter 113, Subchapter D, Division 6. Certain elements of the proposed Division 6 rules would also reference portions of the 40 CFR Part 62, Subpart OOO federal plan rule to facilitate the transition for MSWLF which have already begun to comply with those federal requirements. The separate §111(d)

state plan document contains information required by 40 CFR Part 60, Subpart B and 40 CFR Part 60, Subpart Cf.

B.) Scope required by federal regulations or state statutes:
The changes to Chapter 113, Subchapter D are required in order to satisfy FCAA requirements relating to the implementation of a state plan for MSWLF. With the exceptions discussed below, the proposed rule changes to Chapter 113 directly parallel the requirements in the new EG and federal plan regulations for MSWLF. The §111(d) state plan meets the federal requirements for state plans.

C.) Additional staff recommendations that are not required by federal rule or state statute:
Staff recommends that the proposed revisions to Chapter 113 and the state plan include an alternate applicability date which may reduce the number of MSWLF sites potentially subject to the emission guidelines, compared to the "standard" applicability dates specified in the federal rules. The TCEQ's alternate applicability date for the EG was previously approved by the EPA in 1999, and TCEQ expects it to be approved again. In addition, the proposed revisions carry over an existing provision which allows landfills to meet certain requirements of the EG by complying with certain emission control requirements for landfills in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. Staff also recommends a proposed requirement for affected landfill sites to provide an annual report on NMOC emissions, which is not explicitly required by federal rule, but is necessary for TCEQ to maintain sufficient information to satisfy federal progress report requirements under 40 CFR §60.25.

Statutory authority:
The rulemaking and state plan are proposed under Texas Water Code (TWC), §5.103, Rules; TWC, §5.105, General Policy; Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.014, Emission Inventory; THSC, §382.015 Permission to Enter Property; THSC, §382.016, Monitoring Requirements; Examination of Records; THSC, §382.017, Rules; THSC, §382.021, Sampling Methods and Procedures; THSC, §382.022, Investigations; and THSC, §382.051, Permitting Authority of Commission; Rules. The proposed rules and state plan are also proposed under TWC, §7.002, Enforcement Authority; TWC, §7.032, Injunctive Relief; and TWC, §7.302, Grounds for Revocation or Suspension of Permit.

Effect on the:

A.) Regulated community:
Affected existing MSWLF facilities must comply with the new EG requirements regardless of whether TCEQ adopts a state plan and implements the requirements through revisions to the Chapter 113 rules, or whether the requirements are implemented through the federal plan administered by the EPA. However, the commission believes that it would be

beneficial for the regulated community and the public for TCEQ to implement the new EG requirements through state rules and a state plan.

B.) Public:
The public would not be adversely affected by the proposed changes. The proposed rules and revisions to the state plan would allow TCEQ to implement these emission guidelines, rather than the EPA. This is expected to result in more effective administration of the guidelines, as TCEQ has more local knowledge about these facilities and closer relationships with nearby communities. TCEQ also has closer relationships with the operators of affected landfill facilities, compared to the EPA.

C.) Agency programs:
Agency programs would not be significantly affected by the rule changes.

Stakeholder meetings:
The commission has not scheduled any stakeholder meetings related to this rulemaking; however, a public hearing will be held during the comment period.

Public Involvement Plan
The proposed rulemaking and revision to the state plan would, once approved by EPA, allow TCEQ to implement the most recent federal emission guidelines for existing MSWLF. These emission guidelines are already in effect in Texas through a federal plan. The proposed rules closely parallel the federal guidelines and would not significantly change the emission standards and monitoring requirements already in effect. Significant public interest in this proposed rulemaking is not expected. A specific public involvement plan has not been developed. The public will have the opportunity to submit comments and attend a public hearing.

Alternative Language Requirements
The agenda item announcement for proposal and adoption at the Commissioners' Agenda Meeting and the agency webpage requesting comments on the proposed rules will be provided in English and Spanish. A plain language summary will be provided in English and Spanish on the agency website, and newspaper notices for the public hearing will be published in English and Spanish. The public will have an opportunity to request additional communication accommodations, including live translation services, for the public hearing.

Potential controversial concerns and legislative interest:
The proposed rulemaking and state plan are necessary to implement revised federal requirements for existing MSWLF, as required by the FCAA. Staff does not expect the requirements proposed in the rulemaking or state plan to be controversial since these requirements already apply to these sources, but any regulatory actions involving MSWLF facilities can generate public and legislative interest.

Re: Docket No. 2017-0574-RUL

Would this rulemaking affect any current policies or require development of new policies?
No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
If the proposed rules and state plan are not adopted, existing MSWLF facilities in Texas would be required to continue to comply with the EPA's federal plan for MSWLF under 40 CFR Part 62, Subpart OOO. This federal plan is directly administered by the EPA. For Title V sources, Texas is also required to have authority to implement all applicable requirements. The requirements of 40 CFR Part 60, Subpart Cf are applicable requirements for sources otherwise subject to the Title V Federal Operating Permit Program. It would be preferable for the public and the regulated community for the TCEQ, rather than the EPA, to be responsible for the implementation of the EG.

Key points in the proposal rulemaking schedule:
Anticipated proposal date: January 11, 2023
Anticipated *Texas Register* publication date: January 27, 2023
Anticipated public hearing date: February 23, 2023
Anticipated public comment period: January 27, 2023 – February 28, 2023
Anticipated adoption date: June 28, 2023

Agency contacts:
Michael Wilhoit, Rule Project Manager, Air Permits Division, (512) 239-1222
Terry Salem, Staff Attorney, (512) 239-0469
Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

Attachments:
Proposed Revisions to §111(d) State Plan
Appendices B1-B4
Appendices C1-C6

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Michael Wilhoit
Terry Salem
Cecilia Mena

THE TEXAS STATE PLAN FOR THE CONTROL OF DESIGNATED FACILITIES AND POLLUTANTS (PROPOSED REVISION)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
[TEXAS NATURAL RESOURCE CONSERVATION COMMISSION]
P.O. BOX 13087
AUSTIN, TEXAS 78711-3087

May 17, 2000

Proposed Revisions: January 11, 2023
RULE PROJECT NO. 2017-014-113-AI

NOTES REGARDING PROPOSED CHANGES

The proposed revisions to this Texas §111(d) State Plan are indicated through use of underlined text to indicate new material and [bracketed text] to indicate deleted material. Sections of the approved State Plan which are not proposed to be modified are indicated with a notation indicating "NO CHANGE."

The purpose of these proposed revisions is to establish a state mechanism to implement 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. As such, the proposed revisions to this State Plan are limited to content relating to municipal solid waste (MSW) landfills and certain general information.

Due to the use of different word processing software since the development of the previously approved State Plan, there may be non-substantive differences in formatting of content when portions of the approved State Plan are cited in this proposal document.

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF TABLES

I. INTRODUCTION

The United States Environmental Protection Agency (EPA) has published New Source Performance Standards (NSPS) for several types of facilities, including sulfuric acid plants; kraft pulp mills; primary aluminum plants; phosphate fertilizer plants; municipal solid waste (MSW) landfills; and hospital, medical, and infectious waste incinerators (HMIWI). The following facilities, however, are not required to meet NSPS control requirements:

1. Sulfuric acid plants built or modified before August 17, 1971;
2. Kraft pulp mills built or modified before September 24, 1976;
3. Primary aluminum plants built or modified before October 23, 1974;
4. Phosphate fertilizer plants built or modified before October 22, 1974;
5. MSW landfills built or modified before July 14, 2014 [May 30, 1991]; and
6. Hospital, Medical, Infectious Waste Incinerators built or modified before June 20, 1996.

These existing facilities are addressed in Section 111(d) of the Federal Clean Air Act (FCAA). Section 111(d) requires that the states set emissions limits for existing facilities for which NSPS would apply if the facility were new. Section 111(d) emission limits are set for pollutants not controlled as criteria pollutants under Section 108(a) of the FCAA or as hazardous air pollutants under Section 112(b)(A).

In Subpart B of 40 Code of Federal Regulations [Regulation] (CFR) Part 60, EPA requires

states to develop and implement a control plan for 111(d) facilities once a guideline document has been published. The EPA has published the following guidelines applicable to the source types included under this §111(d) State Plan:

1. Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units, EPA-450/2-77-019;

2. Kraft Pulping-Control of TRS Emissions from Existing Mills, EPA-450/2-78-003b;

3. Primary Aluminum: Guidelines for Control of Fluoride Emissions from Existing Primary Aluminum Plants, EPA-450/2-78-0496;

4. Control of Fluoride Emissions from Existing Phosphate Fertilizer Plants, EPA-450/2-77-005;

5. Emission Guidelines and Compliance times for Control of Non-Methane Organic Compounds (NMOC) Emissions From Municipal Solid Waste Landfills, 40 CFR Part 60, Subpart Cc; [and]

6. Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for Section 111(d)/129 State Plans, EPA-456/R-97-007; and [.]

7. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 40 CFR Part 60, Subpart Cf.

The following plans contain strategies for controlling emissions from sulfuric acid production units, kraft pulp mills, MSW landfills, and hospital/medical/infectious waste incinerators.

II. CONTROL STRATEGY

A. Plan for Control of Sulfuric Acid Mist Emissions from Sulfuric Acid Plants

1 – 4. ***NO CHANGE***

B. Plan for Control of Total Reduced Sulfur (TRS) Emissions from Kraft Pulp Mills

1 – 6. ***NO CHANGE***

C. Plan for Control of Fluorides from Primary Aluminum Plants (Reserved)

NO CHANGE

D. Plan for Control of Fluorides from Phosphate Fertilizer Plants (Reserved)

NO CHANGE

E. Plan for Control of Non-Methane Organic Compounds (NMOC) from Municipal Solid Waste (MSW) Landfills

1 – 7. ***NO CHANGE***

8. Transition to 2016 Emission Guidelines based on 40 CFR Part 60, Subpart Cf

On and after the implementation date specified in proposed 30 Texas Administrative Code (TAC) §113.2412, owners or operators of MSW landfills subject to the requirements of 30 TAC Chapter 113, Subchapter D, Division 1 and the corresponding §111(d) State Plan requirements of Section II.E 1-7 would instead comply with the requirements of 30 TAC Chapter 113, Subchapter D, Division 6. The rules in Chapter 113, Subchapter D, Division 6 implement the 2016 emission guidelines (EG) for MSW landfills as established under 40 CFR Part 60, Subpart Cf, with certain adjustments. The implementation date is the date when the EPA's approval of the revised Texas §111(d) State Plan implementing 40 CFR Part 60, Subpart Cf becomes effective.

Owners or operators of MSW landfills in Texas which are subject to the federal plan for existing MSW landfills (40 CFR Part 62, Subpart OOO) would also be required to begin complying with the requirements of Chapter 113, Subchapter D, Division 6 on the implementation date specified in proposed 30 TAC §113.2412. On or after that implementation date, owners or operators of existing MSW landfills would no longer be required to comply with the provisions of Chapter 113, Subchapter D, Division 1, or with 40 CFR Part 62, Subpart OOO, except as otherwise specified in Chapter 113, Subchapter D, Division 6. The proposed requirements of Chapter 113, Subchapter D, Division 6 are discussed in detail in Section II.G of this §111(d) State Plan.

F. Plan for Control of Hospital and Medical/Infectious Waste Incinerators

1 – 7. ***NO CHANGE***

G. Plan for Control of NMOC from MSW Landfills (2016 Emission Guidelines based on 40 CFR Part 60, Subpart Cf)

1. Regulatory Background of 2016 MSW Landfill Emission Guidelines

To meet the requirements of the FCAA, §111, the EPA is required to develop regulations to control air pollutant emissions from various types of stationary sources which the EPA has determined cause or contribute significantly to air pollution. FCAA, §111(b) directs the EPA to establish NSPS for new and modified stationary sources. NSPS apply to stationary sources for which construction, reconstruction, or modification commenced after the applicable NSPS is proposed. FCAA, §111(d) directs the EPA to establish Emissions Guidelines (EG) which are generally similar to the NSPS, except that they apply to existing sources for which construction, modification, or reconstruction occurred on or before the date the applicable NSPS is proposed. Essentially, for a given source category, the EG regulate the population of existing sources which are not covered by the corresponding NSPS for new and modified sources. Unlike the NSPS, EG are not enforceable until the EPA approves a state's plan or adopts a federal plan for implementing and enforcing them, and the state or federal plan becomes effective. The NSPS and EG regulations promulgated by the EPA are located in 40 CFR Part 60, Standards of Performance for New Stationary Sources.

FCAA, §111(d) and the EG regulations promulgated by EPA require states to adopt and submit to EPA for approval a state plan to implement and enforce the EG. A §111(d)

state plan is required to be at least as protective as the corresponding EG regulations promulgated by the EPA. FCAA, §111(d) requires the EPA to develop, implement, and enforce a federal plan if a state fails to submit a satisfactory state plan by the applicable deadline. Federal plans to implement EG regulations in states without an approved state plan are located under 40 CFR Part 62, Approval and Promulgation of State Plans for Designated Facilities and Pollutants.

EPA originally adopted NSPS for MSW landfills under 40 CFR Part 60, Subpart WWW, and EG under 40 CFR Part 60, Subpart Cc, in 1996. To implement the 1996 landfill EG, the Texas Commission on Environmental Quality (TCEQ) adopted rules under 30 TAC Chapter 113, Subchapter D, Division 1, and a corresponding §111(d) State Plan, on October 7, 1998 (23 TexReg 10874). The EPA formally approved TCEQ's rules and the Texas §111(d) State Plan for existing MSW landfills on June 17, 1999 (64 FR 32427).

On August 29, 2016, the EPA adopted a new NSPS (40 CFR Part 60, Subpart XXX) and new EG (40 CFR Part 60, Subpart Cf) for MSW landfills, which essentially replaced the 1996 NSPS and EG. The 2016 NSPS and EG rules lowered the annual emission threshold for which a landfill gas collection system is required from 50 megagrams (Mg) of non-methane organic compounds (NMOC) to 34 Mg of NMOC. (The emission threshold for closed landfills remained at 50 Mg.) The EPA's 2016 revisions to the NSPS and EG also included changes to monitoring, recordkeeping, and reporting requirements. The EPA amended Subpart Cf on August 26, 2019, and March 26, 2020. The August 26, 2019 amendments to Subpart Cf, which included changes to the state and federal plan timing requirements to align with the then-applicable Subpart Ba, were vacated on April 5, 2021, and are not included in this proposed revision to the Texas §111(d) State Plan. On May 21, 2021, the EPA published a federal plan to implement the emission

guidelines for MSW landfills located in states where an approved FCAA, §111(d) state plan is not in effect. The federal plan for MSW landfills was adopted under 40 CFR Part 62, Subpart OOO.

In order to implement the EPA's 2016 EG for existing MSW landfills, TCEQ must revise the corresponding Chapter 113 rules for existing MSW landfills and the previously submitted §111(d) State Plan. TCEQ will use state rules proposed under new Chapter 113, Subchapter D, Division 6, to enforce the 2016 landfill EG. TCEQ's proposed revisions to Chapter 113 and the proposed revisions to the Texas §111(d) State Plan are based on the 40 CFR Part 60, Subpart Cf regulations adopted on August 29, 2016, (81 FR 59276) as amended through March 26, 2020. TCEQ is also proposing to include certain elements of the EPA's federal plan (40 CFR Part 62, Subpart OOO) which address reporting and compliance issues for some landfills more specifically than the Subpart Cf regulations. See Appendix C.1 to view a copy of EPA's published EG (Subpart Cf) and the published federal plan (Subpart OOO).

The TCEQ is the agency responsible for developing or revising a state plan as required by FCAA, §111(d) (the §111(d) State Plan) to implement the EPA's landfill EG. The EG contains requirements for emission standards, operational requirements, monitoring and testing requirements, reporting and recordkeeping requirements, and compliance schedules for affected units. The EPA is required to review and take action on state plan submittals and revisions according to the provisions of 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities. The EPA's approval of the revised Texas §111(d) State Plan for MSW landfills would be a critical milestone, since the compliance deadline for the proposed Chapter 113 rules is triggered once the EPA has published approval of the revised Texas §111(d) State Plan.

Note that under the proposed revisions to the Texas §111(d) State Plan and the Chapter 113 MSW landfill rules, the previously approved MSW landfill §111(d) State Plan (sections II.E 1-7) and the current Chapter 113, Subchapter D, Division 1 regulations for MSW landfills remain in effect until the effective date of the EPA's approval of the revisions to the Texas §111(d) State Plan. Similarly, owners or operators of existing MSW landfills are required to continue compliance with the 40 CFR Part 62, Subpart OOO federal plan until the effective date of the EPA's approval of the revised Texas §111(d) State Plan. The proposed revisions to the Texas §111(d) State Plan are not intended to affect or supersede any part of the previously approved Texas §111(d) State Plan unless specifically indicated otherwise.

In conjunction with the proposed revisions to the Texas §111(d) State Plan, the TCEQ concurrently proposes rulemaking to establish requirements for existing MSW landfills based on the EPA's 2016 EG, as codified in 40 CFR Part 60, Subpart Cf as amended through March 26, 2020. The proposed rules also include certain elements from the 40 CFR Part 62, Subpart OOO federal plan published on May 21, 2021. The proposed rulemaking would amend 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Subchapter D, Designated Facilities and Pollutants. The TCEQ proposes revisions to 30 TAC Chapter 113, Subchapter D, Division 1, Municipal Solid Waste Landfills, and proposes new Division 6, 2016 Emission Guidelines for Existing Municipal Solid Waste Landfills. See Appendix C.2 to view the preamble and proposed amendments to 30 TAC Chapter 113, Subchapter D.

2. Emission Standards, Available Control Technologies, and Operational

Standards

The proposed Chapter 113, Subchapter D, Division 6 rules are the mechanism through which TCEQ would implement the requirements of 40 CFR Part 60, Subpart Cf (as amended through March 26, 2020). The proposed Chapter 113, Subchapter D, Division 6 rules directly reference the requirements of Subpart Cf, broken down by section. The emission standards and control requirements in the proposed Chapter 113 rules and this corresponding proposed §111(d) State Plan revision are based on the requirements of 40 CFR §60.33f, which is referenced in proposed 30 TAC §113.2404(a)(3). These requirements include the installation and operation of landfill gas collection and control systems at existing active landfills with a capacity greater than or equal to 2.5 million Mg by mass and 2.5 million cubic meters by volume, with an NMOC emission rate that is greater than or equal to 34 Mg per year, or Tier 4 surface emissions monitoring showing a concentration of 500 parts per million (ppm) methane or greater. For closed landfills, the threshold for the requirement to install a gas collection and control systems is an NMOC emission rate of 50 Mg/year. Landfill gas collection and control systems required by 30 TAC §113.2404(a)(3) and 40 CFR §60.33f may comply with the standards through use of a non-enclosed flare or through other types of control devices (such as, but not limited to, boilers or process heaters) that achieve at least a 98 percent reduction in NMOC emissions or reduce the outlet NMOC concentration to less than 20 ppmv as hexane at 3 percent oxygen or less. If a non-enclosed flare is used as a control device, it must be designed and operated in accordance with the requirements of 40 CFR §60.18, except as noted in 40 CFR §60.37f(d). In addition to the use of flares or other combustion control devices, the landfill gas may be controlled by routing the collected gas to a treatment system that processes the collected gas for subsequent sale or beneficial use (such as, but not

limited to, fuel for combustion, vehicle fuel, or a raw material for chemical manufacturing). Additional requirements for emission standards and gas collection and control systems under this proposed revision to the Texas §111(d) State Plan are provided in the full text of 40 CFR §60.33f.

TCEQ is implementing operational standards for gas collection and control systems by referencing the requirements of 40 CFR §60.34f in proposed 30 TAC §113.2404(a)(4). These operational standards require that gas collection systems be operated such that gas is collected from each area, cell, or group of cells in which solid waste has been in place for five years or more (if active) or two years or more (if closed or at final grade). The collection system must be operated under negative pressure at each wellhead, except for certain conditions specified in 40 CFR §60.34f(b). In addition, each interior wellhead in the collection system must be operated with a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit), unless the owner or operator establishes a higher operating temperature value with supporting data demonstrating that the higher temperature will not cause fires or inhibit anaerobic decomposition by killing methanogens. The collection system must also be operated so that the methane concentration at the surface of the landfill is less than 500 ppm above background. Additional operational requirements for the Chapter 113, Subchapter D, Division 6 rules and §111(d) State Plan are provided in the full text of 40 CFR §60.34f.

While the bulk of the proposed Chapter 113, Subchapter D, Division 6 rules and this revised MSW landfill §111(d) State Plan are based on the requirements of 40 CFR Part 60, Subpart Cf, in several situations TCEQ is using selected provisions from the 40 CFR Part 62, Subpart OOO federal plan that are more appropriate. For example, proposed 30 TAC §113.2404(d) specifies that legacy controlled landfills shall comply with the

requirements of 40 CFR §62.16714(b)(1) in lieu of the requirements of 40 CFR §60.33f(b)(1). This change in requirements (relative to the Subpart Cf requirements) is appropriate because in the federal plan, 40 CFR §62.16714(b)(1)(ii) addresses the 30-month control deadlines for both legacy controlled landfills and landfills in the closed landfill subcategory, where the corresponding Subpart Cf requirement of 40 CFR §60.33f(b)(1)(ii) only addresses landfills in the closed landfill subcategory. TCEQ is including these aspects of the federal plan within the Chapter 113 rules to reduce redundant or duplicative requirements and minimize disruption for legacy sources which will be transitioning to the new Chapter 113, Subchapter D, Division 6 rules from the already-effective federal plan. The use of these provisions from the federal plan will not reduce the degree of emission control or environmental protection achieved from implementation of the emission guidelines. Please consult the Section by Section Discussion in the proposed rule preamble for a detailed discussion of each situation where the TCEQ is proposing to incorporate aspects of the federal plan which differ from the baseline Subpart Cf requirements.

Please refer to Appendix C.4 of this proposed §111(d) State Plan revision for a derivation table which indicates how the proposed Chapter 113, Subchapter D, Division 6 rules correspond to the requirements of 40 CFR Part 60, Subpart Cf and, in certain cases, 40 CFR Part 62, Subpart OOO.

The proposed revisions to the Texas §111(d) State Plan, and the proposed Chapter 113, Subchapter D, Division 6 rules, include two Texas-specific features which differ from the corresponding requirements in 40 CFR Part 60, Subpart Cf and 40 CFR Part 62, Subpart OOO. These two features are: 1) an alternate date range for determining which MSW landfills are subject to the proposed state plan and proposed Chapter 113,

Subchapter D, Division 6 rules; and 2) an option which allows owners or operators of MSW landfills to comply with the collection system and control device requirements of 30 TAC §115.152 in lieu of certain corresponding requirements in 40 CFR Part 60, Subpart Cf. These two features are not new, as they are part of Texas' approved 1998 §111(d) State Plan for MSW landfills and the existing Chapter 113, Subchapter D, Division 1 rules which implement that State Plan. Although these elements of the Texas §111(d) State Plan were previously approved for purposes of implementing the 1996 EG for MSW landfills, a review of these features is warranted to demonstrate that retaining these features is still appropriate for purposes of the 2016 EG. Please refer to Appendix C.5 for a detailed discussion and evaluation of these two elements of the proposed revisions to the Texas §111(d) State Plan.

3. Source Inventory

See Table C.3.1 of Appendix C.3 for an inventory of active, existing MSW landfills in Texas that are potentially subject to the proposed Chapter 113 rules and revised state plan. This inventory is provided for informational purposes, but it is not necessarily determinative of whether a particular MSW landfill would be subject to the control requirements of the proposed Chapter 113 rules implementing the 2016 landfill EG. MSW landfills with permit conditions indicating the applicability of 40 CFR Part 60, Subpart XXX, have been excluded from this list as Subpart XXX landfills are not subject to the 2016 landfill EG. Some landfills shown in this inventory may have waste acceptance dates outside the scope of applicability of the proposed Chapter 113 rules implementing the 2016 landfill EG. The inventory identifies 133 active MSW landfills as potentially covered by the proposed rules, but the final number of landfills which will be subject to the rules (if adopted) may be somewhat lower. In addition, some MSW

landfills may be exempt from most substantive requirements of the EG on the basis of small capacity (less than 2.5 million Mg and 2.5 million cubic meters). The existing and proposed Chapter 113 rules that implement the emission guidelines include complete, self-contained applicability provisions which determine whether or not any particular landfill is subject to the existing and proposed Chapter 113 requirements. Owners or operators of MSW landfills will need to review the applicability provisions closely to determine whether their landfill is affected by the proposed rules and revised §111(d) State Plan.

A table of closed MSW landfills in Texas is also provided in Table C.3.2 of Appendix C.3. As explained previously, this table is provided for informational purposes, but a number of the closed landfills listed in Table C.3.2 may not be subject to the proposed Chapter 113, Subchapter D, Division 6 rules depending on their construction or closure dates, waste acceptance dates, waste capacity, or other site-specific factors affecting applicability.

Additional information on MSW landfills in Texas is available through the TCEQ Municipal Solid Waste Viewer at www.tceq.texas.gov/gis/msw-viewer and through the Commission's website at: www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw-data.

4. Emission Inventory

See Table C.3.3 of Appendix C.3 for an inventory of annual NMOC emissions for MSW landfills in Texas that are potentially subject to the proposed rules and proposed §111(d) State Plan. This NMOC emission data was obtained from the 2019 emission

inventory that EPA prepared for the 40 CFR Part 62, Subpart OOO federal plan, as this was the most comprehensive and current information readily available for NMOC emissions from Texas landfills. As part of the proposed revisions to the Texas §111(d) State Plan, TCEQ is proposing to require that designated landfill facilities provide an annual report of NMOC emissions. This would enable TCEQ to maintain current information on NMOC emissions from designated facilities and support the requirement to provide updated emissions inventory information to the EPA as part of the federal annual progress report requirements of 40 CFR §60.25(e) and (f).

5. Process for Review of Design Plans

In situations where owners or operators of affected MSW landfills are required to submit gas collection and control system design plans, TCEQ proposes to review and process those design plans in a manner similar to the process that is currently used by TCEQ for the existing Chapter 113, Subchapter D, Division 1 rules, as well as for purposes of 40 CFR Part 60, Subparts WWW and XXX. This can be accomplished through relatively minor updates to existing forms and checklists used for this purpose. However, TCEQ is not proposing to require MSW landfills that have already submitted design plans to the EPA (for purposes of the 40 CFR Part 62, Subpart OOO federal plan) to resubmit those plans to TCEQ, unless specifically requested by the executive director.

6. Compliance schedule and increments of progress

For the proposed Chapter 113 rules and revisions to the §111(d) State Plan, the TCEQ is proposing to require owners or operators of affected MSW landfills to meet the

increments of progress specified in 40 CFR Part 62, Subpart OOO, Table 1. The proposed use of the increments of progress from the EPA's federal plan is intended to minimize the disruption for landfills which have begun implementing measures to comply with the federal plan but will be transitioning to compliance with the proposed Chapter 113 rules once the EPA has approved Texas' revised §111(d) State Plan. Table 7 below describes these proposed increments of progress that are required by 40 CFR Part 62, Subpart OOO, Table 1. Under proposed 30 TAC §113.2410, initial design capacity reports and NMOC emission rate reports are due to TCEQ no later than 90 days after the effective date of EPA approval of the revised Texas §111(d) State Plan. If the owner or operator has already submitted those reports to comply with the 40 CFR Part 62, Subpart OOO federal plan, resubmission to TCEQ is not required unless specifically requested by the executive director. Similarly, in parallel to the EPA's approach in the federal plan, legacy controlled landfills are not required to resubmit certain reports or plans which were previously submitted for purposes of compliance with 40 CFR Part 60, Subpart WWW or the Chapter 113, Subchapter D, Division 1 rules.

Table 7. 2016 MSWLF EG Compliance Schedule and Increments of Progress

Increment	Date if using tiers 1, 2, or 3	Date if using tier 4	Date if a legacy controlled landfill
Increment 1 - Submit cover page of final control plan	1 year after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	1 year after the first measured concentration of methane of 500 parts per million or greater from the surface of the landfill.	1 year after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]
Increment 2 - Award Contracts	20 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	20 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	20 months after the most recent NMOC emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]

Increment	Date if using tiers 1, 2, or 3	Date if using tier 4	Date if a legacy controlled landfill
Increment 3 - Begin on-site construction	24 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	24 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	24 months after the most recent NMOC emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]
Increment 4 - Complete on-site construction	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	30 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	30 months after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams submitted under a previous regulation.
Increment 5 - Final compliance	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	30 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	30 months after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams submitted under a previous regulation.[2]

[1] 50 megagrams per year NMOC for the closed landfill subcategory.

[2] Previous regulation refers to 40 CFR Part 60, Subpart WWW; 40 CFR Part 62, Subpart GGG; or a state plan implementing 40 CFR Part 60, Subpart Cc. Increments of progress that have already been completed under previous regulations do not have to be completed again under this subpart.

7. Testing, Monitoring, Recordkeeping, and Reporting

The commission proposes to use the testing, monitoring, recordkeeping, and reporting requirements contained in 40 CFR Part 60, Subpart Cf, as amended through March 26, 2020, to meet federal requirements for the proposed revisions to the Texas §111(d) State Plan. Proposed 30 TAC §113.2404(a)(5), (6), (7), (8), and (9) refer directly to the requirements of 40 CFR §§60.35f, 60.36f, 60.37f, 60.38f, and 60.39f respectively. These sections of Subpart Cf contain comprehensive requirements for performance testing, monitoring, reporting, recordkeeping, and other compliance-related provisions. These

requirements include, but are not limited to, procedures and methods for determining the NMOC emission rate and NMOC concentration, the methodology for surface emission monitoring, and requirements for monitoring wellhead temperatures, landfill gas header pressure, nitrogen or oxygen concentration, and certain control device parameters. In addition, 40 CFR §60.33f, which is referenced by proposed 30 TAC §113.2404(a)(3), contains requirements for initial performance testing. Please refer to the full text of these rule sections for detailed information on these requirements.

For several testing, recordkeeping, and reporting requirements, TCEQ is proposing to use selected provisions from the 40 CFR Part 62, Subpart OOO federal plan instead of the default provisions from 40 CFR Part 60, Subpart Cf. For example, TCEQ is proposing requirements for legacy controlled landfills which parallel provisions of the federal plan, when those federal plan provisions are more appropriate than the default 40 CFR Part 60, Subpart Cf requirements. TCEQ is proposing to include these aspects of the federal plan within the proposed Chapter 113 rules because it will reduce duplicative requirements and minimize disruption for sources which will be transitioning to the new Chapter 113 rules from the already-effective federal plan. The proposed use of these provisions from the federal plan will not reduce the degree of emission control or environmental protection achieved from implementation of the emission guidelines. Please consult the Section by Section Discussion in the proposed rule preamble for a detailed description of each situation where the TCEQ is proposing to incorporate aspects of the federal plan which differ from the baseline 40 CFR Part 60, Subpart Cf requirements.

The commission is proposing an additional reporting requirement in 30 TAC §113.2410(a)(4) that would require owners or operators of existing MSW landfills to

provide annual calculations of NMOC emissions. This proposed requirement is necessary to enable TCEQ to maintain current information on NMOC emissions from designated facilities covered by the proposed Texas §111(d) State Plan and provide updated emissions inventory information to the EPA in compliance with federal annual progress report requirements of 40 CFR §60.25(e) and (f). The commission is proposing to exclude landfills with a capacity less than 2.5 million Mg by mass or 2.5 million cubic meters by volume from this annual NMOC inventory reporting requirement, as these small landfills are exempt from most substantive requirements of 40 CFR Part 60, Subpart Cf and 40 CFR Part 62, Subpart OOO, and the NMOC calculation's results would not affect the applicable emission control requirements or monitoring requirements for these small sites. If a small site were to increase capacity above the 2.5 Mg/MCF threshold, the applicable control requirements and monitoring requirements for the site would be determined by the NMOC calculation methodology specified in 40 CFR Part 60, Subpart Cf.

The commission is proposing that designated facilities use calculation methods specified in the EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42) for these annual NMOC inventory reports, as opposed to the calculation methods specified in 40 CFR Part 60, Subpart Cf. The proposed use of AP-42 calculation methods for purposes of the emissions inventory, rather than the methods in 40 CFR Part 60, Subpart Cf, is in accordance with federal guidance for the implementation of §111(d) state plans for MSW landfills (EPA-456R/98-009, *Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfills Emission Guidelines).* In this guidance, the EPA explains that the calculation methods (AP-42 vs. the EG rule itself) are intentionally different, as the AP-42 methodology for emission inventories is designed to reflect typical or average landfill emissions, while the EG rule methodology

is purposefully conservative to protect human health, encompass a wide range of MSW landfills, and encourage the use of site-specific data.

8. State Plan Hearing and Comment Information

As codified in 40 CFR §60.23, Adoption and submittal of State plans; public hearings, the minimum public participation requirements for the adoption or revision of a state plan include:

(A) one or more public hearing(s) conducted at a location within the state;

(B) reasonable notice for the public hearing(s), which the EPA defines as at least 30 days;

(C) the date, time, and location of public hearing(s) prominently advertised in each region affected;

(D) the availability of the proposed state plan for public inspection in at least one location in each region affected;

(E) notification of public hearing(s) provided to the following: the EPA Administrator; affected local air pollution control agencies; and other states in the same interstate region;

(F) a record of public hearing(s), available for a minimum of two years for public inspection, which contains a list of the commenters, their affiliation, a summary of

each presentation or comment, and the state's responses to the comments; and

(G) certification that each public hearing was conducted in accordance with the notice required by 40 CFR §60.23(d).

In accordance with these requirements, the commission will hold a public hearing on the proposed revisions to the Texas §111(d) State Plan and corresponding proposed revisions to Chapter 113. Detailed information on the public hearing and on the submittal of written comments is provided at the end of this section and in the preamble to the proposed revisions to Chapter 113. Notice of the public hearing will be provided to the EPA Administrator; affected local air pollution control agencies; and other affected states. In addition, notice of the public hearing will be published in the *Texas Register* and in selected newspapers.

Upon adoption of the proposed revisions to the Texas §111(d) State Plan, a complete record of any comments that are received on the proposed §111(d) State Plan and/or the proposed revisions to Chapter 113 will be provided. The TCEQ will also provide written responses to those comments and provide certification that the public hearing was conducted according to the applicable requirements of 40 CFR Part 60, Subpart B.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on February 23, 2023, at 10:00 a.m. in Building D, Room 191, 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.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, February 21, 2023. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, February 22, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzRjOGJmNTktODQxNy00MWY2LWE1MTAtODk0ZTY4MTllYTg4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

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 or 1-800-RELAY-TX (TDD). The hearing will be conducted in English. Language interpretation services may be requested. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted through the TCEQ Public Comments system at: *https://tceq.commentinput.com/comment/search.* File size restrictions may apply to comments being submitted electronically. All comments should reference Rule Project Number 2017-014-113-AI. The comment period closes on February 28, 2023. Copies of the proposed revisions to the Texas §111(d) State Plan and associated proposed rules can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Michael Wilhoit, TCEQ Office of Air, Air Permits Division, at (512) 239-1222.

III. SOURCE SURVEILLANCE, COMPLIANCE ASSURANCE AND ENFORCEMENT, AND REPORTING

A. Source Surveillance; Compliance Assurance, and Enforcement

Monitoring compliance of emission limits for Section 111(d) pollutants will be accomplished through the existing source surveillance procedures of the commission. The specific legal authority for the commission to conduct source surveillance, compliance assurance, and enforcement is detailed in Section IV and Appendix B. Designated facilities are required to either have a new source review permit or be exempt from permitting. The TCEQ [TNRCC] has a history of enforcing requirements on these type of sources. The commission's 16 regional offices conduct site visits for compliance determinations and inspections at all permitted and registered facilities with air emissions. The regional air staff does complaint investigations at permitted

and non-permitted facilities based on citizen request. The Office of Compliance and Enforcement also will develop enforcement actions for most types of air violations identified during inspections and/or complaint investigations. This would include those state adopted standards for designated facilities. [Investigations of specific sources can be developed through negotiations with EPA/Region 6 during periods of renegotiating the Enforcement Memorandum of Understanding (MOU). The current MOU, Appendix C, details responsibilities of TNRCC air enforcement.]

The [Th] enforcement functions are conducted by the regional offices, the Enforcement Division, and the Litigation Division. Most air violations discovered during inspections are quickly corrected in response to notices of violations. However, if serious and/or continuing air violations are identified during an inspection, the regional office either will initiate administrative enforcement action, potentially resulting in an administrative order with penalties; or the regional office can refer the violation to the Office of the Attorney General for enforcement through the courts, including potential civil penalties. Enforcement may also be initiated after record reviews indicate serious and/or continuing violations. Where possible, the TCEQ [TNRCC] encourages expeditious settlement of enforcement actions by extending a settlement offer. If settlement does not occur within a short time, the Litigation Division will start the process that can lead to an administrative hearing. The commission has ultimate approval of all administrative enforcement orders.

B. Reporting

NO CHANGE

IV. LEGAL AUTHORITY

The Texas Clean Air Act (TCAA), Texas Health & Safety Code, Chapter 382 is the principal enabling authority for air quality in the state of Texas and provides relevant authority required by Federal Clean Air Act (FCAA), §111(d) and 40 Code of Federal Regulations (CFR) §60.26. Since the merger of the Texas Air Control Board and the Texas Water Commission to form the Texas Natural Resource Conservation Commission, the predecessor agency to the Texas Commission on Environmental Quality (TCEQ), the Texas Water Code (TWC), Chapters 5 and 7, also contain administrative and enforcement authority pertinent to the TCEQ's ability to meet FCAA, §111(d) and 40 CFR §60.26 State Plan requirements. All statutes are available in Appendices B.1, B.2, and B.3 to the proposed §111(d) State Plan, or online at the following website: https://statutes.capitol.texas.gov/. The TCEQ may rely on any relevant authority contained in either the TCAA or the TWC, but the following table provides specific authority of particular relevance to the 40 CFR §60.26 State Plan requirements.

Table 8. State Plan Authority Requirements and Corresponding State Authorities

Authority Requirements for §111(d) State Plans	**Texas Authority to Implement**
40 C.F.R. §60.26, generally	*General Authority:* TWC, §5.002, Scope of Chapter TWC, §5.011, Purpose of Chapter TWC, §5.012, Declaration of Policy TWC, §5.013, General Jurisdiction of Commission TWC, §5.102, General Powers TCAA, §382.002, Policy and Purpose TCAA, §382.011, General Powers and Duties TCAA, §382.012, State Air Control Plan
40 C.F.R. §60.23(a)(1) Adopt emission standards and compliance schedules	*General authority noted above; and* TWC, §5.103, Rules TCAA, §382.017, Rules

Authority Requirements for §111(d) State Plans	Texas Authority to Implement
applicable to designated facilities.	TCAA, §382.0173, Adoption of Rules Regarding Certain State Implementation Plan requirements and Standards of Performance for Certain Sources
40 C.F.R. §60.26(a)(2) Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.	*General authority noted above; and* TWC, §5.117, Mandatory Enforcement Hearing TWC, §5.230, Enforcement TWC, Chapter 5, Subchapter L, Emergency and Temporary Orders, generally, and in particular: TWC, §5.501, Emergency and Temporary Order or Permit; Temporary Suspension or Amendment of Permit Condition TWC, §5.502, Application for Emergency or Temporary Order TWC, §5.512, Emergency Order Concerning Activity of Solid Waste Management TWC, §5.514, Order Issued Under Air Emergency TWC, §5.515, Emergency Order Because of Catastrophe TWC, Chapter 7, Enforcement, generally, and in particular, the following: Subchapter A, General Provisions: TWC, §7.002, Enforcement Authority TWC, §7.0025, Initiation of Enforcement Action Using Information Provided by Private Individual TWC, §7.00251, Initiation of Certain Clean Air Act Enforcement Actions Using Information Provided by a Person TWC, §7.006, Enforcement Policies Subchapter B, Corrective Action and Injunctive Relief TWC, §7.032, Injunctive Relief Subchapter C, Administrative Penalties Subchapter D, Civil Penalties Subchapter E, Criminal Offenses and Penalties Subchapter F, Defenses Subchapter G, Revocation and Suspension of Permits, Licenses, Certificates, and Registration TWC, §7.302, Grounds for Revocation or Suspension of Permit TCAA, §382.015, Power to Enter Property TCAA, §382.016, Monitoring Requirements; Examination of Records TCAA, §382.021. Sampling Methods and Procedures TCAA, §382.022, Investigations

Authority Requirements for §111(d) State Plans	Texas Authority to Implement
	TCAA, §382.023, Orders TCAA, §382.024, Factors in Issuing Orders and Determinations TCAA, §382.025 Orders Relating to Controlling Air Pollution TCAA, §382.026 Orders Issued Under Emergencies TCAA, Subchapter C, Permits (permitting authority of the commission, generally) and in particular: TCAA, §382.0513, Permit Conditions TCAA, §382.0541, Administration and Enforcement of Federal Operating Permit TCAA, §382.085, Unauthorized Emissions Prohibited
40 C.F.R. §60.26(a)(3) Obtain information necessary to determine compliance.	*General authority noted above; and* TWC, §5.102, General Powers TWC, §5.117, Mandatory Enforcement Hearing TWC, §7.0025, Initiation of Enforcement Action Using Information Provided by Private Individual TWC, §7.00251, Initiation of Certain Clean Air Act Enforcement Actions Using Information Provided by a Person TCAA, §382.014, Emission Inventory TCAA, §382.015, Power to Enter Property TCAA, §382.016, Monitoring Requirements; Examination of Records TCAA, §382.021, Sampling Methods and Procedures TCAA, §382.022, Investigations TCAA, §382.029, Hearing Powers TCAA, §382.034, Research and Investigations TCAA, §382.0513, Permit Conditions TCAA, §382.0514, Sampling, Monitoring, and Certification TCAA, §382.0515, Application for Permit
40 C.F.R. §60.26(a)(3) Require recordkeeping, make inspections, and conduct tests of designated facilities.	*General authority noted above; and* TCAA, §382.015, Power to Enter Property TCAA, §382.016, Monitoring Requirements; Examination of Records TCAA, §382.021, Sampling Methods and Procedures TCAA, §382.022, Investigations TCAA, §382.034, Research and Investigations TCAA, §382.0513, Permit Conditions TCAA, §382.0514, Sampling, Monitoring, and Certification

Authority Requirements for §111(d) State Plans	Texas Authority to Implement
40 C.F.R. §60.26(a)(4) Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and make periodic emission reports.	*General authority noted above; and* TCAA, §382.021, Sampling Methods and Procedures TCAA, §382.0514, Sampling, Monitoring, and Certification TCAA, §382.0513, Permit Conditions TCAA, §382.014, Emission Inventory
40 C.F.R. §60.26(a)(4) Make emission data available to the public.	*General authority noted above; and* TWC, §5.121, Public Information TWC, §5.1733, Electronic Posting of Information TCAA, §382.014, Emission Inventory TCAA, §382.040, Documents, Public Property TCAA, §382.041, Confidential Information

[The Texas Clean Air Act (TCAA), which is found in Chapter 382 of the Texas Health and Safety Code, states that the commission is the state air pollution agency and is the principal authority in the state on matters relating to the quality of air resources and for setting standards, criteria levels, and emission limits. The powers and duties of the commission are summarized in Chapter 382 of the Texas Health and Safety Code and in Chapters 5 and 7 of the Texas Water Code (TWC). The TWC and TCAA give the commission the legal authority to:]

[1. adopt emission standards and limitations;]

[2. enforce applicable laws, regulations, and standards, and to seek injunctive relief;]

[3. obtain information necessary to determine compliance;]

[4. require recordkeeping and inspections and conduct tests;]

[5. require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices, and to make periodic reports to the state; and]

[6. make emissions data available to the public.]

[A list of the applicable laws demonstrating the commission's legal authority is provided in Appendix B.1.]

A legal opinion from the Texas Attorney General's Office has previously been filed with the Title V Permit Program and subsequently with the Section 111(d) Plan for Municipal Solid Waste Landfills. The legal opinion includes statements indicating that the Texas [Natural Resource Conservation] Commission on Environmental Quality (commission) has the authority to carry out all aspects of the program. The opinion specifically states administrative regulations and, where appropriate, judicial decisions that demonstrate adequate authority; lawfully adopted state statutes and regulations demonstrating legal authority to issue permits, assure compliance with each applicable requirement, monitoring, recordkeeping, reporting, and compliance certification requirements. A copy of the Attorney General's legal opinion is also located in Appendix B.4 [B.2].

V. STATE PROGRESS REPORTS

The commission will submit annual progress reports on the implementation of 30 TAC Chapter 113, §§2060 - 2069, concerning Municipal Solid Waste Landfills, [and] §§2070

- 2079, concerning Hospital/Medical/Infectious Waste Incinerators, and §§2400 - 2412, concerning Municipal Solid Waste Landfills, in compliance with 40 CFR §60.25(a), (e), and (f). The reports will be submitted to the EPA Region VI Administrator on an annual basis as part of the reports required by 40 CFR §51.321. Each progress report will include: enforcement actions, achievement of increments of progress, identification of sources that have ceased operation, emission inventory information for sources that were not in operation at the time of plan development, updated emission inventory and compliance information, and copies of technical reports on all performance testing, including concurrent process data. TCEQ may consult and coordinate with EPA Region 6 to develop efficient methods to provide the required information.

VI. PUBLIC HEARINGS

NO CHANGE. *Detailed information on the public hearing for the proposed revisions to the §111(d) State Plan is provided in section II.G of this document.*

VII. PROPOSED CHANGES TO APPENDICES

The commission is proposing revisions, deletions, and additions to the Appendices of this §111(d) State Plan. The commission is proposing to revise Appendix B by replacing an outdated listing of state statutes in Appendix B.1 with current versions (see proposed Appendices B.1, B.2, and B.3). The commission is proposing to renumber Appendix B.2, Attorney General's Opinion, as Appendix B.4, with no changes to content. The commission is proposing to delete existing Appendix C, concerning the Multi-Media/Multi-Year Enforcement Memorandum of Understanding Between the Texas Natural Resource Conservation Commission and U.S. Environmental Protection Agency, as this MOU is no longer in effect. The commission is proposing new

Appendices C.1 through C.6 which contain supporting information related to the proposed control plan for MSW landfills (proposed section II.G).

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, and 113.2412; and amended §113.2069.

The proposed new and amended sections are included in the accompanying proposed revisions to the Federal Clean Air Act (FCAA), §111(d) Texas State Plan for Existing Municipal Solid Waste (MSW) Landfills. If adopted by the commission, the revisions to Chapter 113 and the associated revisions to the state plan will be submitted to the U.S. Environmental Protection Agency (EPA) for review and approval.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed amendments to Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, are necessary to implement emission guidelines in 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. These emission guidelines (2016 emission guidelines) were promulgated by the EPA on August 29, 2016 (81 FR 59276), and amended on August 26, 2019 (84 FR 44547), and March 26, 2020 (85 FR 17244). The August 26, 2019, amendments to Subpart Cf were vacated on April 5, 2021, by the D.C. Circuit Court of Appeals, and are not included in this proposal. On May 21, 2021, the EPA also published a federal plan (86 FR 27756) to implement the 2016 emission guidelines for MSW landfills located in states where an approved FCAA, §111(d), state plan is not in effect. The federal plan for MSW landfills

was adopted under 40 CFR Part 62, Subpart OOO.

The FCAA, §111, requires the EPA to develop performance standards and other requirements for categories of sources which the EPA finds "…causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." Under FCAA, §111, the EPA promulgates New Source Performance Standards (NSPS) and Emission Guidelines. NSPS regulations promulgated by the EPA apply to new stationary sources for which construction begins after the NSPS is proposed, or that are reconstructed or modified on or after a specified date. Emission Guidelines promulgated by the EPA are similar to NSPS, except that they apply to existing sources which were constructed on or before the date the NSPS is proposed, or that are reconstructed or modified before a specified date. Unlike the NSPS, emission guidelines are not enforceable until the EPA approves a state plan or adopts a federal plan for implementing and enforcing them.

States are required under the FCAA, §111(d), and 40 CFR Part 60, Subpart B, to adopt and submit to the EPA for approval a state plan to implement and enforce emission guidelines promulgated by the EPA. A state plan is required to be at least as protective as the corresponding emission guidelines. The FCAA also requires the EPA to develop, implement, and enforce a federal plan to implement the emission guidelines. The federal plan applies to affected units in states without an approved state plan.

In 1996, the EPA promulgated the original NSPS for MSW landfills under 40 CFR Part 60 Subpart WWW, and corresponding emission guidelines (the 1996 emission guidelines) under 40 CFR Part 60 Subpart Cc. TCEQ adopted rules under Chapter 113, Subchapter D, Division 1, and a corresponding §111(d) state plan, to implement the 1996 emission guidelines on October 7, 1998 (23 TexReg 10874). The EPA approved TCEQ's rules and state plan for existing MSW landfills on June 17, 1999 (64 FR 32427).

On August 29, 2016, the EPA adopted a new NSPS (40 CFR Part 60 Subpart XXX) and new emission guidelines (40 CFR Part 60 Subpart Cf) for MSW landfills, which essentially replaced the 1996 NSPS and emission guidelines. The 2016 emission guidelines lowered the emission threshold at which a landfill gas collection system is required from 50 megagrams (Mg) of non-methane organic compounds (NMOC) to 34 Mg of NMOC. The EPA's 2016 adoption of NSPS Subpart XXX and the 2016 emission guidelines under Subpart Cf also included changes to monitoring, recordkeeping, and reporting requirements, relative to the original 1996 requirements of Subparts WWW and Cc.

The original deadline for states to submit a state plan to implement the EPA's 2016 emission guidelines for MSW landfills was May 30, 2017. The TCEQ submitted a request for an extension to this deadline as provided under 40 CFR §60.27(a). In June 2017, TCEQ received a response from EPA Region 6 which stated that, as a result of the stay in effect at that time, "…a state plan submittal is not required at this time." The

stay expired August 29, 2017. On October 17, 2017, the EPA released a "Desk Statement" concerning the emission guidelines, which stated that "…we do not plan to prioritize the review of these state plans nor are we working to issue a Federal Plan for states that failed to submit a state plan. A number of states have expressed concern that their failure to submit a state plan could subject them to sanctions under the Clean Air Act. As the Agency has previously explained, states that fail to submit state plans are not subject to sanctions (e.g., loss of federal highway funds)." Given that the EPA's Desk Statement indicated that submittal of state plans was not a priority, and considering that the EPA had stated that a reconsideration rulemaking of the NSPS and emission guidelines was impending, TCEQ put state plan development on hiatus to monitor developments in the federal rules. On August 26, 2019, the EPA promulgated rules which established a new deadline of August 29, 2019, for states to submit a §111(d) state plan for the 2016 emission guidelines. However, the August 26, 2019, rules were vacated and remanded on April 5, 2021, effectively restoring the original Subpart B deadline of May 30, 2017. *(Environmental Defense Fund v. EPA*, No. 19-1222 (D.C. Circuit, 2021)).

On March 12, 2020, the EPA published a finding of failure to submit (85 FR 14474) that determined that 42 states and territories, including the State of Texas, had failed to submit the required §111(d) state plans to implement the 2016 emission guidelines for MSW landfills. On May 21, 2021, the EPA published a federal plan under 40 CFR Part 62, Subpart OOO, to implement the 2016 emission guidelines for MSW landfills in

states where an approved §111(d) state plan for the 2016 emission guidelines was not in effect. This federal plan became effective on June 21, 2021, and currently applies to MSW landfills in Texas and numerous other states without an approved state plan implementing the 2016 emission guidelines. The overall requirements of the federal plan are similar to the emission guidelines in Subpart Cf, but EPA included certain changes and features in the federal plan to simplify compliance obligations for landfills that are already controlling emissions under prior landfill regulations such as 40 CFR Part 60, Subpart WWW, or state rules adopted as part of a previously approved state plan for the 1996 emission guidelines. Once a state has obtained approval for a §111(d) state plan implementing the 2016 emission guidelines, most requirements of the federal plan no longer apply, as affected sources would instead comply with the requirements of the approved state plan. (Some of the compliance deadlines and increments of progress specified in the federal plan may still apply.)

In order to implement the EPA's 2016 emission guidelines, TCEQ must revise the corresponding Chapter 113 rules and state plan for existing MSW landfills. The proposed changes to Chapter 113 include amendments to §113.2069 in Subchapter D, Division 1, and several new sections under a proposed Division 6. The proposed rules would phase out the requirement to comply with the commission's existing Division 1 rules and phase in new rules corresponding to the EPA's 2016 emission guidelines. The proposed Division 6 rules also incorporate certain elements from the 40 CFR Part 62 Subpart OOO federal plan to facilitate ongoing compliance for MSW landfills in Texas

which have been required to comply with the federal plan since it became effective on June 21, 2021. The transition date for the applicability of the proposed Division 6 rules, and non-applicability of the existing Division 1 rules, would be the effective date of the EPA's approval of Texas' revisions to the §111(d) state plan. This is discussed in more detail in the section-by-section discussion for the proposed changes to §113.2069 and proposed new §113.2412.

Interested persons are encouraged to consult the EPA's 2016 emission guidelines under 40 CFR Part 60 Subpart Cf, and the federal plan under 40 CFR Part 62 Subpart OOO, for further information concerning the specific requirements that are the subject of this proposed rulemaking. In a concurrent action, the commission is proposing a state plan revision to implement and enforce the 2016 emission guidelines that are the subject of this proposed rulemaking.

Section by Section Discussion

§113.2069, Compliance Schedule and Transition to 2016 Landfill Emission Guidelines

The commission proposes an amendment to §113.2069. Proposed subsection (c) serves as a transition mechanism for owners or operators of existing MSW landfills to end compliance with the requirements of Chapter 113, Subchapter D, Division 1, and begin compliance with the requirements of Subchapter D, Division 6, based on the implementation date specified in §113.2412. The implementation date is a future date established when the EPA's approval of the revised Texas §111(d) state plan for the

2016 emission guidelines for landfills becomes effective. On and after this date, owners or operators of MSW landfills will no longer be required to comply with the Division 1 rules, but must instead comply with the applicable requirements of Division 6.

The Division 1 rule requirements were created to implement the 1996 emission guidelines contained in 40 CFR Part 60 Subpart Cc, which have been supplanted by the more stringent 2016 emission guidelines contained in 40 CFR Part 60 Subpart Cf. These Division 1 rules will no longer be needed once the EPA approves TCEQ's new Division 6 rules and the corresponding §111(d) state plan to implement the 2016 emission guidelines.

The commission also proposes to revise the title of §113.2069 to reflect that the section now contains provisions for the transition from the Chapter 113, Division 1, requirements to the new Division 6 rules implementing the 2016 emission guidelines.

Division 6: 2016 Emission Guidelines for Existing Municipal Solid Waste Landfills

§113.2400, Applicability

The commission proposes new §113.2400, which contains requirements establishing the applicability of the new Subchapter D, Division 6, rules which implement the 2016 emission guidelines. Proposed subsection (a) specifies that the Division 6 rules apply

to existing MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014, except for certain landfills exempted under the provisions of proposed §113.2406. The applicability of the proposed Division 6 requirements includes MSW landfills which were previously subject to the requirements of Chapter 113, Subchapter D, Division 1; the requirements of 40 CFR Part 60 Subpart WWW; or the requirements of the federal plan adopted by the EPA to implement the 2016 emission guidelines (40 CFR Part 62 Subpart OOO).

Proposed subsection (b) is intended to clarify that physical or operational changes made to an existing landfill solely for purposes of achieving compliance with the Division 6 rules will not cause the landfill to become subject to NSPS under 40 CFR Part 60, Subpart XXX. This proposed subsection corresponds to 40 CFR Part 60, Subpart Cf, §60.31f(b).

Proposed subsection (c) is intended to clarify that MSW landfills which are subject to 40 CFR Part 60 Subpart XXX are not subject to the requirements of proposed Division 6. 40 CFR Part 60 Subpart XXX applies to landfills which have been modified, constructed, or reconstructed after July 17, 2014, whereas the proposed Division 6 requirements apply to MSW landfills which have not been modified, constructed, or reconstructed after July 17, 2014.

Proposed subsection (d) establishes that the requirements of Division 6 do not apply

until the implementation date specified in proposed §113.2412(a). This implementation date corresponds to the future date when the EPA's approval of Texas' revised §111(d) state plan for existing MSW landfills becomes effective. Until that date, owners or operators of existing MSW landfills must continue complying with the Chapter 113, Division 1, requirements for existing MSW landfills. The EPA will publish a notice in the *Federal Register* once their review of the revised Texas §111(d) state plan has been completed.

§113.2402, Definitions

The commission proposes new §113.2402, which identifies the definitions that apply for the purposes of Subchapter D, Division 6. Proposed subsection (a) incorporates the definitions in 40 CFR §§60.2 and 60.41f by reference, as amended through May 16, 2007, and March 26, 2020, respectively. Proposed subsections (b) and (c) address certain exceptions or additional definitions relevant to the proposed Division 6 rules.

Proposed subsection (b) establishes that the term "Administrator" as used in 40 CFR Part 60, §§60.30f – 60.41f shall refer to the commission, except for the specific purpose of 40 CFR §60.35f(a)(5), in which case the term "Administrator" shall refer to the Administrator of the EPA. Under 40 CFR §60.30f(c)(1), approval of alternative methods to determine NMOC concentration or a site-specific methane generation rate constant cannot be delegated to States. The federal rule associated with approval of these alternative methods is 40 CFR §60.35f(a)(5), so for purposes of this specific rule

the EPA must remain "the Administrator."

Proposed subsection (c) establishes a definition of a "legacy controlled landfill" for use with the proposed Division 6 rules. The proposed definition parallels the definition of "legacy controlled landfill" used by the EPA in the 40 CFR Part 62, Subpart OOO federal plan, with minor changes to align this definition with the Chapter 113 landfill rules. In plain language, a legacy controlled landfill is a landfill which submitted a collection and control system design plan before May 21, 2021, to comply with previous standards for MSW landfills (either 40 CFR Part 60, Subpart WWW, or 30 TAC Chapter 113, Division 1). This includes not only landfills which have already completed construction and installation of the GCCS, but also those that have submitted design plans and are within the 30-month timeline to install and start-up a GCCS according to 40 CFR §60.752(b)(2)(ii) (if subject to NSPS Subpart WWW), or the corresponding requirements of Chapter 113, Division 1.

§113.2404, Standards for existing municipal solid waste landfills

The commission proposes new §113.2404, which contains the technical and administrative requirements for affected MSW landfills under Subchapter D, Division 6.

Proposed subsection (a) specifies the following requirements for MSW landfills subject to Division 6: default emission standards; operational standards; compliance, testing, and monitoring provisions; recordkeeping and reporting provisions; and other

technical and administrative requirements. Proposed subsection (a) refers directly to the provisions of 40 CFR Part 60, Subpart Cf, as amended, for the relevant requirement. The various sections of Subpart Cf have been amended at different times, so the most recent amendment date of each rule section is noted in the proposed rule text. Owners or operators of existing MSW landfills subject to Division 6 would be required to comply with the referenced requirements of Subpart Cf, as applicable, unless otherwise specified within the Division 6 rules. Certain landfills, such as legacy controlled landfills, are subject to different (non-Subpart Cf) requirements as addressed in proposed §113.2404(b), (c), and (d), and in §113.2410.

Proposed subsection (b) establishes that landfill gas collection and control systems that are approved by the commission and installed in compliance with 30 TAC §115.152 are deemed to satisfy certain technical requirements of these emission guidelines. Proposed subsection (b) is intended to reduce potentially duplicative requirements relating to the landfill gas collection and control system. The gas collection and control system requirements in 30 TAC §115.152 are based on the requirements in the proposed version of the original landfill NSPS under 40 CFR Part 60, Subpart WWW (56 FR 24468, May 30, 1991). Proposed subsection (b) is essentially carried over from existing 30 TAC §113.2061(b), but the text of the proposed rule has been rephrased to more clearly state which specific design requirements of 40 CFR Part 60, Subpart Cf are satisfied. A detailed explanation of the 30 TAC §115.152 requirements and how they compare to the corresponding requirements of 40 CFR Part

60, Subpart Cf is provided in Appendix C.5 of the proposed state plan document. The technical requirements of 30 TAC §115.152 are still substantially equivalent to the corresponding Subparts Cc and Cf requirements for landfill gas collection and control systems, so preserving this previously approved aspect of the Texas state plan is still appropriate and would not result in any backsliding of emission standards or control system requirements. Owners or operators of landfills meeting the Chapter 115 requirements must still comply with all other applicable requirements of Division 6 and the associated requirements of 40 CFR Part 60, Subpart Cf, except for 40 CFR §60.33f(b) and (c).

Proposed subsection (c) allows legacy controlled landfills or landfills in the closed landfill subcategory that have already completed initial or subsequent performance tests to comply with prior landfill regulations (such as 40 CFR Part 60 Subpart WWW, or the Chapter 113, Subchapter D, Division 1, rules) to use those performance test results to comply with the proposed Division 6 rules. This proposed subsection parallels similar language in Subpart Cf at 40 CFR §60.33f(c)(2)(iii), but adds legacy controlled landfills as eligible to use this provision. This is consistent with the approach EPA used for the federal plan at 40 CFR §62.16714(c)(2)(iii). The commission believes that expanding the provision to include legacy controlled landfills, as the EPA did with the federal plan, is reasonable and will not reduce the effectiveness of the emission guidelines as implemented by the proposed revisions to the Texas §111(d) state plan for landfills. This provision will minimize the need for costly re-testing when

appropriately recent test results are already available as a result of testing for compliance with prior landfill emission standards. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with the federal plan for purposes of this requirement should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (d) specifies that legacy controlled landfills shall comply with the requirements of 40 CFR §62.16714(b)(1), as amended through May 21, 2021, in lieu of the requirements of 40 CFR §60.33f(b)(1). This change in requirements (relative to the Subpart Cf requirements) is necessary and reasonable because in the 40 CFR Part 62, Subpart OOO federal plan, 40 CFR §62.16714(b)(1)(ii) addresses the 30-month control deadlines for both legacy controlled landfills and landfills in the closed landfill subcategory, where the corresponding Subpart Cf requirement of 40 CFR §60.33f(b)(1)(ii) only addresses landfills in the closed landfill subcategory. The approach the EPA used in the federal plan to address legacy controlled landfills is an improvement relative to the corresponding provisions of Subpart Cf. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with the federal plan for purposes of this requirement should reduce the potential for confusion or noncompliance while having no adverse effect on

emissions or the environment.

§113.2406, Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules

The commission proposes new §113.2406, which contains exemptions from the proposed Subchapter D, Division 6, requirements.

Proposed subsection (a) would exempt certain MSW landfills from the requirements of Division 6. This proposed exemption is carried over from the Division 1 landfill rules (30 TAC §113.2060(2)(A)) and the previously approved state plan, but has been rephrased as an explicit exemption rather than as a part of the definition of existing MSW landfill. The proposed rule exempts MSW landfills which have not accepted waste since October 9, 1993, and have no remaining waste disposal capacity. This proposed exemption modifies the applicability of the rules relative to the default federal requirements of 40 CFR Part 60, Subparts Cc and Cf, because it excludes MSW landfills which stopped accepting waste between November 8, 1987 (the date specified in the federal guidelines) and October 9, 1993. This proposed exemption is in accordance with 40 CFR §60.24(f) criteria, which allow a state rule to be less stringent for a particular designated class of facilities provided the state can show that factors exist which make application of a less stringent standard significantly more reasonable. When TCEQ adopted the Chapter 113, Division 1, rules for existing MSW landfills in 1998, the commission's analysis found that only one landfill (City of Killeen) which

closed within the relevant time period had an estimated emission rate above the control threshold of 50 Mg/yr, and that the Killeen landfill's emissions were projected to fall below the 50 Mg/yr control threshold by 2004. The commission also estimated that, using an alternate calculation method, the emissions from the landfill would be even lower, and would be "borderline" relative to the 50 Mg/yr threshold. The commission further determined that the cost of installing and operating a gas collection and control system for the landfill would be unreasonable based on the short period of time the facility was projected to be above the 50 Mg/yr threshold. (*See* 23 TexReg 10876, October 23, 1999.) In EPA's approval of the TCEQ's original state plan submittal, the EPA acknowledged that no designated landfills which closed between November 8, 1987, and October 9, 1993, would have estimated non-methane organic compounds (NMOC) emissions above the 50 megagram (Mg) control threshold, and that controlling these closed landfills would not result in a significant reduction in NMOC emissions compared to the cost to install gas collection systems. (*See* 64 FR 32428.) As many years have passed since the original Texas state plan was approved in 1999, none of the landfills which stopped accepting waste during the relevant 1987-1993 time period would have current NMOC emissions above the 50 Mg/year threshold. The previous state plan analysis and other supporting material relating to this proposed exemption is included in Appendix C.5 of the proposed state plan document.

Proposed subsection (b) allows an owner or operator of an MSW landfill to apply for

less stringent emission standards or longer compliance schedules, provided that the owner or operator demonstrates to the executive director and to the EPA that certain criteria are met. An exemption under subsection (b) may be requested based on unreasonable cost of control, the physical impossibility of installing control equipment, or other factors specific to the MSW landfill that make application of a less stringent standard or compliance deadline more reasonable. The proposed provisions of subsection (b) are carried over from functionally identical provisions in the EPA-approved Division 1 landfill rules at 30 TAC §113.2067. The proposed exemption is consistent with the federal requirements in 40 CFR §60.24(f) for obtaining a less stringent emission standard or compliance schedule.

Proposed subsection (c) contains language to clarify how an owner or operator of an affected MSW landfill would request an alternate emission standard or alternate compliance schedule. Requests should be submitted to the TCEQ Office of Air, Air Permits Division, and a copy should be provided to the EPA Region 6 office.

§113.2408, Federal Operating Permit requirements

The commission proposes new §113.2408 to address federal operating permit requirements for MSW landfills subject to the proposed Chapter 113, Subchapter D, Division 6, rules. Proposed §113.2408 requires that owners or operators of MSW landfills subject to Division 6 obtain a federal operating permit as required under 40 CFR §60.31f(c) and (d) and applicable requirements of 30 TAC Chapter 122, Federal

Operating Permits Program. Under 40 CFR §60.31f(c), a federal operating permit is not required for MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters, unless the landfill is otherwise subject to the requirement to obtain an operating permit under 40 CFR Part 70 or 71. For purposes of submitting a timely application for an operating permit, the owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the Texas landfill state plan under §111(d) of the CAA, and not otherwise subject to either Part 70 or 71, becomes subject to the requirements of 40 CFR §70.5(a)(1)(i) or §71.5(a)(1)(i), 90 days after the effective date of the §111(d) state plan approval, even if the design capacity report is submitted earlier.

As stated in 40 CFR §60.31f(d), when an MSW landfill subject to the proposed Division 6 rules is closed (as defined in Subpart Cf) the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not otherwise subject to the requirements of either Part 70 or 71 and either of the following conditions are met: (1) The landfill was never subject to the requirement to install and operate a gas collection and control system under 40 CFR §60.33f; or (2) the landfill meets the conditions for control system removal specified in 40 CFR §60.33f(f).

§113.2410, Initial and Annual Reporting, and Modified Reporting Requirements for Legacy Controlled Landfills

The commission proposes new §113.2410 to address certain initial reports and design plans which must be submitted to the executive director and to establish modified reporting requirements for legacy controlled landfills.

Proposed subsection (a) identifies the requirements for initial reports of design capacity, non-methane organic compound (NMOC) emissions, and initial gas collection and control system design plans. These proposed reporting requirements correspond to certain reports required by 40 CFR §60.38f and by the 40 CFR Part 62, Subpart OOO federal plan. The proposed subsection (a) rules do not require an owner or operator that has already submitted the specified reports to comply with the Subpart OOO federal plan to re-submit the reports to TCEQ unless specifically requested.

The commission is proposing an additional reporting requirement in 30 TAC §113.2410(a)(4) that would require owners or operators of existing MSW landfills to provide annual calculations of NMOC emissions. This proposed requirement is necessary to enable TCEQ to maintain current information on NMOC emissions from designated facilities covered by the proposed state plan and provide updated emissions inventory information to the EPA in compliance with federal annual progress report requirements of 40 CFR §60.25(e) and (f). The commission is proposing to exclude landfills with a capacity less than 2.5 million Mg by mass or 2.5 million cubic meters by volume from this annual NMOC inventory reporting requirement, as these small landfills are exempt from most substantive requirements

of 40 CFR Part 60, Subpart Cf and 40 CFR Part 62, Subpart OOO, and the NMOC calculation's results would not affect the applicable emission control requirements or monitoring requirements for these small sites. If a small site were to increase capacity above the 2.5 Mg or 2.5 million cubic meter threshold, the applicable control requirements and monitoring requirements for the site would be determined by the NMOC calculation methodology specified in 40 CFR Part 60, Subpart Cf.

For the annual NMOC emission inventory reports required by proposed §113.2410(a)(4), TCEQ is proposing that designated facilities use calculation methods specified in the EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42), as opposed to the calculation methods specified in 40 CFR Part 60, Subpart Cf. The proposed use of AP-42 calculation methods for purposes of the emissions inventory, rather than the methods in 40 CFR Part 60, Subpart Cf, is in accordance with federal guidance for the implementation of §111(d) state plans for MSW landfills (EPA-456R/98-009, *Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfills Emission Guidelines*). In this guidance, the EPA explains that the calculation methods (AP-42 vs. the emission guideline rule itself) are intentionally different, as the AP-42 methodology for emission inventories is designed to reflect typical or average landfill emissions, while the emission guideline rule methodology is purposefully conservative to protect human health, encompass a wide range of MSW landfills, and encourage the use of site-specific data.

At this time, the commission is not proposing a specific method that affected facilities would use to submit the annual NMOC emission inventory reports. The commission anticipates that an electronic method would facilitate more efficient collection and analysis of the data. The annual reporting might be implemented through modification of the commission's existing Annual Emissions Inventory Report (AEIR) system, the commission's existing e-permitting system, or through a separate portal or interface. The commission invites comment on possible methods for submittal of these annual NMOC inventory reports. Depending on the comments received and other factors, the commission may specify the method of reporting in the final rule, if adopted, or in guidance posted on the commission's website.

It should be noted that proposed 30 TAC §113.2410 does not comprehensively include all reporting requirements, and that owners or operators of MSW landfills subject to Subchapter D, Division 6, must also comply with any additional reporting requirements specified in 40 CFR §60.38f or elsewhere in 40 CFR Part 60, Subpart Cf, even if not specifically identified in §113.2410.

Proposed subsection (b) establishes certain exemptions from reporting requirements for legacy controlled landfills which have already submitted similar reports to comply with prior regulations that applied to MSW landfills. Specifically, the owner or operator of a legacy controlled landfill is not required to submit an initial design capacity report, initial or subsequent NMOC emission rate report, collection and control system

design plan, initial performance test report, or the initial annual report, if those report(s) were already provided under the requirements of 40 CFR Part 60, Subpart WWW, or the Chapter 113, Subchapter D, Division 1, rules. This proposed exemption corresponds to the approach EPA used for legacy controlled landfills in the 40 CFR Part 62, Subpart OOO, federal plan (specifically, 40 CFR §62.16711(h)). The commission has included this proposed provision because the approach the EPA used in the federal plan to address reporting for legacy controlled landfills is an improvement relative to the corresponding provisions of Subpart Cf. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with this aspect of the federal plan should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (c) establishes that owners or operators of legacy controlled landfills that have already submitted an annual report under 40 CFR Part 60, Subpart WWW, or Chapter 113, Subchapter D, Division 1, are required to submit the following annual report under Division 6 no later than one year after the most recent annual report was submitted, as specified in 40 CFR §62.16724(h). This is a clarification of the timing requirements for the annual reports of legacy controlled landfills transitioning from the prior-effective landfill regulations (40 CFR Part 60 Subpart WWW, or Chapter 113, Subchapter D, Division 1) to the new Division 6 regulations. This proposed subsection corresponds to the approach EPA used for legacy controlled landfills in the

40 CFR Part 62, Subpart OOO, federal plan (specifically, 40 CFR §62.16724(h)). Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113 and maintaining consistency with this aspect of the federal plan should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (d) requires owners or operators of legacy controlled landfills that demonstrate compliance with the emission control requirements of Division 6 using a treatment system (as defined in 40 CFR §60.41f) to comply with 40 CFR §62.16724(d)(7). This requires the preparation of a site-specific treatment system monitoring plan no later than May 23, 2022. Legacy controlled landfills affected by this rule will have been required to prepare this plan by May 23, 2022, to comply with the federal plan, even though the proposed Subchapter D, Division 6, rules were not yet effective or approved by the EPA at that time. This proposed requirement maintains consistency with this aspect of the federal plan and ensures that TCEQ will have continuing authority to enforce this requirement for any legacy controlled landfills which fail to prepare the required treatment system monitoring plan.

§113.2412, Implementation Date and Increments of Progress

The commission proposes new §113.2412 to establish an implementation date and required increments of progress for the proposed Subchapter D, Division 6, rules.

Proposed subsection (a) contains language that requires owners or operators of existing MSWLF to comply with the Division 6 requirements beginning on the effective date of the EPA's approval of Texas' revised §111(d) state plan implementing the 2016 emission guidelines for existing MSW landfills. Prior to this implementation date, owners or operators of existing MSW landfills shall continue to comply with the Chapter 113, Subchapter D, Division 1, rules; 40 CFR Part 60, Subpart WWW; and/or 40 CFR Part 62, Subpart OOO, as applicable. On and after the implementation date specified in this subsection, owners or operators of existing MSW landfills would no longer be required to comply with the Chapter 113, Subchapter D, Division 1, requirements or the federal requirements of Subparts WWW or OOO.

Proposed subsection (b) requires owners or operators of MSW landfills subject to Subchapter D, Division 6, to comply with all applicable requirements of progress specified in 40 CFR Part 62, Subpart OOO, Table 1, as amended through May 21, 2021. These increments of progress set deadlines for certain milestones, such as the submittal of the cover page of the final control plan; the awarding of contracts; the beginning of on-site construction; the completion of on-site construction; and final compliance. The commission is proposing to require the same increments of progress as the 40 CFR Part 62 federal plan because the federal plan is already in effect, and maintaining consistency with the Subpart OOO requirements will minimize confusion and the potential for noncompliance for owners or operators who have already started

the process of designing and installing controls to comply with the federal plan. In addition, 40 CFR §62.16712(c)(1), indicates that facilities subject to the federal plan will remain subject to the schedule in Table 1, even if a subsequently approved state or tribal plan contains a less stringent schedule. As stated in footnote 2 of Subpart OOO, Table 1, increments of progress that have already been completed under previous regulations do not have to be completed again.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. The federal plan adopted under 40 CFR Part 62, Subpart OOO, may have a fiscal impact to units of local government, but the proposed transfer of regulatory authority to the agency does not change that fiscal impact.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit of the proposed transfer anticipated would be a more accessible point of contact (TCEQ) for the public and the regulated community for the regulation of landfill emissions. Because this proposal designates the TCEQ as the implementing agency for federal emission guidelines for landfills, the public may also

utilize the Small Business and Local Government Assistance program (TexasEnviroHelp.org), which provides free technical assistance for the agency's regulatory programs.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. The federal plan adopted under 40 CFR Part 62, Subpart OOO, may have a fiscal impact to businesses or individuals, but the proposed transfer of regulatory authority to the agency does not change that fiscal impact.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does create a new regulation in Chapter 113, Subchapter D, Division 6. The proposed rulemaking phases out the requirement to comply with Chapter 113, Subchapter D, Division 1, but does not repeal it. The proposed rulemaking increases the number of individuals subject to landfill regulations under Chapter 113; however, those

individuals are regulated under the federal standards and other regulations by the agency. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Tex. Gov't Code Ann., §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A "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. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a "Major environmental rule," which are listed in Tex. Gov't Code Ann., §2001.0225. Tex. Gov't Code Ann., §2001.0225 applies only 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.

The specific intent of these proposed rules is to comply with federal emission guidelines for existing municipal solid waste landfills mandated by 42 United States Code (U.S.C.), §7411 (Federal Clean Air Act (FCAA), §111); and required to be included in operating permits by 42 U.S.C., §7661a (FCAA, §502) as specified elsewhere in this preamble. These sources are required to comply with the federal emission guidelines whether or not the commission adopts rules to implement the federal emission guidelines. The sources are required to comply with federal plans adopted by EPA if states do not adopt state plans. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards for: 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.

Under 42 U.S.C., §7661a (FCAA, §502), states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA; including emission guidelines, which are required under 42 U.S.C., §7411 (FCAA, §111). Similar to requirements in 42 U.S.C., §7410 (FCAA, §110) regarding the requirement to adopt

and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 U.S.C., §7661a (FCAA, §502), and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Additionally, states are required by 42 U.S.C., §7411 (FCAA, §111), to adopt and implement plans to implement and enforce emission guidelines promulgated by the EPA.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. Such rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the

commission routinely proposes and adopts rules designed to incorporate or satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission concludes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature.

While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and in fact creates no additional impacts since the proposed rules do not modify the federal emission guidelines in any substantive aspect, but merely provide for minor administrative changes as described elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in

effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. -- Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Mosley v. Tex. Health & Human Services Comm'n*, 593 S.W.3d 250 (Tex. 2019); *Tex. Ass'n of Appraisal Districts, Inc. v. Hart*, 382 S.W.3d 587 (Tex. App.--Austin 2012, no pet.); *Tex. Dep't of Protective & Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170 (Tex. 2004).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance," Tex. Gov't Code Ann., §2001.035. The legislature specifically identified Tex. Gov't Code Ann., §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Tex. Gov't Code Ann., §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble.

The emission guidelines being proposed for incorporation are federal standards that are required by 42 U.S.C., §7411 (FCAA, §111), and are required to be included in

permits under 42 U.S.C., §7661a (FCAA, §502). They are proposed with only minor administrative changes and will not exceed any standard set by state or federal law. These proposed rules will not implement an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA will delegate implementation and enforcement of the emission guidelines to Texas if this rulemaking is adopted and EPA approves the rules as part of the State Plan required by 42 U.S.C. §7411(d) (FCAA, §111(d)). The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Tex. Gov't Code Ann., §2001.0225(b).

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 evaluated the proposed rulemaking and performed an assessment of whether the requirements of Tex. Gov't Code Ann., Chapter 2007, are applicable. Under Tex. Gov't Code Ann., §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part, or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action as required by Tex. Gov't Code Ann., §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to propose rules to implement the federal emission guidelines for municipal solid waste landfills, mandated by 42 U.S.C., §7411 (FCAA, §111), and required to be included in operating permits by 42 U.S.C., §7661a (FCAA, §502), to facilitate implementation and

enforcement of the emission guidelines by the state. States are also required to submit state plans for the implementation and enforcement of the emission guidelines to EPA for its review and approval.

Tex. Gov't Code Ann., §2007.003(b)(4), provides that the requirements of Chapter 2007 of the Texas Government Code do not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law. In addition, the commission's assessment indicates that Texas Government Code Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. For the reasons stated above, this action is exempt under Tex. Gov't Code Ann. §2007.003(b)(13).

Any reasonable alternative to the proposed rulemaking would be excluded from a takings analysis required under Chapter 2007 of the Texas Government Code for the same reasons as elaborated in this analysis. As discussed in this preamble, states are not free to ignore the federal requirements to implement and enforce the federal emission guidelines for municipal solid waste landfills, including the requirement to submit state plans for the implementation and enforcement of the emission guidelines to EPA for its review and approval; nor are they free to ignore the federal requirement to include the emission guideline requirements in state issued federal operating

permits. If the state does not adopt the proposed rules, the federal rules will continue to apply, and sources must comply with a federal plan that implements those rules. The proposed rules present as narrowly tailored an approach to complying with the federal mandate as possible without unnecessary incursion into possible private real property interests. Consequently, the proposed rules will not create any additional burden on private real property. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007; nor does the Texas Government Code, Chapter 2007, apply to the proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and

policies.

The CMP goal applicable to this proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed amendments to Chapter 113 would update TCEQ rules to implement federal emission guidelines for existing landfills under 40 CFR Part 60, Subpart Cf. These guidelines require certain landfills to install and operate gas collection systems to capture and control emissions. The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking also complies with applicable requirements of 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities.

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

Sites which would be required to obtain a federal operating permit under proposed §113.2408 are already required to obtain a federal operating permit under existing federal regulations. The proposed Subchapter D, Division 6, rules would be applicable

requirements under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program and these rules must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 113 requirements.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on February 23, 2023, at 10:00 a.m. in Building D, Room 191, 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.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, February 21, 2023. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, February 22,

2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzRjOGJmNTktODQxNy00MWY2LWE1MTAtODk0ZTY4MTllYTg4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

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 or 1-800-RELAY-TX (TDD). The hearing will be conducted in English. Language interpretation services may be requested. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted through the TCEQ Public Comments system at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to

comments being submitted electronically. All comments should reference Rule Project Number 2017-014-113-AI. The comment period closes on February 28, 2023. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Michael Wilhoit, Air Permits Division, (512) 239-1222.

SUBCHAPTER D: DESIGNATED FACILITIES AND POLLUTANTS

DIVISION 1: MUNICIPAL SOLID WASTE LANDFILLS

§113.2069

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, which 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, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private

property to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; THSC, §382.022, concerning Investigations, which authorizes the commission to make or require the making of investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The proposed amended section implements TWC, §§5.102-5.103, and 5.105; as well as THSC, §§382.002, 382.011 - 382.017, 382.021-382.022, and 382.051.

§113.2069. Compliance Schedule and Transition to 2016 Landfill Emission Guidelines.

(a) An owner or operator subject to the requirements of this division shall submit the initial design capacity report in accordance with 40 Code of Federal Regulations (CFR) Part 60, §60.757(a)(2) to the executive director within 90 days from

the date the commission publishes notification in the [Texas Register] *Texas Register* that the United States Environmental Protection Agency (EPA) has approved this rule.

(b) An owner or operator of a municipal solid waste landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound emission rate report in accordance with 40 CFR §60.757(b)(2) to the executive director within 90 days from the date the commission publishes notification in the [Texas Register] *Texas Register* that EPA has approved this rule.

(c) On and after the implementation date specified in §113.2412 of this title, owners or operators of landfills subject to the requirements of this division shall instead comply with the applicable requirements of Division 6 of this subchapter.

SUBCHAPTER D: DESIGNATED FACILITIES AND POLLUTANTS

DIVISION 6: 2016 EMISSION GUIDELINES FOR EXISTING MUNICIPAL SOLID WASTE LANDFILLS

§§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, 113.2412

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which 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, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.015, concerning Power to Enter Property, which

authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; THSC, §382.022, concerning Investigations, which authorizes the commission to make or require the making of investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also proposed under TWC, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; TWC, §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and TWC, §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The proposed new sections implement TWC, §§5.102 - 5.103, and 5.105; as well as THSC, §§382.002, 382.011 - 382.017, 382.021 - 382.022 and 382.051.

§113.2400. Applicability.

(a) The requirements of this division apply to existing municipal solid waste landfills (MSWLFs) for which construction, reconstruction, or modification was commenced on or before July 17, 2014, except for landfills exempted under §113.2406 of this title (relating to Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules).

(b) Physical or operational changes made to an existing MSWLF solely to comply with these emission guidelines are not considered a modification or reconstruction and would not subject an existing MSWLF to the requirements of a standard of performance for new MSWLFs (such as 40 Code of Federal Regulations (CFR) Part 60, Subpart XXX).

(c) The requirements of this division do not apply to landfills which are subject to 40 CFR Part 60, Subpart XXX (Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification after July 17, 2014).

(d) The requirements of this division do not apply until the implementation date specified in §113.2412 of this title (relating to Implementation Date and Increments of Progress).

§113.2402. Definitions.

(a) Except as provided in subsections (b) and (c) of this section, the terms used in this division are defined in 40 CFR §60.2 as amended through May 16, 2007, and 40 CFR §60.41f as amended through March 26, 2020, which are incorporated by reference.

(b) The term "Administrator" wherever it appears in 40 CFR Part 60, §§60.30f - 60.41f, shall refer to the commission, except for purposes of 40 CFR §60.35f(a)(5). For purposes of 40 CFR §60.35f(a)(5), the term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(c) Legacy controlled landfill--any municipal solid waste landfill subject to this division that submitted a gas collection and control system (GCCS) design plan prior to May 21, 2021, in compliance with 40 CFR §60.752(b)(2)(i) or 30 TAC §113.2061 of this title (relating to Standards for Air Emissions), depending on which regulation was applicable to the landfill. This definition applies to those landfills that completed construction and began operations of the GCCS and those that are within the 30-month timeline for installation and start-up of a GCCS according to 40 CFR §60.752(b)(2)(ii), or the requirements of 30 TAC Chapter 113, Subchapter D, Division 1.

§113.2404. Standards for Existing Municipal Solid Waste Landfills.

(a) Except as specifically provided otherwise in §§113.2400 - 113,2412 of this title, an owner or operator of an existing municipal solid waste landfill (MSWLF) subject to the requirements of this division shall comply with the applicable provisions specified in 40 CFR Part 60, Subpart Cf, as follows:

(1) 40 CFR §60.31f, relating to Designated Facilities, as amended through August 29, 2016;

(2) 40 CFR §60.32f, relating to Compliance Times, as amended through August 29, 2016;

(3) 40 CFR §60.33f, relating to Emission Guidelines for municipal solid waste landfill emissions, as amended through August 29, 2016;

(4) 40 CFR §60.34f, relating to Operational Standards for collection and control systems, as amended through March 26, 2020;

(5) 40 CFR §60.35f, relating to Test methods and procedures, as amended through August 29, 2016;

(6) 40 CFR §60.36f, relating to Compliance provisions, as amended through March 26, 2020;

(7) 40 CFR §60.37f, relating to Monitoring of operations, as amended through March 26, 2020;

(8) 40 CFR §60.38f, relating to Reporting guidelines, as amended through March 26, 2020;

(9) 40 CFR §60.39f, relating to Recordkeeping guidelines, as amended through March 26, 2020; and

(10) 40 CFR §60.40f, relating to Specifications for active collection systems, as amended through August 29, 2016.

(b) Gas collection and control systems approved by the commission and installed at an MSWLF in compliance with §115.152 of this title (relating to Control Requirements), satisfy the gas collection and control system design requirements of 40 CFR §60.33f(b) and (c) for purposes of this section.

(c) Legacy controlled landfills or landfills in the closed landfill subcategory that have already installed control systems and completed initial or subsequent

performance tests may comply with this division using the initial or most recent performance test conducted to comply with 40 CFR Part 60, Subpart WWW, or 30 TAC Chapter 113, Subchapter D, Division 1 of this title.

(d) Legacy controlled landfills shall comply with the requirements of 40 CFR §62.16714(b)(1), as amended through May 21, 2021, in lieu of the requirements of 40 CFR §60.33f(b)(1).

§113.2406. Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules.

(a) A municipal solid waste landfill (MSWLF) meeting the following conditions is not subject to the requirements of this division:

(1) The MSWLF has not accepted waste at any time since October 9, 1993; and

(2) The MSWLF does not have additional design capacity available for future waste deposition, regardless of whether the MSWLF is currently open or closed.

(b) A MSWLF may apply for less stringent emission standards or longer compliance schedules than those otherwise required by this division, provided that the owner or operator demonstrates to the executive director and EPA, the following:

(1) unreasonable cost of control resulting from MSWLF age, location, or basic MSWLF design;

(2) physical impossibility of installing necessary control equipment; or

(3) other factors specific to the MSWLF that make application of a less stringent standard or final compliance time significantly more reasonable.

(c) Owners or operators requesting alternate emission standards or compliance schedules under subsection (b) of this section shall submit requests and supporting documentation to the TCEQ Office of Air, Air Permits Division and provide a copy to the United States Environmental Protection Agency, Region 6.

§113.2408. Federal Operating PermitRequirements.

The owner or operator of an existing municipal solid waste landfill subject to the requirements of this division shall comply with the applicable requirements of 40 CFR §60.31f(c) and (d), and 30 TAC Chapter 122, Federal Operating Permits Program, relating to the requirement to obtain and maintain a federal operating permit.

§113.2410. Initial and Annual Reporting, and Modified Reporting Requirements for

Legacy Controlled Landfills.

(a) An owner or operator of a municipal solid waste landfill (MSWLF) subject to the requirements of this division shall comply with the following reporting requirements, except as otherwise specified for legacy controlled landfills in subsections (b) - (d) of this section.

(1) The owner or operator shall submit the initial design capacity report in accordance with 40 CFR Part 60, §60.38f(a), to the executive director within 90 days from the implementation date specified in §113.2412 of this title (relating to Implementation Date and Increments of Progress). Owners or operators that have already submitted an initial design capacity report to EPA to satisfy 40 CFR §62.16724 are not required to submit the report again, unless specifically requested by the executive director.

(2) An owner or operator of anMSWLF with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound (NMOC) emission rate report in accordance with 40 CFR §60.38f(c) to the executive director within 90 days from the implementation date specified in §113.2412 of this title. Owners or operators that have already submitted an initial NMOC report to

EPA to satisfy 40 CFR §62.16724 are not required to submit the report again, unless specifically requested by the executive director.

(3) An owner or operator of anMSWLF subject to the requirements of this division shall comply with applicable requirements of 40 CFR §60.38f(d) and (e) concerning the submittal of a site-specific gas collection and control system design plan to the executive director. Owners or operators that have already submitted a design plan to EPA to satisfy 40 CFR §62.16724 are not required to submit the design plan again, unless specifically requested by the executive director.

(4) Owners or operators of an MSWLF subject to the requirements of this division shall provide to the executive director an annual emission inventory report of landfill-generated non-methane organic compound (NMOC) emissions. This annual NMOC emission inventory report is not required for an MSWLF with a capacity less than 2.5 million megagramsby mass or 2.5 million cubic meters by volume. This annual NMOC emission inventory report is separate and distinct from any initial or annual NMOC emission rate reports required under 40 CFR §60.38f.

(A) Annual NMOC emission inventory reports required under this paragraph shall include the landfill's uncontrolled and (if equipped with a control system) controlled NMOC emissions in megagrams per year (Mg/yr) for the preceding calendar year. For purposes of these annual emission inventory reports,

NMOC emissions will be calculated using the procedures specified in the U.S. EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42). Note that the use of AP-42 calculations for these annual NMOC emission inventory reports is different from the calculation method that is required for NMOC emission rate reports prepared for purposes of 40 CFR Part 60, Subpart Cf or 40 CFR Part 62, Subpart OOO.

(B) Annual NMOC emission inventory reports required under this paragraph shall be submitted no later than March 31 of each year following the calendar reporting year. These reports shall be submitted using the method designated by the executive director.

(5) This section only addresses certain specific reports for MSWLFs which are subject to this division. Owners or operators of an MSWLF subject to this division shall also comply with any additional reporting requirements specified in 40 CFR §60.38f or elsewhere in 40 CFR Part 60, Subpart Cf, except as otherwise specified for legacy controlled landfills in subsections (b) - (d) of this section.

(b) Owners or operators of legacy controlled landfills are not required to submit the following reports, provided these reports were submitted under 40 CFR Part 60, Subpart WWW, or Chapter 113, §113.2061 (relating to Standard for Air Emissions), on or before June 21, 2021:

(1) Initial design capacity report specified in 40 CFR §60.38f(a);

(2) Initial or subsequent NMOC emission rate report specified in 40 CFR §60.38f(c);

(3) Collection and control system design plan specified in 40 CFR §60.38f(d);

(4) Initial annual report specified in 40 CFR §60.38f(h); and

(5) Initial performance test report specified in 40 CFR §60.38(f)(i).

(c) Owners or operators of legacy controlled landfills that have already submitted an annual report under 40 CFR Part 60, Subpart WWW, or Chapter 113, Division 1, of this title, are required to submit the annual report under this divisionno later than one year after the most recent annual report was submitted.

(d) Owners or operators of legacy controlled landfills that demonstrate compliance with the emission control requirements of this division using a treatment system as defined in 40 CFR §60.41f must comply with 40 CFR §62.16724(d)(7) as amended through May 21, 2021.

§113.2412. Implementation Date and Increments of Progress.

(a) Upon the effective date of United States Environmental Protection Agency (EPA) approval of the Texas §111(d) state plan for the implementation of 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills), owners or operators of municipal solid waste landfills (MSWLFs) covered by the applicability provisions of §113.2400(a) of this title (relating to Applicability), must comply with the requirements of this division.

(b) Owners or operators of an MSWLF subject to this division shall comply with all applicable increments of progress specified in 40 CFR Part 62, Subpart OOO, Table 1, as amended through May 21, 2021.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Proposed Rulemaking

AGENDA REQUESTED: January 11, 2023

DATE OF REQUEST: December 21, 2022

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Cecilia Mena, Rule/Agenda Coordinator, (512) 239-6098

CAPTION: Docket No. 2017-0574-RUL. Consideration for publication of, and hearing on, amended Section 113.2069 and new Sections 113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, and 113.2412 of 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; and corresponding revisions to the Federal Clean Air Act (CAA) Section 111(d) State Plan for municipal solid waste (MSW) landfills.

The proposed rulemaking would revise Chapter 113 to implement updated federal emission guidelines for existing MSW landfills. The proposed changes to the rules and the CAA Section 111(d) State Plan would allow TCEQ to administer and enforce these emission guidelines after federal approval. The guidelines are currently being implemented by the United States Environmental Protection Agency through a federal plan. (Michael Wilhoit, Terry Salem; Rule Project No. 2017-014-113-AI.)

Samuel Short

Acting Director

Samuel Short

Division Deputy Director

Cecilia Mena

Agenda Coordinator

Copy to CCC Secretary? NO ☐ YES ☒

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** December 21, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Samuel Short, Acting Director
Office of Air

Docket No.: 2017-0574-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants
Municipal Solid Waste Landfills §111(d) State Plan and Rule Updates
Rule Project No. 2017-014-113-AI

Background and reason(s) for the rulemaking:
On August 29, 2016, the United States Environmental Protection Agency (EPA) issued new emission guidelines (EG) for existing municipal solid waste landfills (MSWLF) (the 2016 EG rule) and published an updated New Source Performance Standard for new and modified MSWLF. The 2016 EG rule (40 Code of Federal Regulations (CFR) Part 60, Subpart Cf) effectively superseded the EPA's original emission guidelines for MSWLF which were promulgated in 1996. On May 21, 2021, the EPA published a federal plan rule for MSWLF under 40 CFR Part 62, Subpart OOO, which regulates existing MSWLF located in states without an approved state plan to implement the 2016 EG. Under the Federal Clean Air Act (FCAA), Texas is required to submit a revised state plan to implement the 2016 EG. The current Texas state plan for existing MSWLF is implemented through regulations in 30 Texas Administrative Code (TAC) Chapter 113, Subchapter D, Division 1, and was approved by the EPA in 1999. This plan is now out-of-date because it does not address the 2016 EG. Rulemaking is needed to revise the Texas state plan and corresponding Chapter 113 MSWLF rules to conform to the EPA's 2016 EG. The proposed rulemaking would also allow MSWLF which are currently subject to EPA's Subpart OOO federal plan to instead comply with substantially equivalent state rules under the authority of the Texas Commission on Environmental Quality (TCEQ or commission), rather than the federal plan being administered by the EPA, after EPA approval of the revised state plan.

Scope of the state plan and rulemaking:
The proposed rules would establish a new Chapter 113, Subchapter D, Division 6 containing requirements to implement the 2016 EG. The proposed rules also include transitional language in Subchapter D, Division 1, to establish when landfills would be required to begin complying with the new Division 6 rules. A separate §111(d) state plan document with supporting documentation has also been prepared for concurrent proposal with the rule changes to Chapter 113.

A.) Summary of what the state plan and rulemaking would do:
The proposed rules would implement the 2016 EG by incorporating the relevant 40 CFR Part 60 Subpart Cf requirements by reference into Chapter 113, Subchapter D, Division 6. Certain elements of the proposed Division 6 rules would also reference portions of the 40 CFR Part 62, Subpart OOO federal plan rule to facilitate the transition for MSWLF which have already begun to comply with those federal requirements. The separate §111(d)

state plan document contains information required by 40 CFR Part 60, Subpart B and 40 CFR Part 60, Subpart Cf.

B.) Scope required by federal regulations or state statutes:
The changes to Chapter 113, Subchapter D are required in order to satisfy FCAA requirements relating to the implementation of a state plan for MSWLF. With the exceptions discussed below, the proposed rule changes to Chapter 113 directly parallel the requirements in the new EG and federal plan regulations for MSWLF. The §111(d) state plan meets the federal requirements for state plans.

C.) Additional staff recommendations that are not required by federal rule or state statute:
Staff recommends that the proposed revisions to Chapter 113 and the state plan include an alternate applicability date which may reduce the number of MSWLF sites potentially subject to the emission guidelines, compared to the "standard" applicability dates specified in the federal rules. The TCEQ's alternate applicability date for the EG was previously approved by the EPA in 1999, and TCEQ expects it to be approved again. In addition, the proposed revisions carry over an existing provision which allows landfills to meet certain requirements of the EG by complying with certain emission control requirements for landfills in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. Staff also recommends a proposed requirement for affected landfill sites to provide an annual report on NMOC emissions, which is not explicitly required by federal rule, but is necessary for TCEQ to maintain sufficient information to satisfy federal progress report requirements under 40 CFR §60.25.

Statutory authority:
The rulemaking and state plan are proposed under Texas Water Code (TWC), §5.103, Rules; TWC, §5.105, General Policy; Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.014, Emission Inventory; THSC, §382.015 Permission to Enter Property; THSC, §382.016, Monitoring Requirements; Examination of Records; THSC, §382.017, Rules; THSC, §382.021, Sampling Methods and Procedures; THSC, §382.022, Investigations; and THSC, §382.051, Permitting Authority of Commission; Rules. The proposed rules and state plan are also proposed under TWC, §7.002, Enforcement Authority; TWC, §7.032, Injunctive Relief; and TWC, §7.302, Grounds for Revocation or Suspension of Permit.

Effect on the:

A.) Regulated community:
Affected existing MSWLF facilities must comply with the new EG requirements regardless of whether TCEQ adopts a state plan and implements the requirements through revisions to the Chapter 113 rules, or whether the requirements are implemented through the federal plan administered by the EPA. However, the commission believes that it would be

beneficial for the regulated community and the public for TCEQ to implement the new EG requirements through state rules and a state plan.

B.) Public:
The public would not be adversely affected by the proposed changes. The proposed rules and revisions to the state plan would allow TCEQ to implement these emission guidelines, rather than the EPA. This is expected to result in more effective administration of the guidelines, as TCEQ has more local knowledge about these facilities and closer relationships with nearby communities. TCEQ also has closer relationships with the operators of affected landfill facilities, compared to the EPA.

C.) Agency programs:
Agency programs would not be significantly affected by the rule changes.

Stakeholder meetings:
The commission has not scheduled any stakeholder meetings related to this rulemaking; however, a public hearing will be held during the comment period.

Potential controversial concerns and legislative interest:
The proposed rulemaking and state plan are necessary to implement revised federal requirements for existing MSWLF, as required by the FCAA. Staff does not expect the requirements proposed in the rulemaking or state plan to be controversial since these requirements already apply to these sources, but any regulatory actions involving MSWLF facilities can generate public and legislative interest.

Would this rulemaking affect any current policies or require development of new policies?
No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
If the proposed rules and state plan are not adopted, existing MSWLF facilities in Texas would be required to continue to comply with the EPA's federal plan for MSWLF under 40 CFR Part 62, Subpart OOO. This federal plan is directly administered by the EPA. For Title V sources, Texas is also required to have authority to implement all applicable requirements. The requirements of 40 CFR Part 60, Subpart Cf are applicable requirements for sources otherwise subject to the Title V Federal Operating Permit Program. It would be preferable for the public and the regulated community for the TCEQ, rather than the EPA, to be responsible for the implementation of the EG.

Key points in the proposal rulemaking schedule:
Anticipated proposal date: January 11, 2023
Anticipated *Texas Register* publication date: January 27, 2023
Anticipated public hearing date: February 23, 2023
Anticipated public comment period: January 27, 2023 – February 28, 2023
Anticipated adoption date: June 28, 2023

Re: Docket No. 2017-0574-RUL

Agency contacts:
Michael Wilhoit, Rule Project Manager, Air Permits Division, (512) 239-1222
Terry Salem, Staff Attorney, (512) 239-0469
Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

Attachments:
Proposed Revisions to §111(d) State Plan
Appendices B1-B4
Appendices C1-C6

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Michael Wilhoit
Terry Salem
Cecilia Mena

THE TEXAS STATE PLAN FOR THE CONTROL OF DESIGNATED FACILITIES AND POLLUTANTS (PROPOSED REVISION)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
[TEXAS NATURAL RESOURCE CONSERVATION COMMISSION]
P.O. BOX 13087
AUSTIN, TEXAS 78711-3087

May 17, 2000

Proposed Revisions: January 11, 2023
RULE PROJECT NO. 2017-014-113-AI

NOTES REGARDING PROPOSED CHANGES

The proposed revisions to this Texas §111(d) State Plan are indicated through use of underlined text to indicate new material and [bracketed text] to indicate deleted material. Sections of the approved State Plan which are not proposed to be modified are indicated with a notation indicating "NO CHANGE."

The purpose of these proposed revisions is to establish a state mechanism to implement 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. As such, the proposed revisions to this State Plan are limited to content relating to municipal solid waste (MSW) landfills and certain general information.

Due to the use of different word processing software since the development of the previously approved State Plan, there may be non-substantive differences in formatting of content when portions of the approved State Plan are cited in this proposal document.

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF TABLES

I. INTRODUCTION

The United States Environmental Protection Agency (EPA) has published New Source Performance Standards (NSPS) for several types of facilities, including sulfuric acid plants; kraft pulp mills; primary aluminum plants; phosphate fertilizer plants; municipal solid waste (MSW) landfills; and hospital, medical, and infectious waste incinerators (HMIWI). The following facilities, however, are not required to meet NSPS control requirements:

1. Sulfuric acid plants built or modified before August 17, 1971;
2. Kraft pulp mills built or modified before September 24, 1976;
3. Primary aluminum plants built or modified before October 23, 1974;
4. Phosphate fertilizer plants built or modified before October 22, 1974;
5. MSW landfills built or modified before July 14, 2014 [May 30, 1991]; and
6. Hospital, Medical, Infectious Waste Incinerators built or modified before June 20, 1996.

These existing facilities are addressed in Section 111(d) of the Federal Clean Air Act (FCAA). Section 111(d) requires that the states set emissions limits for existing facilities for which NSPS would apply if the facility were new. Section 111(d) emission limits are set for pollutants not controlled as criteria pollutants under Section 108(a) of the FCAA or as hazardous air pollutants under Section 112(b)(A).

In Subpart B of 40 Code of Federal Regulations [Regulation] (CFR) Part 60, EPA requires

states to develop and implement a control plan for 111(d) facilities once a guideline document has been published. The EPA has published the following guidelines applicable to the source types included under this §111(d) State Plan:

1. Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units, EPA-450/2-77-019;

2. Kraft Pulping-Control of TRS Emissions from Existing Mills, EPA-450/2-78-003b;

3. Primary Aluminum: Guidelines for Control of Fluoride Emissions from Existing Primary Aluminum Plants, EPA-450/2-78-0496;

4. Control of Fluoride Emissions from Existing Phosphate Fertilizer Plants, EPA-450/2-77-005;

5. Emission Guidelines and Compliance times for Control of Non-Methane Organic Compounds (NMOC) Emissions From Municipal Solid Waste Landfills, 40 CFR Part 60, Subpart Cc; [and]

6. Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for Section 111(d)/129 State Plans, EPA-456/R-97-007; and [.]

7. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 40 CFR Part 60, Subpart Cf.

The following plans contain strategies for controlling emissions from sulfuric acid production units, kraft pulp mills, MSW landfills, and hospital/medical/infectious waste incinerators.

II. CONTROL STRATEGY

A. Plan for Control of Sulfuric Acid Mist Emissions from Sulfuric Acid Plants

1 – 4. ***NO CHANGE***

B. Plan for Control of Total Reduced Sulfur (TRS) Emissions from Kraft Pulp Mills

1 – 6. ***NO CHANGE***

C. Plan for Control of Fluorides from Primary Aluminum Plants (Reserved)

NO CHANGE

D. Plan for Control of Fluorides from Phosphate Fertilizer Plants (Reserved)

NO CHANGE

E. Plan for Control of Non-Methane Organic Compounds (NMOC) from Municipal Solid Waste (MSW) Landfills

1 – 7. ***NO CHANGE***

8. Transition to 2016 Emission Guidelines based on 40 CFR Part 60, Subpart Cf

On and after the implementation date specified in proposed 30 Texas Administrative Code (TAC) §113.2412, owners or operators of MSW landfills subject to the requirements of 30 TAC Chapter 113, Subchapter D, Division 1 and the corresponding §111(d) State Plan requirements of Section II.E 1-7 would instead comply with the requirements of 30 TAC Chapter 113, Subchapter D, Division 6. The rules in Chapter 113, Subchapter D, Division 6 implement the 2016 emission guidelines (EG) for MSW landfills as established under 40 CFR Part 60, Subpart Cf, with certain adjustments. The implementation date is the date when the EPA's approval of the revised Texas §111(d) State Plan implementing 40 CFR Part 60, Subpart Cf becomes effective.

Owners or operators of MSW landfills in Texas which are subject to the federal plan for existing MSW landfills (40 CFR Part 62, Subpart OOO) would also be required to begin complying with the requirements of Chapter 113, Subchapter D, Division 6 on the implementation date specified in proposed 30 TAC §113.2412. On or after that implementation date, owners or operators of existing MSW landfills would no longer be required to comply with the provisions of Chapter 113, Subchapter D, Division 1, or with 40 CFR Part 62, Subpart OOO, except as otherwise specified in Chapter 113, Subchapter D, Division 6. The proposed requirements of Chapter 113, Subchapter D, Division 6 are discussed in detail in Section II.G of this §111(d) State Plan.

F. Plan for Control of Hospital and Medical/Infectious Waste Incinerators

1 – 7. ***NO CHANGE***

G. Plan for Control of NMOC from MSW Landfills (2016 Emission Guidelines based on 40 CFR Part 60, Subpart Cf)

1. Regulatory Background of 2016 MSW Landfill Emission Guidelines

To meet the requirements of the FCAA, §111, the EPA is required to develop regulations to control air pollutant emissions from various types of stationary sources which the EPA has determined cause or contribute significantly to air pollution. FCAA, §111(b) directs the EPA to establish NSPS for new and modified stationary sources. NSPS apply to stationary sources for which construction, reconstruction, or modification commenced after the applicable NSPS is proposed. FCAA, §111(d) directs the EPA to establish Emissions Guidelines (EG) which are generally similar to the NSPS, except that they apply to existing sources for which construction, modification, or reconstruction occurred on or before the date the applicable NSPS is proposed. Essentially, for a given source category, the EG regulate the population of existing sources which are not covered by the corresponding NSPS for new and modified sources. Unlike the NSPS, EG are not enforceable until the EPA approves a state's plan or adopts a federal plan for implementing and enforcing them, and the state or federal plan becomes effective. The NSPS and EG regulations promulgated by the EPA are located in 40 CFR Part 60, Standards of Performance for New Stationary Sources.

FCAA, §111(d) and the EG regulations promulgated by EPA require states to adopt and submit to EPA for approval a state plan to implement and enforce the EG. A §111(d)

state plan is required to be at least as protective as the corresponding EG regulations promulgated by the EPA. FCAA, §111(d) requires the EPA to develop, implement, and enforce a federal plan if a state fails to submit a satisfactory state plan by the applicable deadline. Federal plans to implement EG regulations in states without an approved state plan are located under 40 CFR Part 62, Approval and Promulgation of State Plans for Designated Facilities and Pollutants.

EPA originally adopted NSPS for MSW landfills under 40 CFR Part 60, Subpart WWW, and EG under 40 CFR Part 60, Subpart Cc, in 1996. To implement the 1996 landfill EG, the Texas Commission on Environmental Quality (TCEQ) adopted rules under 30 TAC Chapter 113, Subchapter D, Division 1, and a corresponding §111(d) State Plan, on October 7, 1998 (23 TexReg 10874). The EPA formally approved TCEQ's rules and the Texas §111(d) State Plan for existing MSW landfills on June 17, 1999 (64 FR 32427).

On August 29, 2016, the EPA adopted a new NSPS (40 CFR Part 60, Subpart XXX) and new EG (40 CFR Part 60, Subpart Cf) for MSW landfills, which essentially replaced the 1996 NSPS and EG. The 2016 NSPS and EG rules lowered the annual emission threshold for which a landfill gas collection system is required from 50 megagrams (Mg) of non-methane organic compounds (NMOC) to 34 Mg of NMOC. (The emission threshold for closed landfills remained at 50 Mg.) The EPA's 2016 revisions to the NSPS and EG also included changes to monitoring, recordkeeping, and reporting requirements. The EPA amended Subpart Cf on August 26, 2019, and March 26, 2020. The August 26, 2019 amendments to Subpart Cf, which included changes to the state and federal plan timing requirements to align with the then-applicable Subpart Ba, were vacated on April 5, 2021, and are not included in this proposed revision to the Texas §111(d) State Plan. On May 21, 2021, the EPA published a federal plan to implement the emission

guidelines for MSW landfills located in states where an approved FCAA, §111(d) state plan is not in effect. The federal plan for MSW landfills was adopted under 40 CFR Part 62, Subpart OOO.

In order to implement the EPA's 2016 EG for existing MSW landfills, TCEQ must revise the corresponding Chapter 113 rules for existing MSW landfills and the previously submitted §111(d) State Plan. TCEQ will use state rules proposed under new Chapter 113, Subchapter D, Division 6, to enforce the 2016 landfill EG. TCEQ's proposed revisions to Chapter 113 and the proposed revisions to the Texas §111(d) State Plan are based on the 40 CFR Part 60, Subpart Cf regulations adopted on August 29, 2016, (81 FR 59276) as amended through March 26, 2020. TCEQ is also proposing to include certain elements of the EPA's federal plan (40 CFR Part 62, Subpart OOO) which address reporting and compliance issues for some landfills more specifically than the Subpart Cf regulations. See Appendix C.1 to view a copy of EPA's published EG (Subpart Cf) and the published federal plan (Subpart OOO).

The TCEQ is the agency responsible for developing or revising a state plan as required by FCAA, §111(d) (the §111(d) State Plan) to implement the EPA's landfill EG. The EG contains requirements for emission standards, operational requirements, monitoring and testing requirements, reporting and recordkeeping requirements, and compliance schedules for affected units. The EPA is required to review and take action on state plan submittals and revisions according to the provisions of 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities. The EPA's approval of the revised Texas §111(d) State Plan for MSW landfills would be a critical milestone, since the compliance deadline for the proposed Chapter 113 rules is triggered once the EPA has published approval of the revised Texas §111(d) State Plan.

Note that under the proposed revisions to the Texas §111(d) State Plan and the Chapter 113 MSW landfill rules, the previously approved MSW landfill §111(d) State Plan (sections II.E 1-7) and the current Chapter 113, Subchapter D, Division 1 regulations for MSW landfills remain in effect until the effective date of the EPA's approval of the revisions to the Texas §111(d) State Plan. Similarly, owners or operators of existing MSW landfills are required to continue compliance with the 40 CFR Part 62, Subpart OOO federal plan until the effective date of the EPA's approval of the revised Texas §111(d) State Plan. The proposed revisions to the Texas §111(d) State Plan are not intended to affect or supersede any part of the previously approved Texas §111(d) State Plan unless specifically indicated otherwise.

In conjunction with the proposed revisions to the Texas §111(d) State Plan, the TCEQ concurrently proposes rulemaking to establish requirements for existing MSW landfills based on the EPA's 2016 EG, as codified in 40 CFR Part 60, Subpart Cf as amended through March 26, 2020. The proposed rules also include certain elements from the 40 CFR Part 62, Subpart OOO federal plan published on May 21, 2021. The proposed rulemaking would amend 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Subchapter D, Designated Facilities and Pollutants. The TCEQ proposes revisions to 30 TAC Chapter 113, Subchapter D, Division 1, Municipal Solid Waste Landfills, and proposes new Division 6, 2016 Emission Guidelines for Existing Municipal Solid Waste Landfills. See Appendix C.2 to view the preamble and proposed amendments to 30 TAC Chapter 113, Subchapter D.

2. Emission Standards, Available Control Technologies, and Operational

Standards

The proposed Chapter 113, Subchapter D, Division 6 rules are the mechanism through which TCEQ would implement the requirements of 40 CFR Part 60, Subpart Cf (as amended through March 26, 2020). The proposed Chapter 113, Subchapter D, Division 6 rules directly reference the requirements of Subpart Cf, broken down by section. The emission standards and control requirements in the proposed Chapter 113 rules and this corresponding proposed §111(d) State Plan revision are based on the requirements of 40 CFR §60.33f, which is referenced in proposed 30 TAC §113.2404(a)(3). These requirements include the installation and operation of landfill gas collection and control systems at existing active landfills with a capacity greater than or equal to 2.5 million Mg by mass and 2.5 million cubic meters by volume, with an NMOC emission rate that is greater than or equal to 34 Mg per year, or Tier 4 surface emissions monitoring showing a concentration of 500 parts per million (ppm) methane or greater. For closed landfills, the threshold for the requirement to install a gas collection and control systems is an NMOC emission rate of 50 Mg/year. Landfill gas collection and control systems required by 30 TAC §113.2404(a)(3) and 40 CFR §60.33f may comply with the standards through use of a non-enclosed flare or through other types of control devices (such as, but not limited to, boilers or process heaters) that achieve at least a 98 percent reduction in NMOC emissions or reduce the outlet NMOC concentration to less than 20 ppmv as hexane at 3 percent oxygen or less. If a non-enclosed flare is used as a control device, it must be designed and operated in accordance with the requirements of 40 CFR §60.18, except as noted in 40 CFR §60.37f(d). In addition to the use of flares or other combustion control devices, the landfill gas may be controlled by routing the collected gas to a treatment system that processes the collected gas for subsequent sale or beneficial use (such as, but not

limited to, fuel for combustion, vehicle fuel, or a raw material for chemical manufacturing). Additional requirements for emission standards and gas collection and control systems under this proposed revision to the Texas §111(d) State Plan are provided in the full text of 40 CFR §60.33f.

TCEQ is implementing operational standards for gas collection and control systems by referencing the requirements of 40 CFR §60.34f in proposed 30 TAC §113.2404(a)(4). These operational standards require that gas collection systems be operated such that gas is collected from each area, cell, or group of cells in which solid waste has been in place for five years or more (if active) or two years or more (if closed or at final grade). The collection system must be operated under negative pressure at each wellhead, except for certain conditions specified in 40 CFR §60.34f(b). In addition, each interior wellhead in the collection system must be operated with a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit), unless the owner or operator establishes a higher operating temperature value with supporting data demonstrating that the higher temperature will not cause fires or inhibit anaerobic decomposition by killing methanogens. The collection system must also be operated so that the methane concentration at the surface of the landfill is less than 500 ppm above background. Additional operational requirements for the Chapter 113, Subchapter D, Division 6 rules and §111(d) State Plan are provided in the full text of 40 CFR §60.34f.

While the bulk of the proposed Chapter 113, Subchapter D, Division 6 rules and this revised MSW landfill §111(d) State Plan are based on the requirements of 40 CFR Part 60, Subpart Cf, in several situations TCEQ is using selected provisions from the 40 CFR Part 62, Subpart OOO federal plan that are more appropriate. For example, proposed 30 TAC §113.2404(d) specifies that legacy controlled landfills shall comply with the

requirements of 40 CFR §62.16714(b)(1) in lieu of the requirements of 40 CFR §60.33f(b)(1). This change in requirements (relative to the Subpart Cf requirements) is appropriate because in the federal plan, 40 CFR §62.16714(b)(1)(ii) addresses the 30-month control deadlines for both legacy controlled landfills and landfills in the closed landfill subcategory, where the corresponding Subpart Cf requirement of 40 CFR §60.33f(b)(1)(ii) only addresses landfills in the closed landfill subcategory. TCEQ is including these aspects of the federal plan within the Chapter 113 rules to reduce redundant or duplicative requirements and minimize disruption for legacy sources which will be transitioning to the new Chapter 113, Subchapter D, Division 6 rules from the already-effective federal plan. The use of these provisions from the federal plan will not reduce the degree of emission control or environmental protection achieved from implementation of the emission guidelines. Please consult the Section by Section Discussion in the proposed rule preamble for a detailed discussion of each situation where the TCEQ is proposing to incorporate aspects of the federal plan which differ from the baseline Subpart Cf requirements.

Please refer to Appendix C.4 of this proposed §111(d) State Plan revision for a derivation table which indicates how the proposed Chapter 113, Subchapter D, Division 6 rules correspond to the requirements of 40 CFR Part 60, Subpart Cf and, in certain cases, 40 CFR Part 62, Subpart OOO.

The proposed revisions to the Texas §111(d) State Plan, and the proposed Chapter 113, Subchapter D, Division 6 rules, include two Texas-specific features which differ from the corresponding requirements in 40 CFR Part 60, Subpart Cf and 40 CFR Part 62, Subpart OOO. These two features are: 1) an alternate date range for determining which MSW landfills are subject to the proposed state plan and proposed Chapter 113,

Subchapter D, Division 6 rules; and 2) an option which allows owners or operators of MSW landfills to comply with the collection system and control device requirements of 30 TAC §115.152 in lieu of certain corresponding requirements in 40 CFR Part 60, Subpart Cf. These two features are not new, as they are part of Texas' approved 1998 §111(d) State Plan for MSW landfills and the existing Chapter 113, Subchapter D, Division 1 rules which implement that State Plan. Although these elements of the Texas §111(d) State Plan were previously approved for purposes of implementing the 1996 EG for MSW landfills, a review of these features is warranted to demonstrate that retaining these features is still appropriate for purposes of the 2016 EG. Please refer to Appendix C.5 for a detailed discussion and evaluation of these two elements of the proposed revisions to the Texas §111(d) State Plan.

3. Source Inventory

See Table C.3.1 of Appendix C.3 for an inventory of active, existing MSW landfills in Texas that are potentially subject to the proposed Chapter 113 rules and revised state plan. This inventory is provided for informational purposes, but it is not necessarily determinative of whether a particular MSW landfill would be subject to the control requirements of the proposed Chapter 113 rules implementing the 2016 landfill EG. MSW landfills with permit conditions indicating the applicability of 40 CFR Part 60, Subpart XXX, have been excluded from this list as Subpart XXX landfills are not subject to the 2016 landfill EG. Some landfills shown in this inventory may have waste acceptance dates outside the scope of applicability of the proposed Chapter 113 rules implementing the 2016 landfill EG. The inventory identifies 133 active MSW landfills as potentially covered by the proposed rules, but the final number of landfills which will be subject to the rules (if adopted) may be somewhat lower. In addition, some MSW

landfills may be exempt from most substantive requirements of the EG on the basis of small capacity (less than 2.5 million Mg and 2.5 million cubic meters). The existing and proposed Chapter 113 rules that implement the emission guidelines include complete, self-contained applicability provisions which determine whether or not any particular landfill is subject to the existing and proposed Chapter 113 requirements. Owners or operators of MSW landfills will need to review the applicability provisions closely to determine whether their landfill is affected by the proposed rules and revised §111(d) State Plan.

A table of closed MSW landfills in Texas is also provided in Table C.3.2 of Appendix C.3. As explained previously, this table is provided for informational purposes, but a number of the closed landfills listed in Table C.3.2 may not be subject to the proposed Chapter 113, Subchapter D, Division 6 rules depending on their construction or closure dates, waste acceptance dates, waste capacity, or other site-specific factors affecting applicability.

Additional information on MSW landfills in Texas is available through the TCEQ Municipal Solid Waste Viewer at www.tceq.texas.gov/gis/msw-viewer and through the Commission's website at: www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw-data.

4. Emission Inventory

See Table C.3.3 of Appendix C.3 for an inventory of annual NMOC emissions for MSW landfills in Texas that are potentially subject to the proposed rules and proposed §111(d) State Plan. This NMOC emission data was obtained from the 2019 emission

inventory that EPA prepared for the 40 CFR Part 62, Subpart OOO federal plan, as this was the most comprehensive and current information readily available for NMOC emissions from Texas landfills. As part of the proposed revisions to the Texas §111(d) State Plan, TCEQ is proposing to require that designated landfill facilities provide an annual report of NMOC emissions. This would enable TCEQ to maintain current information on NMOC emissions from designated facilities and support the requirement to provide updated emissions inventory information to the EPA as part of the federal annual progress report requirements of 40 CFR §60.25(e) and (f).

5. Process for Review of Design Plans

In situations where owners or operators of affected MSW landfills are required to submit gas collection and control system design plans, TCEQ proposes to review and process those design plans in a manner similar to the process that is currently used by TCEQ for the existing Chapter 113, Subchapter D, Division 1 rules, as well as for purposes of 40 CFR Part 60, Subparts WWW and XXX. This can be accomplished through relatively minor updates to existing forms and checklists used for this purpose. However, TCEQ is not proposing to require MSW landfills that have already submitted design plans to the EPA (for purposes of the 40 CFR Part 62, Subpart OOO federal plan) to resubmit those plans to TCEQ, unless specifically requested by the executive director.

6. Compliance schedule and increments of progress

For the proposed Chapter 113 rules and revisions to the §111(d) State Plan, the TCEQ is proposing to require owners or operators of affected MSW landfills to meet the

increments of progress specified in 40 CFR Part 62, Subpart OOO, Table 1. The proposed use of the increments of progress from the EPA's federal plan is intended to minimize the disruption for landfills which have begun implementing measures to comply with the federal plan but will be transitioning to compliance with the proposed Chapter 113 rules once the EPA has approved Texas' revised §111(d) State Plan. Table 7 below describes these proposed increments of progress that are required by 40 CFR Part 62, Subpart OOO, Table 1. Under proposed 30 TAC §113.2410, initial design capacity reports and NMOC emission rate reports are due to TCEQ no later than 90 days after the effective date of EPA approval of the revised Texas §111(d) State Plan. If the owner or operator has already submitted those reports to comply with the 40 CFR Part 62, Subpart OOO federal plan, resubmission to TCEQ is not required unless specifically requested by the executive director. Similarly, in parallel to the EPA's approach in the federal plan, legacy controlled landfills are not required to resubmit certain reports or plans which were previously submitted for purposes of compliance with 40 CFR Part 60, Subpart WWW or the Chapter 113, Subchapter D, Division 1 rules.

Table 7. 2016 MSWLF EG Compliance Schedule and Increments of Progress

Increment	Date if using tiers 1, 2, or 3	Date if using tier 4	Date if a legacy controlled landfill
Increment 1 - Submit cover page of final control plan	1 year after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	1 year after the first measured concentration of methane of 500 parts per million or greater from the surface of the landfill.	1 year after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]
Increment 2 - Award Contracts	20 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	20 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	20 months after the most recent NMOC emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]

Increment	Date if using tiers 1, 2, or 3	Date if using tier 4	Date if a legacy controlled landfill
Increment 3 - Begin on-site construction	24 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	24 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	24 months after the most recent NMOC emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]
Increment 4 - Complete on-site construction	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	30 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	30 months after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams submitted under a previous regulation.
Increment 5 - Final compliance	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1]	30 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	30 months after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams submitted under a previous regulation.[2]

[1] 50 megagrams per year NMOC for the closed landfill subcategory.

[2] Previous regulation refers to 40 CFR Part 60, Subpart WWW; 40 CFR Part 62, Subpart GGG; or a state plan implementing 40 CFR Part 60, Subpart Cc. Increments of progress that have already been completed under previous regulations do not have to be completed again under this subpart.

7. Testing, Monitoring, Recordkeeping, and Reporting

The commission proposes to use the testing, monitoring, recordkeeping, and reporting requirements contained in 40 CFR Part 60, Subpart Cf, as amended through March 26, 2020, to meet federal requirements for the proposed revisions to the Texas §111(d) State Plan. Proposed 30 TAC §113.2404(a)(5), (6), (7), (8), and (9) refer directly to the requirements of 40 CFR §§60.35f, 60.36f, 60.37f, 60.38f, and 60.39f respectively. These sections of Subpart Cf contain comprehensive requirements for performance testing, monitoring, reporting, recordkeeping, and other compliance-related provisions. These

requirements include, but are not limited to, procedures and methods for determining the NMOC emission rate and NMOC concentration, the methodology for surface emission monitoring, and requirements for monitoring wellhead temperatures, landfill gas header pressure, nitrogen or oxygen concentration, and certain control device parameters. In addition, 40 CFR §60.33f, which is referenced by proposed 30 TAC §113.2404(a)(3), contains requirements for initial performance testing. Please refer to the full text of these rule sections for detailed information on these requirements.

For several testing, recordkeeping, and reporting requirements, TCEQ is proposing to use selected provisions from the 40 CFR Part 62, Subpart OOO federal plan instead of the default provisions from 40 CFR Part 60, Subpart Cf. For example, TCEQ is proposing requirements for legacy controlled landfills which parallel provisions of the federal plan, when those federal plan provisions are more appropriate than the default 40 CFR Part 60, Subpart Cf requirements. TCEQ is proposing to include these aspects of the federal plan within the proposed Chapter 113 rules because it will reduce duplicative requirements and minimize disruption for sources which will be transitioning to the new Chapter 113 rules from the already-effective federal plan. The proposed use of these provisions from the federal plan will not reduce the degree of emission control or environmental protection achieved from implementation of the emission guidelines. Please consult the Section by Section Discussion in the proposed rule preamble for a detailed description of each situation where the TCEQ is proposing to incorporate aspects of the federal plan which differ from the baseline 40 CFR Part 60, Subpart Cf requirements.

The commission is proposing an additional reporting requirement in 30 TAC §113.2410(a)(4) that would require owners or operators of existing MSW landfills to

provide annual calculations of NMOC emissions. This proposed requirement is necessary to enable TCEQ to maintain current information on NMOC emissions from designated facilities covered by the proposed Texas §111(d) State Plan and provide updated emissions inventory information to the EPA in compliance with federal annual progress report requirements of 40 CFR §60.25(e) and (f). The commission is proposing to exclude landfills with a capacity less than 2.5 million Mg by mass or 2.5 million cubic meters by volume from this annual NMOC inventory reporting requirement, as these small landfills are exempt from most substantive requirements of 40 CFR Part 60, Subpart Cf and 40 CFR Part 62, Subpart OOO, and the NMOC calculation's results would not affect the applicable emission control requirements or monitoring requirements for these small sites. If a small site were to increase capacity above the 2.5 Mg/MCF threshold, the applicable control requirements and monitoring requirements for the site would be determined by the NMOC calculation methodology specified in 40 CFR Part 60, Subpart Cf.

The commission is proposing that designated facilities use calculation methods specified in the EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42) for these annual NMOC inventory reports, as opposed to the calculation methods specified in 40 CFR Part 60, Subpart Cf. The proposed use of AP-42 calculation methods for purposes of the emissions inventory, rather than the methods in 40 CFR Part 60, Subpart Cf, is in accordance with federal guidance for the implementation of §111(d) state plans for MSW landfills (EPA-456R/98-009, *Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfills Emission Guidelines).* In this guidance, the EPA explains that the calculation methods (AP-42 vs. the EG rule itself) are intentionally different, as the AP-42 methodology for emission inventories is designed to reflect typical or average landfill emissions, while the EG rule methodology

is purposefully conservative to protect human health, encompass a wide range of MSW landfills, and encourage the use of site-specific data.

8. State Plan Hearing and Comment Information

As codified in 40 CFR §60.23, Adoption and submittal of State plans; public hearings, the minimum public participation requirements for the adoption or revision of a state plan include:

(A) one or more public hearing(s) conducted at a location within the state;

(B) reasonable notice for the public hearing(s), which the EPA defines as at least 30 days;

(C) the date, time, and location of public hearing(s) prominently advertised in each region affected;

(D) the availability of the proposed state plan for public inspection in at least one location in each region affected;

(E) notification of public hearing(s) provided to the following: the EPA Administrator; affected local air pollution control agencies; and other states in the same interstate region;

(F) a record of public hearing(s), available for a minimum of two years for public inspection, which contains a list of the commenters, their affiliation, a summary of

each presentation or comment, and the state's responses to the comments; and

(G) certification that each public hearing was conducted in accordance with the notice required by 40 CFR §60.23(d).

In accordance with these requirements, the commission will hold a public hearing on the proposed revisions to the Texas §111(d) State Plan and corresponding proposed revisions to Chapter 113. Detailed information on the public hearing and on the submittal of written comments is provided at the end of this section and in the preamble to the proposed revisions to Chapter 113. Notice of the public hearing will be provided to the EPA Administrator; affected local air pollution control agencies; and other affected states. In addition, notice of the public hearing will be published in the *Texas Register* and in selected newspapers.

Upon adoption of the proposed revisions to the Texas §111(d) State Plan, a complete record of any comments that are received on the proposed §111(d) State Plan and/or the proposed revisions to Chapter 113 will be provided. The TCEQ will also provide written responses to those comments and provide certification that the public hearing was conducted according to the applicable requirements of 40 CFR Part 60, Subpart B.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on February 23, 2023, 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.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, February 21, 2023. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, February 22, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzRjOGJmNTktODQxNy00MWY2LWE1MTAtODk0ZTY4MTllYTg4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

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 or 1-800-RELAY-TX (TDD). The hearing will be conducted in English. Language interpretation services may be requested. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted through the TCEQ Public Comments system at: *https://tceq.commentinput.com/comment/search.* File size restrictions may apply to comments being submitted electronically. All comments should reference Rule Project Number 2017-014-113-AI. The comment period closes on February 28, 2023. Copies of the proposed revisions to the Texas §111(d) State Plan and associated proposed rules can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Michael Wilhoit, TCEQ Office of Air, Air Permits Division, at (512) 239-1222.

III. SOURCE SURVEILLANCE, COMPLIANCE ASSURANCE AND ENFORCEMENT, AND REPORTING

A. Source Surveillance; Compliance Assurance, and Enforcement

Monitoring compliance of emission limits for Section 111(d) pollutants will be accomplished through the existing source surveillance procedures of the commission. The specific legal authority for the commission to conduct source surveillance, compliance assurance, and enforcement is detailed in Section IV and Appendix B. Designated facilities are required to either have a new source review permit or be exempt from permitting. The TCEQ [TNRCC] has a history of enforcing requirements on these type of sources. The commission's 16 regional offices conduct site visits for compliance determinations and inspections at all permitted and registered facilities with air emissions. The regional air staff does complaint investigations at permitted

and non-permitted facilities based on citizen request. The Office of Compliance and Enforcement also will develop enforcement actions for most types of air violations identified during inspections and/or complaint investigations. This would include those state adopted standards for designated facilities. [Investigations of specific sources can be developed through negotiations with EPA/Region 6 during periods of renegotiating the Enforcement Memorandum of Understanding (MOU). The current MOU, Appendix C, details responsibilities of TNRCC air enforcement.]

The [Th] enforcement functions are conducted by the regional offices, the Enforcement Division, and the Litigation Division. Most air violations discovered during inspections are quickly corrected in response to notices of violations. However, if serious and/or continuing air violations are identified during an inspection, the regional office either will initiate administrative enforcement action, potentially resulting in an administrative order with penalties; or the regional office can refer the violation to the Office of the Attorney General for enforcement through the courts, including potential civil penalties. Enforcement may also be initiated after record reviews indicate serious and/or continuing violations. Where possible, the TCEQ [TNRCC] encourages expeditious settlement of enforcement actions by extending a settlement offer. If settlement does not occur within a short time, the Litigation Division will start the process that can lead to an administrative hearing. The commission has ultimate approval of all administrative enforcement orders.

B. Reporting

NO CHANGE

IV. LEGAL AUTHORITY

The Texas Clean Air Act (TCAA), Texas Health & Safety Code, Chapter 382 is the principal enabling authority for air quality in the state of Texas and provides relevant authority required by Federal Clean Air Act (FCAA), §111(d) and 40 Code of Federal Regulations (CFR) §60.26. Since the merger of the Texas Air Control Board and the Texas Water Commission to form the Texas Natural Resource Conservation Commission, the predecessor agency to the Texas Commission on Environmental Quality (TCEQ), the Texas Water Code (TWC), Chapters 5 and 7, also contain administrative and enforcement authority pertinent to the TCEQ's ability to meet FCAA, §111(d) and 40 CFR §60.26 State Plan requirements. All statutes are available in Appendices B.1, B.2, and B.3 to the proposed §111(d) State Plan, or online at the following website: https://statutes.capitol.texas.gov/. The TCEQ may rely on any relevant authority contained in either the TCAA or the TWC, but the following table provides specific authority of particular relevance to the 40 CFR §60.26 State Plan requirements.

Table 8. State Plan Authority Requirements and Corresponding State Authorities

Authority Requirements for §111(d) State Plans	**Texas Authority to Implement**
40 C.F.R. §60.26, generally	*General Authority:* TWC, §5.002, Scope of Chapter TWC, §5.011, Purpose of Chapter TWC, §5.012, Declaration of Policy TWC, §5.013, General Jurisdiction of Commission TWC, §5.102, General Powers TCAA, §382.002, Policy and Purpose TCAA, §382.011, General Powers and Duties TCAA, §382.012, State Air Control Plan
40 C.F.R. §60.23(a)(1) Adopt emission standards and compliance schedules	*General authority noted above; and* TWC, §5.103, Rules TCAA, §382.017, Rules

Authority Requirements for §111(d) State Plans	Texas Authority to Implement
applicable to designated facilities.	TCAA, §382.0173, Adoption of Rules Regarding Certain State Implementation Plan requirements and Standards of Performance for Certain Sources
40 C.F.R. §60.26(a)(2) Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.	*General authority noted above; and* TWC, §5.117, Mandatory Enforcement Hearing TWC, §5.230, Enforcement TWC, Chapter 5, Subchapter L, Emergency and Temporary Orders, generally, and in particular: TWC, §5.501, Emergency and Temporary Order or Permit; Temporary Suspension or Amendment of Permit Condition TWC, §5.502, Application for Emergency or Temporary Order TWC, §5.512, Emergency Order Concerning Activity of Solid Waste Management TWC, §5.514, Order Issued Under Air Emergency TWC, §5.515, Emergency Order Because of Catastrophe TWC, Chapter 7, Enforcement, generally, and in particular, the following: Subchapter A, General Provisions: TWC, §7.002, Enforcement Authority TWC, §7.0025, Initiation of Enforcement Action Using Information Provided by Private Individual TWC, §7.00251, Initiation of Certain Clean Air Act Enforcement Actions Using Information Provided by a Person TWC, §7.006, Enforcement Policies Subchapter B, Corrective Action and Injunctive Relief TWC, §7.032, Injunctive Relief Subchapter C, Administrative Penalties Subchapter D, Civil Penalties Subchapter E, Criminal Offenses and Penalties Subchapter F, Defenses Subchapter G, Revocation and Suspension of Permits, Licenses, Certificates, and Registration TWC, §7.302, Grounds for Revocation or Suspension of Permit TCAA, §382.015, Power to Enter Property TCAA, §382.016, Monitoring Requirements; Examination of Records TCAA, §382.021. Sampling Methods and Procedures TCAA, §382.022, Investigations

Authority Requirements for §111(d) State Plans	Texas Authority to Implement
	TCAA, §382.023, Orders TCAA, §382.024, Factors in Issuing Orders and Determinations TCAA, §382.025 Orders Relating to Controlling Air Pollution TCAA, §382.026 Orders Issued Under Emergencies TCAA, Subchapter C, Permits (permitting authority of the commission, generally) and in particular: TCAA, §382.0513, Permit Conditions TCAA, §382.0541, Administration and Enforcement of Federal Operating Permit TCAA, §382.085, Unauthorized Emissions Prohibited
40 C.F.R. §60.26(a)(3) Obtain information necessary to determine compliance.	*General authority noted above; and* TWC, §5.102, General Powers TWC, §5.117, Mandatory Enforcement Hearing TWC, §7.0025, Initiation of Enforcement Action Using Information Provided by Private Individual TWC, §7.00251, Initiation of Certain Clean Air Act Enforcement Actions Using Information Provided by a Person TCAA, §382.014, Emission Inventory TCAA, §382.015, Power to Enter Property TCAA, §382.016, Monitoring Requirements; Examination of Records TCAA, §382.021, Sampling Methods and Procedures TCAA, §382.022, Investigations TCAA, §382.029, Hearing Powers TCAA, §382.034, Research and Investigations TCAA, §382.0513, Permit Conditions TCAA, §382.0514, Sampling, Monitoring, and Certification TCAA, §382.0515, Application for Permit
40 C.F.R. §60.26(a)(3) Require recordkeeping, make inspections, and conduct tests of designated facilities.	*General authority noted above; and* TCAA, §382.015, Power to Enter Property TCAA, §382.016, Monitoring Requirements; Examination of Records TCAA, §382.021, Sampling Methods and Procedures TCAA, §382.022, Investigations TCAA, §382.034, Research and Investigations TCAA, §382.0513, Permit Conditions TCAA, §382.0514, Sampling, Monitoring, and Certification

Authority Requirements for §111(d) State Plans	Texas Authority to Implement
40 C.F.R. §60.26(a)(4) Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and make periodic emission reports.	*General authority noted above; and* TCAA, §382.021, Sampling Methods and Procedures TCAA, §382.0514, Sampling, Monitoring, and Certification TCAA, §382.0513, Permit Conditions TCAA, §382.014, Emission Inventory
40 C.F.R. §60.26(a)(4) Make emission data available to the public.	*General authority noted above; and* TWC, §5.121, Public Information TWC, §5.1733, Electronic Posting of Information TCAA, §382.014, Emission Inventory TCAA, §382.040, Documents, Public Property TCAA, §382.041, Confidential Information

[The Texas Clean Air Act (TCAA), which is found in Chapter 382 of the Texas Health and Safety Code, states that the commission is the state air pollution agency and is the principal authority in the state on matters relating to the quality of air resources and for setting standards, criteria levels, and emission limits. The powers and duties of the commission are summarized in Chapter 382 of the Texas Health and Safety Code and in Chapters 5 and 7 of the Texas Water Code (TWC). The TWC and TCAA give the commission the legal authority to:]

[1. adopt emission standards and limitations;]

[2. enforce applicable laws, regulations, and standards, and to seek injunctive relief;]

[3. obtain information necessary to determine compliance;]

[4. require recordkeeping and inspections and conduct tests;]

[5. require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices, and to make periodic reports to the state; and]

[6. make emissions data available to the public.]

[A list of the applicable laws demonstrating the commission's legal authority is provided in Appendix B.1.]

A legal opinion from the Texas Attorney General's Office has previously been filed with the Title V Permit Program and subsequently with the Section 111(d) Plan for Municipal Solid Waste Landfills. The legal opinion includes statements indicating that the Texas [Natural Resource Conservation] Commission on Environmental Quality (commission) has the authority to carry out all aspects of the program. The opinion specifically states administrative regulations and, where appropriate, judicial decisions that demonstrate adequate authority; lawfully adopted state statutes and regulations demonstrating legal authority to issue permits, assure compliance with each applicable requirement, monitoring, recordkeeping, reporting, and compliance certification requirements. A copy of the Attorney General's legal opinion is also located in Appendix B.4 [B.2].

V. STATE PROGRESS REPORTS

The commission will submit annual progress reports on the implementation of 30 TAC Chapter 113, §§2060 - 2069, concerning Municipal Solid Waste Landfills, [and] §§2070

- 2079, concerning Hospital/Medical/Infectious Waste Incinerators, and §§2400 - 2412, concerning Municipal Solid Waste Landfills, in compliance with 40 CFR §60.25(a), (e), and (f). The reports will be submitted to the EPA Region VI Administrator on an annual basis as part of the reports required by 40 CFR §51.321. Each progress report will include: enforcement actions, achievement of increments of progress, identification of sources that have ceased operation, emission inventory information for sources that were not in operation at the time of plan development, updated emission inventory and compliance information, and copies of technical reports on all performance testing, including concurrent process data. TCEQ may consult and coordinate with EPA Region 6 to develop efficient methods to provide the required information.

VI. PUBLIC HEARINGS

NO CHANGE. *Detailed information on the public hearing for the proposed revisions to the §111(d) State Plan is provided in section II.G of this document.*

VII. PROPOSED CHANGES TO APPENDICES

The commission is proposing revisions, deletions, and additions to the Appendices of this §111(d) State Plan. The commission is proposing to revise Appendix B by replacing an outdated listing of state statutes in Appendix B.1 with current versions (see proposed Appendices B.1, B.2, and B.3). The commission is proposing to renumber Appendix B.2, Attorney General's Opinion, as Appendix B.4, with no changes to content. The commission is proposing to delete existing Appendix C, concerning the Multi-Media/Multi-Year Enforcement Memorandum of Understanding Between the Texas Natural Resource Conservation Commission and U.S. Environmental Protection Agency, as this MOU is no longer in effect. The commission is proposing new

Appendices C.1 through C.6 which contain supporting information related to the proposed control plan for MSW landfills (proposed section II.G).

PROPOSED APPENDICES B.1 – B.4

The Texas State Plan for the Control of Designated Facilities and Pollutants

Proposed Revisions: January 11, 2023

APPENDIX B.1

Texas Health and Safety Code, Title 5, Chapter 382, Clean Air Act

APPENDIX B.1

HEALTH AND SAFETY CODE
TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY
SUBTITLE C. AIR QUALITY
CHAPTER 382. CLEAN AIR ACT[1]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 382.001. SHORT TITLE. This chapter may be cited as the Texas Clean Air Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 382.002. POLICY AND PURPOSE. (a) The policy of this state and the purpose of this chapter are to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.

(b) It is intended that this chapter be vigorously enforced and that violations of this chapter or any rule or order of the Texas Commission on Environmental Quality result in expeditious initiation of enforcement actions as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.139, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0893, eff. April 2, 2015.

Sec. 382.003. DEFINITIONS. In this chapter:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency.

[1] Text downloaded from https://statutes.capitol.texas.gov/ on February 10, 2022, as current through the 87th 3rd Called Legislative Session, 2021. Minor formatting changes made for easier reading.

(1-a)"Advanced clean energy project" means a project for which an application for a permit or for an authorization to use a standard permit under this chapter is received by the commission on or after January 1, 2008, and before January 1, 2020, and that:

(A) involves the use of coal, biomass, petroleum coke, solid waste, natural gas, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

(B) with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving:

(i) on an annual basis:

(a) a 99 percent or greater reduction of sulfur dioxide emissions;

(b) if the project is designed for the use of feedstock, substantially all of which is subbituminous coal, an emission rate of 0.04 pounds or less of sulfur dioxide per million British thermal units as determined by a 30-day average; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, a sulfur dioxide emission rate that meets best available control technology requirements as determined by the commission;

(ii) on an annual basis:

(a) a 95 percent or greater reduction of mercury emissions; or

(b) if the project is designed for the use of one or more combustion turbines that burn natural gas, a

mercury emission rate that complies with applicable federal requirements;

(iii) an annual average emission rate for nitrogen oxides of:

(a) 0.05 pounds or less per million British thermal units;

(b) if the project uses gasification technology, 0.034 pounds or less per million British thermal units; or

(c) if the project is designed for the use of one or more combustion turbines that burn natural gas, two parts per million by volume; and

(iv) an annual average emission rate for filterable particulate matter of 0.015 pounds or less per million British thermal units; and

(C) captures not less than 50 percent of the carbon dioxide in the portion of the emissions stream from the facility that is associated with the project and sequesters that captured carbon dioxide by geologic storage or other means.

(2) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(3) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use or enjoyment of animal life, vegetation, or property.

(3-a) "Coal" has the meaning assigned by Section 134.004, Natural Resources Code.

(4) "Commission" means the Texas Commission on Environmental Quality.

(4-a) "Electric vehicle" means a motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(5) "Executive director" means the executive director of the commission.

(6) "Facility" means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

(7) "Federal source" means a facility, group of facilities, or other source that is subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) and includes:

(A) an affected source as defined by Section 402 of the federal Clean Air Act (42 U.S.C. Section 7651a) as added by Section 401 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(B) a major source as defined by Title III of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(C) a major source as defined by Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(D) a source subject to the standards or regulations under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(E) a source required to have a permit under Part C or D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(F) a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602); and

(G) any other stationary source in a category designated by the United States Environmental Protection Agency as subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(7-a) "Federally qualified clean coal technology" means a technology or process, including a technology or process applied at the precombustion, combustion, or postcombustion stage, for use at a new or existing facility that will achieve on an annual basis a 97 percent or greater reduction of sulfur dioxide emissions, an emission rate for nitrogen oxides of 0.08 pounds or less per million British thermal units, and significant reductions in mercury emissions associated with the use of coal in the generation of electricity, process steam, or industrial products, including the creation of liquid fuels, hydrogen for fuel cells, and other coproducts. The technology used must comply with applicable federal law regarding mercury emissions and must render carbon dioxide capable of capture, sequestration, or abatement. Federally qualified clean coal technology includes atmospheric or pressurized fluidized bed combustion technology, integrated gasification combined cycle technology, methanation technology, magnetohydrodynamic technology, direct and indirect coal-fired turbines, undiluted high-flame temperature oxygen combustion technology that excludes air, and integrated gasification fuel cells.

(7-b) "Hybrid vehicle" means a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(8) "Local government" means a health district established under Chapter 121, a county, or a municipality.

(9) "Modification of existing facility" means any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to Section 382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emissions of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted pursuant to Section 382.057 from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a permit, an air pollution control method that is at least as effective as the best available control technology, considering technical practicability and economic reasonableness, that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of a pollutant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification

has occurred after September 1, 1971, or at which modifications have occurred only pursuant to standard exemptions; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with Section 382.060 as that section existed prior to September 1, 1991.

(9-a) "Motor vehicle" means a fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway.

(9-b) "Natural gas vehicle" means a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(10) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(10-a) "Qualifying motor vehicle" means a motor vehicle that meets the requirements of Section 382.210(b).

(11) "Select-use technology" means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn, and enhanced gas reburn/sorbent injection.

(11-a) "Solid waste" has the meaning assigned by Section 361.003.

(12) "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated.

(13) "Well test" means the testing of an oil or gas well for a period of time less than 72 hours that does not constitute a major source or major modification under any provision of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 135, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 4, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.140, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 1, eff. May 19,

1995; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.01, eff. June 8, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 2, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(55), eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 2, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 3, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 2, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0894, eff. April 2, 2015.

Sec. 382.004. CONSTRUCTION WHILE PERMIT AMENDMENT APPLICATION PENDING. (a) To the extent permissible under federal law, notwithstanding Section 382.0518, and except as provided by Subsection (c), a person who submits an application for a permit amendment may, at the person's own risk, begin construction related to the application after the executive director has issued a draft permit including the permit amendment.

(b) The commission may not consider construction begun under this section in determining whether to grant the permit amendment sought in the application.

(c) A person may not begin construction under this section if the facility that is the subject of the permit amendment is a concrete batch plant located within 880 yards of a property that is used as a residence.

(d) The commission shall adopt rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1134 (H.B. 2726), Sec. 1, eff. January 1, 2020.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 382.011. GENERAL POWERS AND DUTIES. (a) The commission shall:

(1) administer this chapter;

(2) establish the level of quality to be maintained in the state's air; and

(3) control the quality of the state's air.

(b) The commission shall seek to accomplish the purposes of this chapter through the control of air contaminants by all practical and economically feasible methods.

(c) The commission has the powers necessary or convenient to carry out its responsibilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.012. STATE AIR CONTROL PLAN. The commission shall prepare and develop a general, comprehensive plan for the proper control of the state's air.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.013. AIR QUALITY CONTROL REGIONS. The commission may designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors, including atmospheric areas, necessary to provide adequate implementation of air quality standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.014. EMISSION INVENTORY. The commission may require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions of air contaminants in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.0145. CLEAN FUEL INCENTIVE SURCHARGE. (a) The commission shall levy a clean fuel incentive surcharge of 20 cents per MMBtu on fuel oil used between April 15 and October 15 of each year in an industrial or utility boiler that is:

(1) capable of using natural gas; and

(2) located in a consolidated metropolitan statistical area or metropolitan statistical area with a population of 350,000 or more that has not met federal ambient air quality standards for ozone.

(b) The commission may not levy the clean fuel incentive surcharge on:

(1) waste oils, used oils, or hazardous waste-derived fuels burned for purposes of energy recovery or disposal, if the commission or the United States Environmental Protection Agency approves or permits the burning;

(2) fuel oil used during:

(A) any period of full or partial natural gas curtailment;

(B) any period when there is a failure to deliver sufficient quantities of natural gas to satisfy contractual obligations to the purchaser; or

(C) a catastrophic event as defined by Section 382.063;

(3) fuel oil used between April 15 and October 15 in equipment testing or personnel training up to an aggregate of the equivalent of 48 hours full-load operation; or

(4) any firm engaged in fixed price contracts with public works agencies for contracts entered into before August 28, 1989.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 136, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.015. POWER TO ENTER PROPERTY. (a) A member, employee, or agent of the commission may enter public or private property, other than property designed for and used exclusively as a private residence housing not more than three families, at a reasonable time to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere.

(b) A member, employee, or agent who enters private property that has management in residence shall:

(1) notify the management, or the person then in charge, of the member's, employee's, or agent's presence; and

(2) show proper credentials.

(c) A member, employee, or agent who enters private property shall observe that establishment's rules concerning safety, internal security, and fire protection.

(d) The commission is entitled to the remedies provided by Sections 382.082-382.085 if a member, employee, or agent is refused the right to enter public or private property as provided by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.144, eff. Sept. 1, 1995.

Sec. 382.016. MONITORING REQUIREMENTS; EXAMINATION OF RECORDS. (a) The commission may prescribe reasonable requirements for:

(1) measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants subject to the commission's jurisdiction under this chapter; and

(2) the owner or operator of the source to make and maintain records on the measuring and monitoring of emissions.

(b) A member, employee, or agent of the commission may examine during regular business hours any records or memoranda relating to the operation of any air pollution or emission control equipment or facility, or relating to emission of air

contaminants. This subsection does not authorize the examination of records or memoranda relating to the operation of equipment or a facility on property designed for and used exclusively as a private residence housing not more than three families.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.145, eff. Sept. 1, 1995.

Sec. 382.0161. AIR POLLUTANT WATCH LIST. (a) The commission shall establish and maintain an air pollutant watch list. The air pollutant watch list must identify:

(1) each air contaminant that the commission determines, on the basis of federal or state ambient air quality standards for the contaminant, should be included on the air pollutant watch list; and

(2) each geographic area of the state for which ambient air quality monitoring data indicates that the individual or cumulative emissions of one or more air contaminants identified by the commission under Subdivision (1) may cause short-term or long-term adverse human health effects or odors in that area.

(b) The commission shall publish notice of and allow public comment on:

(1) an addition of an air contaminant to or removal of an air contaminant from the air pollutant watch list; or

(2) an addition of an area to or removal of an area from the air pollutant watch list.

(c) When considering the addition or removal of an area to or from the air pollutant watch list, the commission shall provide the monitoring data related to the area to the state senator and representative who represent the area.

(d) The commission may hold a public meeting in an area listed on the air pollutant watch list to provide residents of the area with information regarding:

(1) the reasons for the area's inclusion on the air pollutant watch list; and

(2) commission actions to reduce the emissions of air contaminants contributing to the area's inclusion on the air pollutant watch list.

(e) The air pollutant watch list and the addition or removal of a pollutant or area to or from the list are not matters subject to the requirements of Subchapter B, Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 1, eff. September 1, 2011.

Sec. 382.017. RULES. (a) The commission may adopt rules. The commission shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.

(b) If the rule will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the commission's judgment, give reasonable circulation throughout the state. If the rule will have effect in only a part of the state, the notice shall be published one time at least 20 days before the scheduled date of the hearing in a newspaper of general circulation in the area to be affected.

(c) Any person may appear and be heard at a hearing to adopt a rule. The executive director shall make a record of the names and addresses of the persons appearing at the hearing. A person heard or represented at the hearing or requesting notice of the commission's action shall be sent by mail written notice of the commission's action.

(d) Subsections (a) and (b) notwithstanding, the commission may adopt rules consistent with Chapter 2001, Government Code, if the commission determines that the need for

expeditious adoption of proposed rules requires use of those procedures.

(e) The terms and provisions of a rule adopted by the commission may differentiate among particular conditions, particular sources, and particular areas of the state. In adopting a rule, the commission shall recognize that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere may cause a need for air control in one area of the state but not in other areas. In this connection, the commission shall consider:

(1) the factors found by it to be proper and just, including existing physical conditions, topography, population, and prevailing wind direction and velocity; and

(2) the fact that a rule and the degrees of conformance with the rule that may be proper for an essentially residential area of the state may not be proper for a highly developed industrial area or a relatively unpopulated area.

(f) Except as provided by Sections 382.0171-382.021 or to comply with federal law or regulations, the commission by rule may not specify:

(1) a particular method to be used to control or abate air pollution;

(2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or

(3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 137, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.33, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.145, eff. Sept. 1, 1995.

Sec. 382.0171. ALTERNATIVE FUELS AND SELECT-USE TECHNOLOGIES. (a) In adopting rules, the commission shall encourage and may allow the use of natural gas and other

alternative fuels, as well as select-use technologies, that will reduce emissions.

(b) Any orders or determinations made under this section must be consistent with Section 382.024.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 138, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.146, eff. Sept. 1, 1995.

Sec. 382.0172. INTERNATIONAL BORDER AREAS. (a) In order to qualify for the exceptions provided by Section 179B of the federal Clean Air Act (42 U.S.C. Section 7509a), as added by Section 818 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), the commission, in developing rules and control programs to be included in an implementation plan for an international border area, shall ensure that the plan or revision:

(1) meets all requirements applicable to the plan or revision under Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), other than a requirement that the plan or revision demonstrates attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) or by a regulation adopted under that provision; and

(2) would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) or by a regulation adopted under that provision, but for emissions emanating from outside the United States.

(b) For purposes of any emissions control or permit program adopted or administered by the commission and subject to Subsection (c), the commission, to the extent allowed by federal law, may:

(1) authorize the use of emissions reductions achieved outside the United States to satisfy otherwise

applicable emissions reduction requirements if the commission finds that the emissions reductions achieved outside the United States are surplus to requirements imposed by applicable law and are appropriately quantifiable and enforceable; and

(2) allow the use of reductions in emissions of one air contaminant to satisfy otherwise applicable requirements for reductions in emissions of another air contaminant if the commission finds that the air contaminant emissions reductions that will be substituted are of equal or greater significance to the overall air quality of the area affected than reductions in emissions of the other air contaminant.

(c) The commission may authorize or allow substitution of emissions reductions under Subsection (b) only if:

(1) reductions in emissions of one air contaminant for which the area has been designated as nonattainment are substituted for reductions in emissions of another air contaminant for which the area has been designated as nonattainment; or

(2) the commission finds that the substitution will clearly result in greater health benefits for the community as a whole than would reductions in emissions at the original facility.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.02, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 960, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 820 (S.B. 784), Sec. 1, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 1, eff. September 1, 2005.

Sec. 382.0173. ADOPTION OF RULES REGARDING CERTAIN STATE IMPLEMENTATION PLAN REQUIREMENTS AND STANDARDS OF PERFORMANCE FOR CERTAIN SOURCES. (a) The commission shall adopt rules to comply with Sections 110(a)(2)(D) and 111(d) of the federal Clean Air Act (42 U.S.C. Sections 7410 and 7411). In adopting the rules, at a minimum the commission shall adopt and incorporate by reference 40 C.F.R. Subparts AA through II and

Subparts AAA through III of Part 96 and 40 C.F.R. Subpart HHHH of Part 60. The commission shall adopt a state implementation plan in accordance with the rules and submit the plan to the United States Environmental Protection Agency for approval according to the schedules adopted by that agency.

(b) The commission may require emissions reductions in conjunction with implementation of the rules adopted under Subsection (a) only for electric generating units. The commission shall make permanent allocations that are reflective of the allocation requirements of 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, at no cost to units as defined in 40 C.F.R. Sections 51.123 and 60.4102 using the United States Environmental Protection Agency's allocation method as specified by 40 C.F.R. Section 60.4142(a)(1)(i) or 40 C.F.R. Section 96.142(a)(1)(i), as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c). The commission shall maintain a special reserve of allocations for new units commencing operation on or after January 1, 2001, as defined by 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c).

(c) Additional requirements regarding NOx allocations:

(1) The commission shall maintain a special reserve of allocations for nitrogen oxide of 9.5 percent for new units. Beginning with the 2015 control period, units shall be considered new for each control period in which they do not have five years of operating data reported to the commission prior to the date of allocation for a given control period. Prior to the 2015 control period, units that commenced operation on or after January 1, 2001, will receive NOx allocations from the special reserve only.

(2) Nitrogen oxide allowances shall be established for the 2009-2014 control periods for units commencing operation

before January 1, 2001, using the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(B) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(C) if the fossil fuel fired unit is not subject to Paragraph (A) or (B) of this subdivision, the unit's control period heat input for such year is multiplied by 30 percent.

(3) Before the allocation date specified by EPA for the control period beginning January 1, 2018, and every five years thereafter, the commission shall adjust the baseline for all affected units using the average of the three highest amounts of the unit's adjusted control period heat input for periods one through five of the preceding nine control periods, with the adjusted control period heat input for each year calculated as follows:

(A) for units commencing operation before January 1, 2001:

(i) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(ii) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(iii) if the fossil fuel fired unit is not subject to Subparagraph (i) or (ii) of this paragraph, the unit's control period heat input for such year is multiplied by 30 percent; and

(B) for units commencing operation on or after January 1, 2001, in accordance with the formulas set forth by

USEPA in 40 C.F.R. 96.142 with any corrections to this section that may be issued by USEPA prior to the allocation date.

(d) This section applies only while the federal rules cited in this section are enforceable and does not limit the authority of the commission to implement more stringent emissions control requirements.

(e) In adopting rules under Subsection (a), the commission shall incorporate any modifications to the federal rules cited in this section that result from:

(1) a request for rehearing regarding those rules that is filed with the United States Environmental Protection Agency;

(2) a petition for review of those rules that is filed with a court; or

(3) a final rulemaking action of the United States Environmental Protection Agency.

(f) The commission shall take all reasonable and appropriate steps to exclude the West Texas Region and El Paso Region, as defined by Section 39.264(g), Utilities Code, from any requirement under, derived from, or associated with 40 C.F.R. Sections 51.123, 51.124, and 51.125, including filing a petition for reconsideration with the United States Environmental Protection Agency requesting that it amend 40 C.F.R. Sections 51.123, 51.124, and 51.125 to exclude such regions. The commission shall promptly amend the rules it adopts under Subsection (a) of this section to incorporate any exclusions for such regions that result from the petition required under this subsection.

(g) The commission shall study the availability of mercury control technology. The commission shall also examine the timeline for implementing the reductions required under the federal rules, the cost of additional controls both to the plant owners and consumers, and the fiscal impact on the state of higher levels of mercury emissions between 2005 and 2018, and consider the impact of trading on local communities. The commission shall report its findings by September 1, 2006.

Added by Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 56 (S.B. 1672), Sec. 1, eff. May 10, 2007.

Sec. 382.018. OUTDOOR BURNING OF WASTE AND COMBUSTIBLE MATERIAL. (a) Subject to Section 352.082, Local Government Code, and except as provided by Subsections (b) and (d), the commission by rule may control and prohibit the outdoor burning of waste and combustible material and may include requirements concerning the particular method to be used to control or abate the emission of air contaminants resulting from that burning.

(b) The commission by rule shall authorize outdoor burning of waste if the waste:

(1) consists of trees, brush, grass, leaves, branch trimmings, or other plant growth; and

(2) is burned:

(A) in an area that meets the national ambient air quality standards and that does not contain any part of a city that does not meet national ambient air quality standards; and

(B) on the property on which it was generated and by the owner of the property or any other person authorized by the owner.

(c) Rules adopted under Subsection (b) may not:

(1) require prior commission approval of the burning; or

(2) authorize the burning only when no practical alternative to burning exists.

(d) The commission may not control or prohibit outdoor burning of waste consisting of trees, brush, grass, leaves, branch trimmings, or other plant growth if:

(1) the person burning the waste is doing so at a site:

(A) designated for consolidated burning of waste generated from specific residential properties;

(B) located in a county with a population of less than 50,000;

(C) located outside of a municipality; and

(D) supervised at the time of the burning by:

(i) an employee of a fire department who is part of the fire protection personnel, as defined by Section 419.021, Government Code, of the department and is acting in the scope of the person's employment; or

(ii) a volunteer firefighter acting in the scope of the firefighter's volunteer duties; and

(2) the waste was generated from a property for which the site is designated.

(e) A fire department employee who will supervise a burning under Subsection (d)(1)(D) shall notify the commission of each burning supervised by the employee, and the commission shall provide the employee with information on practical alternatives to burning.

(f) If conduct that violates a rule adopted under this section also violates a municipal ordinance, that conduct may be prosecuted only under the municipal ordinance, provided that:

(1) the violation is not a second or subsequent violation of a rule adopted under this section or a municipal ordinance; and

(2) the violation does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes.

(g) Notwithstanding Section 7.002, Water Code, the provisions of this section and rules adopted under this section may be enforced by a peace officer as described by Article 2.12, Code of Criminal Procedure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 419 (S.B. 1710), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 904 (H.B. 39), Sec. 1, eff. September 1, 2005.
Reenacted and amended by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 8.001, eff. September 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 145 (H.B. 1619), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 478 (H.B. 2386), Sec. 1, eff. September 1, 2017.

Sec. 382.019. METHODS USED TO CONTROL AND REDUCE EMISSIONS FROM LAND VEHICLES. (a) Except as provided by Section 382.202(j), or another provision of this chapter, the commission by rule may provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

(b) The commission may not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification, or other approval of any feature or equipment designed to control emissions from motor vehicles if that feature or equipment has been certified, approved, or otherwise authorized under federal law.

(c) The commission or any other state agency may not adopt a rule requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at a gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act (42 U.S.C. 7401 et seq.), except the commission may adopt rules requiring such vapor recovery systems installed in nonattainment areas if it can be demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Department of State Health Services, it is determined to be necessary for the protection of public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.24, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 15.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(b), eff. Sept. 1, 2003.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0895, eff. April 2, 2015.

Sec. 382.0191. IDLING OF MOTOR VEHICLE. (a) In this section, "idling" means allowing an engine to run while the motor vehicle is not engaged in forward or reverse motion.

(b) The commission may not prohibit or limit the idling of any motor vehicle with a gross vehicle weight rating greater than 8,500 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the United States Environmental Protection Agency or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 390 (S.B. 493), Sec. 1, eff. June 17, 2011.

Sec. 382.0195. COMMERCIAL INFECTIOUS WASTE INCINERATORS. (a) The commission shall adopt rules prescribing the most effective emissions control technology reasonably available to control emissions of air contaminants from a commercial infectious waste incinerator.

(b) Rules adopted under this section must require that the prescribed emissions control technology be installed as soon as practicable at each commercial infectious waste incinerator.

(c) In this section, "commercial infectious waste incinerator" means a facility that accepts for incineration infectious waste generated outside the property boundaries of the facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 139, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.148, eff. Sept. 1, 1995.

Sec. 382.020. CONTROL OF EMISSIONS FROM FACILITIES THAT HANDLE CERTAIN AGRICULTURAL PRODUCTS. (a) The commission, when it determines that the control of air pollution is necessary,

shall adopt rules concerning the control of emissions of particulate matter from plants at which grain, seed, legumes, or vegetable fibers are handled, loaded, unloaded, dried, manufactured, or processed according to a formula derived from the process weight of the materials entering the process.

(b) A person affected by a rule adopted under this section may use:

(1) the process weight method to control and measure the emissions from the plant; or

(2) any other method selected by that person that the commission or the executive director, if authorized by the commission, finds will provide adequate emission control efficiency and measurement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.0201. PROHIBITION ON COMMISSION RULE RELATING TO EMISSIONS FROM CERTAIN HOSPITAL OR MEDICAL DISINFECTANTS. (a) In this section, "hospital or medical disinfectant" means an antimicrobial product that is registered with and meets the performance standards of the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sections 136, 136a).

(b) Except as specifically required to comply with federal law or regulation, the commission may not adopt a rule that lessens the efficacy of a hospital or medical disinfectant in killing or inactivating agents of an infectious disease, including a rule restricting volatile organic compound content of or emissions from the disinfectant.

Added by Acts 1999, 76th Leg., ch. 364, Sec. 1, eff. Sept. 1, 1999.

Sec. 382.0205. SPECIAL PROBLEMS RELATED TO AIR CONTAMINANT EMISSIONS. Consistent with applicable federal law, the commission by rule may control air contaminants as necessary to protect against adverse effects related to:

(1) acid deposition;

(2) stratospheric changes, including depletion of ozone; and

(3) climatic changes, including global warming.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.03, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.021. SAMPLING METHODS AND PROCEDURES. (a) The commission may prescribe the sampling methods and procedures to be used in determining violations of and compliance with the commission's rules, variances, and orders, including:

(1) ambient air sampling;

(2) stack-sampling;

(3) visual observation; or

(4) any other sampling method or procedure generally recognized in the field of air pollution control.

(b) The commission may prescribe new sampling methods and procedures if:

(1) in the commission's judgment, existing methods or procedures are not adequate to meet the needs and objectives of the commission's rules, variances, and orders; and

(2) the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.0215. ASSESSMENT OF EMISSIONS DUE TO EMISSIONS EVENTS.

(a) In this section:

(1) "Emissions event" means an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(2) "Regulated entity" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location.

(a-1) Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by commission rule, or if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and:

(1) the owner or operator of the regulated entity provides any prior notice or final report that the commission, by rule, may establish;

(2) the notice or final report includes the information required in Subsection (b)(3); and

(3) the actual emissions do not exceed the estimates submitted in the notice by more than a reportable quantity.

(b) The commission shall require the owner or operator of a regulated entity that experiences emissions events:

(1) to maintain a record of all emissions events at the regulated entity in the manner and for the periods prescribed by commission rule;

(2) to notify the commission in a single report for each emissions event, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3) to report to the commission in a single report for each emissions event, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:

(A) the name of the owner or operator of the reporting regulated entity;

(B) the location of the reporting regulated entity;

(C) the date and time the emissions began;

(D) the duration of the emissions;

(E) the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F) the processes and equipment involved in the emissions event;

(G) the cause of the emissions; and

(H) any additional information necessary to evaluate the emissions event.

(c) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at concentrations of less than 0.02 percent by weight that is equipped with a continuous emission monitoring system that completes a minimum of one cycle per operation (sampling, analyzing, and data recording) for each successive 15-minute interval who is required to submit excess emission reports by other state or federal regulations, shall, by commission rule, be allowed to submit information from that monitoring system to meet the requirements under Subsection (b)(3) so long as the notice submitted under Subsection (b)(2) contains the information required under Subsection (b)(3). Such excess emission reports shall satisfy the recordkeeping requirements of Subsection (b)(1) so long as the information in such reports meets commission requirements. This subsection does not require the commission to revise the reportable quantity for boilers and combustion turbines.

(d) The commission shall centrally track emissions events and collect information relating to:

(1) inspections or enforcement actions taken by the commission in response to emissions events; and

(2) the number of emissions events occurring in each commission region and the quantity of emissions from each emissions event.

(e) The commission shall develop the capacity for electronic reporting and shall incorporate reported emissions events into a permanent online centralized database for emissions events. The commission shall develop a mechanism whereby the reporting entity shall be allowed to review the information relative to its reported emissions events prior to such information being included in the database. The database shall be easily searchable and accessible to the public. The commission shall evaluate information in the database to identify persons who repeatedly fail to report reportable emissions events. The commission shall enforce against such persons pursuant to Section 382.0216(i). The commission shall describe such enforcement actions in the report required in Subsection (g).

(f) An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year must include as part of the inventory a statement that the regulated entity experienced no emissions events during the prior year. An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report must include the total annual emissions from all emissions events in categories as established by commission rule.

(g) The commission annually, or at the request of a member of the legislature, shall assess the information received under this section, including actions taken by the commission in response to the emissions events, and shall include the assessment in the report required by Section 5.126, Water Code.

(h) The commission may allow operators of pipelines, gathering lines, and flowlines to treat all such facilities under common ownership or control in a particular county as a

single regulated entity for the purpose of assessment and regulation of emissions events.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(a), eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 1, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 2, eff. September 1, 2011.

Sec. 382.0216. REGULATION OF EMISSIONS EVENTS. (a) In this section, "emissions event" has the meaning assigned by Section 382.0215.

(b) The commission shall establish criteria for determining when emissions events are excessive. The criteria must include consideration of:

(1) the frequency of the facility's emissions events;

(2) the cause of the emissions event;

(3) the quantity and impact on human health or the environment of the emissions event;

(4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(c) The commission shall require a facility to take action to reduce emissions from excessive emissions events. Consistent with commission rules, a facility required to take action under this subsection must either file a corrective action plan or file a letter of intent to obtain authorization for emissions from the excessive emissions events, provided that the emissions are sufficiently frequent, quantifiable, and predictable. If the intended authorization is a permit, a permit application shall be filed within 120 days of the filing of the letter of intent. If the intended authorization is a permit by rule or standard exemption, the authorization must be obtained within 120 days of the filing of the letter of intent. If the

commission denies the requested authorization, within 45 days of receiving notice of the commission's denial, the facility shall file a corrective action plan to reduce emissions from the excessive emissions events.

(d) A corrective action plan filed under Subsection (c) must identify the cause or causes of each emissions event, specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future, and specify a time within which the corrective action plan will be implemented. A corrective action plan must be approved by the commission. A corrective action plan shall be deemed approved 45 days after filing, if the commission has not disapproved the plan; however, an owner or operator may request affirmative commission approval, in which case the commission must take final written action to approve or disapprove the plan within 120 days. An approved corrective action plan shall be made available to the public by the commission, except to the extent information in the plan is confidential information protected under Chapter 552, Government Code. The commission shall establish reasonable schedules for the implementation of corrective action plans and procedures for revision of a corrective action plan if the commission finds the plan, after implementation begins, to be inadequate to meet the goal of preventing or minimizing emissions and emissions events. The implementation schedule shall be enforceable by the commission.

(e) The rules may not exclude from the requirement to submit a corrective action plan emissions events resulting from the lack of preventive maintenance or from operator error, or emissions that are a part of a recurring pattern of emissions events indicative of inadequate design or operation.

(f) The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a

minimum must require consideration of the factors listed in Subsections (b)(1)-(6).

(g) The burden of proof in any claim of a defense to commission enforcement action for an emissions event is on the person claiming the defense.

(h) A person may not claim an affirmative defense to a commission enforcement action if the person failed to take corrective action under a corrective action plan approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure.

(i) In the event the owner or operator of a facility fails to report an emissions event, the commission shall initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely unless the owner or operator knowingly or intentionally falsified the information in the report.

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's compliance history.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.

Sec. 382.022. INVESTIGATIONS. The executive director may make or require the making of investigations:

(1) that the executive director considers advisable in administering this chapter and the commission's rules, orders, and determinations, including investigations of violations and general air pollution problems or conditions; or

(2) as requested or directed by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.023. ORDERS. (a) The commission may issue orders and make determinations as necessary to carry out the purposes of this chapter. Orders authorized by this chapter may be issued only by the commission unless expressly provided by this chapter.

(b) If it appears that this chapter or a commission rule, order, or determination is being violated, the commission, or the executive director if authorized by the commission or this chapter, may proceed under Sections 382.082-382.084, or hold a public hearing and issue orders on the alleged violation, or take any other action authorized by this chapter as the facts may warrant.

(c) In addition to the notice required by Chapter 2001, Government Code, the commission or the executive director shall give notice to such other interested persons as the commission or the executive director may designate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.149, eff. Sept. 1, 1995.

Sec. 382.024. FACTORS IN ISSUING ORDERS AND DETERMINATIONS. In issuing an order and making a determination, the commission shall consider the facts and circumstances bearing on the reasonableness of emissions, including:

(1) the character and degree of injury to or interference with the public's health and physical property;

(2) the source's social and economic value;

(3) the question of priority of location in the area involved; and

(4) the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the source.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.025. ORDERS RELATING TO CONTROLLING AIR POLLUTION. (a) If the commission determines that air pollution exists, the commission may order any action indicated by the circumstances to control the condition.

(b) The commission shall grant to the owner or operator of a source time to comply with its orders as provided for by commission rules. Those rules must provide for time for compliance gauged to the general situations that the hearings on proposed rules indicate are necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.026. ORDERS ISSUED UNDER EMERGENCIES. The commission may issue an order under an air emergency under Section 5.514, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.150, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 41, eff. Sept. 1, 1997.

Sec. 382.027. PROHIBITION ON COMMISSION ACTION RELATING TO AIR CONDITIONS EXISTING SOLELY IN COMMERCIAL AND INDUSTRIAL FACILITIES. (a) The commission may not adopt a rule, determination, or order that:

(1) relates to air conditions existing solely within buildings and structures used for commercial and industrial plants, works, or shops if the source of the offending air contaminants is under the control of the person who owns or operates the plants, works, or shops; or

(2) affects the relations between employers and their employees relating to or arising out of an air condition from a source under the control of the person who owns or operates the plants, works, or shops.

(b) This section does not limit or restrict the authority or powers granted to the commission under Sections 382.018 and 382.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.151, eff. Sept. 1, 1995.

Sec. 382.0275. COMMISSION ACTION RELATING TO RESIDENTIAL WATER HEATERS. (a) In this section, "residential water heater" means a water heater that:

(1) is designed primarily for residential use; and

(2) has a maximum rated capacity of 75,000 British thermal units per hour (Btu/hr) or less.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 49, Sec. 2, eff. May 8, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 49, Sec. 2, eff. May 8, 2007.

(d) The commission may not adopt or enforce a rule, determination, or order that relates to emissions of residential water heaters that is below 40 nanograms of NOx per joule unless a lower standard is established by a federal statute or rule. Any commission rule, determination, or order existing on or before the effective date of this subsection related to emission specifications for residential water heaters that is more stringent than the 40 nanograms of NOx per joule standard is hereby repealed.

Added by Acts 2005, 79th Leg., Ch. 59 (H.B. 965), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 1, eff. May 8, 2007.
Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 2, eff. May 8, 2007.

Sec. 382.028. VARIANCES. (a) This chapter does not prohibit the granting of a variance.

(b) A variance is an exceptional remedy that may be granted only on demonstration that compliance with a provision of this chapter or commission rule or order results in an arbitrary and unreasonable taking of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.152, eff. Sept. 1, 1995.

Sec. 382.029. HEARING POWERS. The commission may call and hold hearings, administer oaths, receive evidence at a hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to a hearing, and make findings of fact and decisions relating to administering this chapter or the rules, orders, or other actions of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

Sec. 382.0291. PUBLIC HEARING PROCEDURES. (a) Any statements, correspondence, or other form of oral or written communication made by a member of the legislature to a commission official or employee during a public hearing conducted by the commission shall become part of the record of the hearing, regardless of whether the member is a party to the hearing.

(b) When a public hearing conducted by the commission is required by law to be conducted at a certain location, the commission shall determine the place within that location at which the hearing will be conducted. In making that determination, the commission shall consider the cost of available facilities and the adequacy of a facility to accommodate the type of hearing and anticipated attendance.

(c) The commission shall conduct at least one session of a public hearing after normal business hours on request by a party to the hearing or any person who desires to attend the hearing.

(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the commission may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the commission and must again comply with notice

requirements and any other requirements of law or commission rule as though the application were originally submitted to the commission on that date.

(e) If an application for a license, permit, registration, or similar form of permission required by law is pending before the commission at a time when changes take effect concerning notice requirements imposed by law for that type of application, the applicant must comply with the new notice requirements.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 9.02, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

Sec. 382.030. DELEGATION OF HEARING POWERS. (a) The commission may delegate the authority to hold hearings called by the commission under this chapter to:

(1) one or more commission members;

(2) the executive director; or

(3) one or more commission employees.

(b) Except for hearings required to be held before the commission under Section 5.504, Water Code, the commission may authorize the executive director to:

(1) call and hold a hearing on any subject on which the commission may hold a hearing; and

(2) delegate the authority to hold any hearing called by the executive director to one or more commission employees.

(c) The commission may establish the qualifications for individuals to whom the commission or the executive director delegates the authority to hold hearings.

(d) An individual holding a hearing under this section may administer oaths and receive evidence at the hearing and shall report the hearing in the manner prescribed by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 42, eff. Sept. 1, 1997.

Sec. 382.031. NOTICE OF HEARINGS. (a) Notice of a hearing under this chapter shall be published at least once in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice must be published not less than 30 days before the date set for the hearing.

(b) Notice of the hearing must describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed to the person at the person's most recent address known to the commission not less than 30 days before the date set for the hearing. If the party is not an individual, the notice may be given to an officer, agent, or legal representative of the party.

(d) The hearing body shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed by Subsection (c) at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting. In this subsection, "hearing body" means the individual or individuals that hold a hearing under this section.

(e) This section applies to all hearings held under this chapter except as otherwise specified by Section 382.017.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.154, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 43, eff. Sept. 1, 1997.

Sec. 382.032. APPEAL OF COMMISSION ACTION. (a) A person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not provided, may appeal the action by filing a petition in a district court of Travis County.

(b) The petition must be filed in the time required by Section 5.351, Water Code, unless the appeal relates to the commission's failure to take final action on an application for a federal operating permit, a reopening of a federal operating permit, a revision to a federal operating permit, or a permit renewal application for a federal operating permit in accordance with Section 382.0542(b), in which case the petition may be filed at any time before the commission or the executive director takes final action.

(c) Service of citation on the commission must be accomplished within 30 days after the date on which the petition is filed. Citation may be served on the executive director or any commission member.

(d) The plaintiff shall pursue the action with reasonable diligence. If the plaintiff does not prosecute the action within one year after the date on which the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of an action of the commission or executive director other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

(f) An appeal of the cancellation or suspension of a variance must be tried in the same manner as appeals from the justice court to the county court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 5, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 174 (S.B. 211), Sec. 3, eff. September 1, 2021.

Sec. 382.033. CONTRACTS; INSTRUMENTS. The commission may execute contracts and instruments that are necessary or convenient to perform its powers or duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.0335. AIR CONTROL ACCOUNT. (a) The commission may apply for, solicit, contract for, receive, or accept money from any source to carry out its duties under this chapter.

(b) Money received by the commission under this section shall be deposited to the credit of the air control account, an account in the general revenue fund. The commission may use money in the account for any necessary expenses incurred in carrying out commission duties under this chapter.

Added by Acts 1997, 75th Leg., ch. 333, Sec. 72, eff. Sept. 1, 1997.

Sec. 382.034. RESEARCH AND INVESTIGATIONS. The commission shall conduct or require any research and investigations it considers advisable and necessary to perform its duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.035. MEMORANDUM OF UNDERSTANDING. The commission by rule shall adopt any memorandum of understanding between the commission and another state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.036. COOPERATION AND ASSISTANCE. The commission shall:

(1) encourage voluntary cooperation by persons or affected groups in restoring and preserving the purity of the state's air;

(2) encourage and conduct studies, investigations, and research concerning air quality control;

(3) collect and disseminate information on air quality control;

(4) advise, consult, and cooperate with other state agencies, political subdivisions of the state, industries, other states, the federal government, and interested persons or groups concerning matters of common interest in air quality control; and

(5) represent the state in all matters relating to air quality plans, procedures, or negotiations for interstate compacts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.037. NOTICE IN TEXAS REGISTER REGARDING NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE. (a) This section applies only if:

(1) with respect to each active or revoked national ambient air quality standard for ozone referenced in 40 C.F.R. Section 81.344, the United States Environmental Protection Agency has, for each designated area referenced in that section:

(A) designated the area as attainment or unclassifiable/attainment; or

(B) approved a redesignation substitute making a finding of attainment for the area; and

(2) for each designated area described by Subdivision (1), with respect to an action of the United States Environmental Protection Agency described by Subdivision (1)(A) or (B):

(A) the action has been fully and finally upheld following judicial review or the limitations period to seek judicial review of the action has expired; and

(B) the rules under which the action was approved by the agency have been fully and finally upheld following judicial review or the limitations period to seek judicial review of those rules has expired.

(b) Not later than the 30th day after the date the conditions described by Subsection (a) have been met, the commission shall publish notice in the Texas Register that, with respect to each active or revoked national ambient air quality standard for ozone referenced in 40 C.F.R. Section 81.344, the United States Environmental Protection Agency has, for each designated area referenced in that section:

(1) designated the area as attainment or unclassifiable/attainment; or

(2) approved a redesignation substitute making a finding of attainment for the area.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(b-1), eff. August 30, 2017.

Sec. 382.040. DOCUMENTS; PUBLIC PROPERTY. All information, documents, and data collected by the commission in performing its duties are state property. Subject to the limitations of Section 382.041, all commission records are public records open to inspection by any person during regular office hours.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 381.020 and amended by Acts 1993, 73rd Leg., ch. 485, Sec. 2, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995.

Sec. 382.041. CONFIDENTIAL INFORMATION. (a) Except as provided by Subsection (b), a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of

manufacture or production that is identified as confidential when submitted.

(b) A member, employee, or agent of the commission may disclose information confidential under Subsection (a) to a representative of the United States Environmental Protection Agency on the request of a representative of that agency if:

(1) at the time of disclosure the member, employee, or agent notifies the representative that the material has been identified as confidential when submitted; and

(2) the commission, before the information is disclosed, has entered into an agreement with the United States Environmental Protection Agency that ensures that the agency treats information identified as confidential as though it had been submitted by the originator of the information with an appropriate claim of confidentiality under federal law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 381.022 and amended by Acts 1993, 73rd Leg., ch. 485, Sec. 3, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995.

SUBCHAPTER C. PERMITS

Sec. 382.051. PERMITTING AUTHORITY OF COMMISSION; RULES. (a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate an existing facility affected by Section 382.0518(g); or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519;

(7) an existing facility permit or existing facility flexible permit under Section 382.05183;

(8) a small business stationary source permit under Section 382.05184;

(9) an electric generating facility permit under Section 382.05185 of this code and Section 39.264, Utilities Code;

(10) a pipeline facilities permit under Section 382.05186; or

(11) other permits as necessary.

(c) The commission may issue a federal operating permit for a federal source in violation only if the operating permit incorporates a compliance plan for the federal source as a condition of the permit.

(d) The commission shall adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.06, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 6, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.159, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 5.02, eff. Sept. 1, 2001.

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which a permit under Section 382.0518 or 382.0519, a standard permit under Section 382.05195 or

382.05198, or a permit by rule under Section 382.05196 is not required.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 3, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 361, Sec. 1, eff. Sept. 1, 2003.

Sec. 382.05102. PERMITTING AUTHORITY OF COMMISSION; GREENHOUSE GAS EMISSIONS. (a) In this section, "greenhouse gas emissions" means emissions of:

(1) carbon dioxide;

(2) methane;

(3) nitrous oxide;

(4) hydrofluorocarbons;

(5) perfluorocarbons; and

(6) sulfur hexafluoride.

(b) To the extent that greenhouse gas emissions require authorization under federal law, the commission may authorize greenhouse gas emissions in a manner consistent with Section 382.051.

(c) The commission shall:

(1) adopt rules to implement this section, including rules specifying the procedures to transition to review by the commission any applications pending with the United States Environmental Protection Agency for approval under 40 C.F.R. Section 52.2305; and

(2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) If authorization to emit greenhouse gas emissions is no longer required under federal law, the commission shall:

(1) repeal the rules adopted under Subsection (c); and

(2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.

Added by Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 2, eff. June 14, 2013.

Sec. 382.0511. PERMIT CONSOLIDATION AND AMENDMENT. (a) The commission may consolidate into a single permit any permits, special permits, standard permits, permits by rule, or exemptions for a facility or federal source.

(b) Consistent with the rules adopted under Subsection (d) and the limitations of this chapter, including limitations that apply to the modification of an existing facility, the commission may amend, revise, or modify a permit.

(c) The commission may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if:

(1) the changes are de minimis under Section 382.05101; or

(2) the owner or operator:

(A) has obtained a preconstruction permit or permit amendment required by Section 382.0518; or

(B) is operating under:

(i) a standard permit under Section 382.05195 or 382.05198;

(ii) a permit by rule under Section 382.05196; or

(iii) an exemption allowed under Section 382.057.

(d) The commission by rule shall develop criteria and administrative procedures to implement Subsections (b) and (c).

(e) When multiple facilities have been consolidated into a single permit under this section and the consolidated permit is reopened for consideration of an amendment relating to one or more facilities authorized by that permit, the permit is not

considered reopened with respect to facilities for which an amendment, revision, or modification is not sought unless this chapter specifically authorizes or requires that additional reopening in order to protect the public's health and physical property.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 7, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.160, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 4, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 361, Sec. 2, eff. Sept. 1, 2003.

Sec. 382.0512. MODIFICATION OF EXISTING FACILITY. (a) Except as provided in Subsection (b), in determining whether a proposed change at an existing facility is a modification, the commission may not consider the effect on emissions of:

(1) any air pollution control method applied to a source; or

(2) any decreases in emissions from other sources.

(b) In determining whether a proposed change at an existing facility that meets the criteria of Section 382.003(9)(E) results in a net increase in allowable emissions, the commission shall consider the effect on emissions of:

(1) any air pollution control method applied to the facility;

(2) any decreases in allowable emissions from other facilities that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(3) any decreases in actual emissions from other facilities that meet the criteria of Section 382.003(9)(E)(i) or (ii).

(c) Nothing in this section shall be construed to limit the application of otherwise applicable state or federal requirements, nor shall this section be construed to limit the commission's powers of enforcement under this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1,

1995; Acts 1995, 74th Leg., ch. 150, Sec. 2, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(b), eff. Sept. 1, 1999.

Sec. 382.0513. PERMIT CONDITIONS. The commission may establish and enforce permit conditions consistent with this chapter. Permit conditions of general applicability shall be adopted by rule.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 8, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0514. SAMPLING, MONITORING, AND CERTIFICATION. The commission may require, at the expense of the permit holder and as a condition of the permit:

(1) sampling and monitoring of a permitted federal source or facility;

(2) certification of the compliance of the owner or operator of the permitted federal source with the terms and conditions of the permit and with all applicable requirements; and

(3) a periodic report of:

(A) the results of sampling and monitoring; and

(B) the certification of compliance.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 9, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0515. APPLICATION FOR PERMIT. A person applying for a permit shall submit to the commission:

(1) a permit application;

(2) copies of all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of this chapter; and

(3) any other information the commission considers necessary.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.05155. EXPEDITED PROCESSING OF APPLICATION. (a) An applicant, in a manner prescribed by the commission, may request the expedited processing of an application filed under this chapter if the applicant demonstrates that the purpose of the application will benefit the economy of this state or an area of this state.

(b) The executive director may grant an expedited processing request if the executive director determines that granting the request will benefit the economy of this state or an area of this state.

(c) The expediting of an application under this section does not affect a contested case hearing or applicable federal, state, and regulatory requirements, including the notice, opportunity for a public hearing, and submission of public comment required under this chapter.

(d) The commission by rule may add a surcharge to an application fee assessed under this chapter for an expedited application in an amount sufficient to cover the expenses incurred by the expediting, including overtime, costs of full-time equivalent commission employees to support the expedited processing of air permit applications, contract labor, and other costs. The surcharge is considered part of the application fee and shall be deposited with the fee to the credit of the clean air account established under Section 382.0622(b). Money from the surcharge collected under this section may be used to support the expedited processing of air permit applications under this section.

(e) The commission may authorize the use of overtime, full-time equivalent commission employees to support the expedited processing of air permit applications, or contract labor to process expedited applications. The overtime, full-time equivalent commission employees, or contract labor

authorized under this section is not included in the calculation of the number of full-time equivalent commission employees allotted under other law.

(f) The commission may pay for compensatory time, overtime, full-time equivalent commission employees supporting the expedited processing of air permit applications, or contract labor used to implement this section. The commission is authorized to set the rate for overtime compensation for full-time equivalent commission employees supporting the expedited processing of air permit applications.

(g) A rule adopted under this section must be consistent with Chapter 2001, Government Code. A rule adopted under this section regarding notice must include a provision to require an indication that the application is being processed in an expedited manner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 808 (S.B. 1756), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 393 (S.B. 698), Sec. 1, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1173 (H.B. 3317), Sec. 16(a), eff. June 14, 2019.
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.007, eff. September 1, 2021.

Sec. 382.0516. NOTICE TO STATE SENATOR, STATE REPRESENTATIVE, AND CERTAIN LOCAL OFFICIALS. (a) On receiving an application for a construction permit or an amendment to a construction permit, a special permit, or an operating permit for a facility that may emit air contaminants, the commission shall send notice of the application to the state senator and representative who represent the area in which the facility is or will be located.

(b) In addition to the notice required by Subsection (a), for an application that relates to an existing or proposed concrete batch plant, on receiving an application for a construction permit, an amendment to a construction permit, an

operating permit, or an authorization to use a standard permit, the commission shall send notice of the application:

(1) to the county judge of the county in which the facility is or will be located; and

(2) if the facility is or will be located in a municipality or the extraterritorial jurisdiction of a municipality, to the presiding officer of the municipality's governing body.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 382.0511 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.07, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1327, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 5.01, eff. September 1, 2007.

Sec. 382.0517. DETERMINATION OF ADMINISTRATIVE COMPLETION OF APPLICATION. The commission shall determine when an application filed under Section 382.054 or Section 382.0518 is administratively complete. On determination, the commission by mail shall notify the applicant and any interested party who has requested notification. If the number of interested parties who have requested notification makes it impracticable for the commission to notify those parties by mail, the commission shall notify those parties by publication using the method prescribed by Section 382.031(a).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0518. PRECONSTRUCTION PERMIT. (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission.

(b) The commission shall grant within a reasonable time a permit or permit amendment to construct or modify a facility if,

from the information available to the commission, including information presented at any hearing held under Section 382.056(k), the commission finds:

(1) the proposed facility for which a permit, permit amendment, or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's compliance history in accordance with the method for using compliance history developed by the commission under Section 5.754, Water Code. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(d) If the commission finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the commission may not grant the permit, permit amendment, or special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(e) If the person applying for a permit, permit amendment, or special permit makes the alterations in the person's plans and specifications to meet the commission's specific objections, the commission shall grant the permit, permit amendment, or special permit. If the person fails or refuses to alter the plans and specifications, the commission may not grant the permit, permit amendment, or special permit. The commission may

refuse to accept a person's new application until the commission's objections to the plans previously submitted by that person are satisfied.

(f) A person may operate a facility or source under a permit issued by the commission under this section if:

(1) the facility or source is not required to obtain a federal operating permit under Section 382.054; and

(2) within the time and in the manner prescribed by commission rule, the permit holder demonstrates that:

(A) the facility complies with all terms of the existing preconstruction permit; and

(B) operation of the facility or source will not violate the intent of this chapter or standards adopted by the commission.

(g) Subsections (a)-(d) do not apply to a person who has executed a contract or has begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971, and who has complied with the requirements of Section 382.060, as it existed on November 30, 1991. To qualify for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.

(h) Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria defined by commission rule and will not change in character. For a facility affected by Section 382.020, Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the permit amendment is not significant and will not change in character. In this subsection, a finding that a total emissions increase is not significant must be made as provided under Section 382.05196 for a finding under that section.

(i) In considering a permit amendment under this section the commission shall consider any adjudicated decision or

compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.162, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 3, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.25, eff. September 1, 2011.

Sec. 382.05181. PERMIT REQUIRED. (a) Any facility affected by Section 382.0518(g) that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003, if the facility is located in the East Texas region; or

(2) September 1, 2004, if the facility is located in the West Texas region.

(b) Any facility affected by Section 382.0518(g) that has obtained a permit under this chapter, other than a permit under Section 382.054, and has not fully complied with the conditions of the permit pertaining to the installation of emissions controls or reductions in emissions of air contaminants, may not emit air contaminants on or after:

(1) March 1, 2007, if the facility is located in the East Texas region; or

(2) March 1, 2008, if the facility is located in the West Texas region.

(c) The East Texas region:

(1) contains all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio; and

(2) includes Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

(d) The West Texas region includes all counties not contained in the East Texas region.

(e) The commission promptly shall review each application for a permit under this chapter for a facility affected by Section 382.0518(g). If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the commission shall dismiss the application.

(f) The commission shall take final action on an application for a permit under this chapter for a facility affected by Section 382.0518(g) before the first anniversary of the date on which the commission receives an administratively complete application.

(g) An owner or operator of a facility affected by Section 382.0518(g) that does not obtain a permit within the 12-month period may petition the commission for an extension of the time period for compliance specified by Subsection (b). The commission may grant not more than one extension for a facility, for an additional period not to exceed 12 months, if the commission finds good cause for the extension.

(h) A permit application under this chapter for a facility affected by Section 382.0518(g) is subject to the notice and hearing requirements as provided by Section 382.05191.

(i) This section does not apply to a facility eligible for a permit under Section 382.05184.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

(1) the date the facility intends to cease operating;

(2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility affected by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that the facility will use a control method at least as beneficial as that described by Section 382.003(9)(E)(ii), considering the age and the remaining useful life of the facility.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site affected by Section 382.0518(g) and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification, and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a) Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 5.135, Water Code, and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(b) Facilities affected by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after March 1, 2008.

(c) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) A permit application under this section is not subject to notice and hearing requirements and is not subject to Chapter 2001, Government Code.

(g) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(b), eff. September 1, 2005.

Sec. 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural-gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under Section 39.264(d), Utilities Code.

(b) A coal-fired electric generating facility that is required to obtain a permit under Section 39.264, Utilities Code:

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulphur dioxide, and, as provided by commission rules, for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) is not considered permitted for criteria pollutants not described by Subsection (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Upon request by the applicant, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, is:

(1) a generator that does not generate electric energy for compensation and is used not more than 10 percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons of any air contaminant annually.

(e) Emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission may not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For the purposes of this section, a natural-gas-fired electric generating facility includes a facility that was designed to burn either natural gas or fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05186. PIPELINE FACILITIES PERMITS. (a) This section applies only to reciprocating internal combustion engines that are part of processing, treating, compression, or

pumping facilities affected by Section 382.0518(g) connected to or part of a gathering or transmission pipeline. Pipeline facilities affected by Section 382.0518(g) other than reciprocating internal combustion engines may apply for an existing facility permit or other applicable permit under this chapter other than a pipeline facilities permit.

(b) The commission by rule shall:

(1) provide for the issuance of a single permit for all reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline;

(2) provide for a means for mandatory emissions reductions for facilities permitted under this section to be achieved:

(A) at one source; or

(B) by averaging reductions among more than one reciprocating internal combustion facility connected to or part of a gathering or transmission pipeline; and

(3) allow an owner or operator to apply for separate permits under this section for discrete and separate reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline.

(c) If the mandatory emissions reductions under this section are to be achieved by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline, the average may not include emissions reductions achieved in order to comply with other state or federal law.

(d) If the mandatory emissions reductions under this section are to be achieved at one source, the reduction may include emissions reductions achieved since January 1, 2001, in order to comply with other state or federal law.

(e) The commission shall grant a permit under this section for a facility or facilities located in the East Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require a 50 percent reduction of the hourly emissions rate of nitrogen

oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require a 50 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(f) The commission shall grant a permit under this section for facilities located in the West Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require up to a 20 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require up to a 20 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(i) The commission may adopt rules as necessary to implement and administer this section.

(j) A reciprocating internal combustion engine that is subject to this section and to a mass emissions cap as established by commission rule is considered permitted under this section with respect to all air contaminants if the facility is:

(1) located in an area designated nonattainment for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1023, Sec. 3, eff. June 20, 2003.

Sec. 382.051865. STATIONARY NATURAL GAS ENGINES USED IN COMBINED HEATING AND POWER SYSTEM. (a) In this section,

"natural gas engine" includes a natural gas internal combustion engine, natural gas stationary internal combustion reciprocating engine, and natural gas turbine. The term does not include a natural gas engine that powers a motor vehicle as defined by Section 382.003(9-a), Health and Safety Code.

(b) This section applies only to a stationary natural gas engine used in a combined heating and power system.

(c) The commission shall issue a standard permit or permit by rule for stationary natural gas engines used in a combined heating and power system that establishes emission limits for air contaminants released by the engines.

(d) The commission in adopting a standard permit or permit by rule under this section may consider:

(1) the geographic location in which a stationary natural gas engine may be used, including the proximity to an area designated as a nonattainment area;

(2) the total annual operating hours of a stationary natural gas engine;

(3) the technology used by a stationary natural gas engine;

(4) the types of fuel used to power a stationary natural gas engine; and

(5) other emission control policies of the state.

(e) The commission in adopting a standard permit or permit by rule under this section may not distinguish between the end-use functions powered by a stationary natural gas engine.

(f) The commission must provide for the emission limits for stationary natural gas engines subject to this section to be measured in terms of air contaminant emissions per unit of total energy output. The commission shall consider both the primary and secondary functions when determining the engine's emissions per unit of energy output.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1175 (H.B. 3268), Sec. 1, eff. June 17, 2011.

Sec. 382.051866. EMISSIONS REDUCTIONS INCENTIVES ACCOUNT. (a) In this section, "affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with another person.

(b) The comptroller of public accounts shall establish an account within the clean air account to be known as the emissions reductions incentives account.

(c) The emissions reductions incentives account consists of money from:

(1) gifts, grants, or donations to the account for a designated or general use;

(2) money from any other source the legislature designates; and

(3) the interest earned on money in the emissions reductions incentives account.

(d) Money in the emissions reductions incentives account may be appropriated only to pay for emissions reduction project incentives under a program developed under Section 382.051867 and administrative expenses associated with providing the incentives or the incentive program established under that section.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1346, Sec. 3, eff. June 15, 2007.

(f) The emissions reductions incentives account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1023, Sec. 2, eff. June 20, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 1, eff. June 15, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 3, eff. June 15, 2007.

Sec. 382.0519. VOLUNTARY EMISSIONS REDUCTION PERMIT. (a) Before September 1, 2001, the owner or operator of an existing, unpermitted facility not subject to the requirement to obtain a permit under Section 382.0518(g) may apply for a permit to operate that facility under this section.

(b) The commission shall grant within a reasonable time a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment:

(1) the commission finds that the facility will use an air pollution control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility, except as provided by Subdivision (2); or

(2) for a facility located in a near-nonattainment or nonattainment area for a national ambient air quality standard, the commission finds that the facility will use the more stringent of:

(A) a control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility; or

(B) a control technology that the commission finds is demonstrated to be generally achievable for facilities in that area of the same type that are permitted under this section, considering the age and remaining useful life of the facility.

(c) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(d) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before work is begun on the construction of the modification.

(e) A permit issued by the commission under this section may defer the implementation of the requirement of reductions in the emissions of certain air contaminants only if the applicant will make substantial emissions reductions in other specific air contaminants. The deferral shall be based on a prioritization

of air contaminants by the commission as necessary to meet local, regional, and statewide air quality needs.

(f) The commission shall give priority to the processing of applications for the issuance, amendment, or renewal of a permit for those facilities authorized under Section 382.0518(g) that are located less than two miles from the outer perimeter of a school, child day-care facility, hospital, or nursing home.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05191. EMISSIONS REDUCTION PERMITS: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a permit under Section 382.05183, 382.05185(c) or (d), or 382.05186 may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.04, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(c), eff. September 1, 2005.

Sec. 382.05192. REVIEW AND RENEWAL OF EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05183, 382.05185(c) or (d), 382.05186, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.05, eff. Sept. 1, 2001.

Sec. 382.05193. EMISSIONS PERMITS THROUGH EMISSIONS REDUCTION. (a) The commission may issue a permit under Section 382.0519 for a facility:

(1) that makes a good faith effort to make equipment improvements and emissions reductions necessary to meet the requirements of that section;

(2) that, in spite of the effort, cannot reduce the facility's emissions to the degree necessary for the issuance of the permit; and

(3) the owner or operator of which acquires a sufficient number of emissions reduction credits to offset the facility's excessive emissions under the program established under Subsection (b).

(b) The commission by rule shall establish a program to grant emissions reduction credits to a facility if the owner or operator conducts an emissions reduction project to offset the facility's excessive emissions. To be eligible for a credit to offset a facility's emissions, the emissions reduction project must reduce emissions in the airshed, as defined by commission rule, in which the facility is located.

(c) The commission by rule shall provide that an emissions reduction project must reduce net emissions from one or more sources in this state in an amount and type sufficient to prevent air pollution to a degree comparable to the amount of the reduction in the facility's emissions that would be

necessary to meet the permit requirement. Qualifying emissions reduction projects must include:

(1) generation of electric energy by a low-emission method, including:

(A) wind power;

(B) biomass gasification power; and

(C) solar power;

(2) the purchase and destruction of high-emission automobiles or other mobile sources;

(3) the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit;

(4) a carpooling or alternative transportation program for the owner's or operator's employees;

(5) a telecommuting program for the owner's or operator's employees; and

(6) conversion of a motor vehicle fleet operated by the owner or operator to a low-sulphur fuel or an alternative fuel approved by the commission.

(d) A permit issued under Section 382.0519 for a facility participating in the program established under this section must be conditioned on the successful and timely completion of the project or projects for which the facility owner or operator acquires the credits.

(e) To renew the permit of a facility permitted under Section 382.0519 with credits acquired under the program established under this section, the commission shall require the owner or operator of the facility to have:

(1) made equipment improvements and emissions reductions necessary to meet the permit requirements under that section for a new permit; or

(2) acquired additional credits under the program as necessary to meet the permit requirements under that section for a new permit.

(f) Emissions reduction credits acquired under the program established under this section are not transferrable.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05194. MULTIPLE PLANT PERMIT. (a) The commission may issue a multiple plant permit for multiple plant sites that are owned or operated by the same person or persons under common control if the commission finds that:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing unpermitted facilities not subject to the requirement to obtain a preconstruction authorization under Section 382.0518(g) or for facilities authorized under Section 382.0519, the rates that would be authorized under Section 382.0519; and

(2) there is no indication that the emissions from the facilities will contravene the intent of this chapter, including protection of the public's health and physical property.

(b) A permit issued under this section may not authorize emissions from any of the facilities authorized under the permit that exceed the facility's highest historic annual rate or the levels authorized in the facility's most recent permit. In the absence of records extending back to the original construction of the facility, best engineering judgment shall be used to demonstrate the facility's highest historic annual rate to the commission.

(c) Emissions control equipment previously installed at a facility permitted under this section may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

(d) The commission by rule shall establish the procedures for application and approval for the use of a multiple plant permit.

(e) For a multiple plant permit that applies only to existing facilities for which an application is filed before September 1, 2001, the issuance, amendment, or revocation by the commission of the permit is not subject to Chapter 2001, Government Code.

(f) The commission may adopt rules as necessary to implement and administer this section and may delegate to the executive director under Section 382.061 the authority to issue, amend, or revoke a multiple plant permit.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 935, Sec. 1, eff. June 14, 2001.

Sec. 382.05195. STANDARD PERMIT. (a) The commission may issue a standard permit for new or existing similar facilities if the commission finds that:

(1) the standard permit is enforceable;

(2) the commission can adequately monitor compliance with the terms of the standard permit; and

(3) for permit applications for facilities subject to Sections 382.0518(a)-(d) filed before September 1, 2001, the facilities will use control technology at least as effective as that described in Section 382.0518(b). For permit applications filed after August 31, 2001, all facilities permitted under this section will use control technology at least as effective as that described in Section 382.0518(b).

(b) The commission shall publish notice of a proposed standard permit in the Texas Register and in one or more statewide or regional newspapers designated by the commission by rule that will, in the commission's judgment, provide reasonable notice throughout the state. If the standard permit will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to

be affected. The commission by rule may require additional notice to be given. The notice must include an invitation for written comments by the public to the commission regarding the proposed standard permit and must be published not later than the 30th day before the date the commission issues the standard permit.

(c) The commission shall hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection as part of the notice described in Subsection (b) not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission shall issue a written response to the comments at the same time the commission issues or denies the permit. The response must be made available to the public, and the commission shall mail the response to each person who made a comment.

(e) The commission by rule shall establish procedures for the amendment of a standard permit and for an application for, the issuance of, the renewal of, and the revocation of an authorization to use a standard permit.

(f) A facility authorized to emit air contaminants under a standard permit shall comply with an amendment to the standard permit beginning on the date the facility's authorization to use the standard permit is renewed or the date the commission otherwise provides. Before the date the facility is required to comply with the amendment, the standard permit, as it read before the amendment, applies to the facility.

(g) The adoption or amendment of a standard permit or the issuance, renewal, or revocation of an authorization to use a standard permit is not subject to Chapter 2001, Government Code.

(h) The commission may adopt rules as necessary to implement and administer this section.

(i) The commission may delegate to the executive director the authority to issue, amend, renew, or revoke an authorization to use a standard permit.

(j) If a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(1) the date new construction, expansion, or modification of a facility begins; or

(2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

(k) An application for the issuance of a standard permit under this section for a concrete plant that performs wet batching, dry batching, or central mixing, including a permanent, temporary, or specialty concrete batch plant, as defined by the commission, must include a plot plan that clearly shows:

(1) a distance scale;

(2) a north arrow;

(3) all property lines, emission points, buildings, tanks, and process vessels and other process equipment in the area in which the facility will be located;

(4) at least two benchmark locations in the area in which the facility will be located; and

(5) if the permit requires a distance, setback, or buffer from other property or structures as a condition of the permit, whether the required distance or setback will be met.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 2, eff. September 1, 2005.
Acts 2021, 87th Leg., R.S., Ch. 159 (S.B. 952), Sec. 1, eff. September 1, 2021.

Sec. 382.05196. PERMITS BY RULE. (a) Consistent with Section 382.051, the commission may adopt permits by rule for certain types of facilities if it is found on investigation that the types of facilities will not make a significant contribution

of air contaminants to the atmosphere. The commission may not adopt a permit by rule authorizing any facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission by rule shall specifically define the terms and conditions for a permit by rule under this section.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.051961. PERMIT FOR CERTAIN OIL AND GAS FACILITIES. (a) This section applies only to new facilities or modifications of existing facilities that belong to Standard Industrial Classification Codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution).

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) conducts a regulatory analysis as provided by Section 2001.0225, Government Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

(c) The air quality monitoring data and the evaluation of that data under Subsection (b):

(1) must be relevant and technically and scientifically credible, as determined by the commission; and

(2) may be generated by an ambient air quality monitoring program conducted by or on behalf of the commission in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051962. AUTHORIZATION FOR PLANNED MAINTENANCE, START-UP, OR SHUTDOWN ACTIVITIES RELATING TO CERTAIN OIL AND GAS FACILITIES. (a) In this section, "planned maintenance, start-up, or shutdown activity" means an activity with emissions or opacity that:

(1) is not expressly authorized by commission permit, rule, or order and involves the maintenance, start-up, or shutdown of a facility;

(2) is part of normal or routine facility operations;

(3) is predictable as to timing; and

(4) involves the type of emissions normally authorized by permit.

(b) The commission may adopt one or more permits by rule or one or more standard permits and may amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities described by Section 382.051961(a). The adoption or amendment of a permit under this subsection must comply with Section 382.051961(b).

(c) An unauthorized emission or opacity event from a planned maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by commission rules as those rules exist on the effective date of this section if:

(1) the emission or opacity event occurs at a facility described by Section 382.051961(a);

(2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to the commission on or before the earlier of:

(A) January 5, 2014; or

(B) the 120th day after the effective date of a new or amended permit adopted by the commission under Subsection (b); and

(3) the affirmative defense criteria in the rules are met.

(d) The affirmative defense described by Subsection (c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051963. AMENDMENT OF CERTAIN PERMITS. (a) A permit by rule or standard permit that has been adopted by the

commission under this subchapter and is in effect on the effective date of this section may be amended to require:

(1) the permit holder to provide to the commission information about a facility authorized by the permit, including the location of the facility; and

(2) any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located.

(b) The amendment of a permit under this section is not subject to Section 382.051961(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051964. AGGREGATION OF FACILITIES. Notwithstanding any other provision of this chapter, the commission may not aggregate a facility that belongs to a Standard Industrial Classification code identified by Section 382.051961(a) with another facility that belongs to a Standard Industrial Classification code identified by that section for purposes of consideration as an oil and gas site, a stationary source, or another single source in a permit by rule or a standard permit unless the facilities being aggregated:

(1) are under the control of the same person or are under the control of persons under common control;

(2) belong to the same first two-digit major grouping of Standard Industrial Classification codes;

(3) are operationally dependant; and

(4) are located not more than one-quarter mile from a condensate tank, oil tank, produced water storage tank, or combustion facility that:

(A) is under the control of the same person who controls the facilities being aggregated or is under the control of persons under common control;

(B) belongs to the same first two-digit major grouping of Standard Industrial Classification codes as the facilities being aggregated; and

(C) is operationally dependant on the facilities being aggregated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.05197. MULTIPLE PLANT PERMIT: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05194 shall publish notice of intent to obtain the permit in accordance with Section 382.056, except that the notice of a proposed multiple plant permit for existing facilities shall be published in one or more statewide or regional newspapers that provide reasonable notice throughout the state. If the multiple plant permit for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require that additional notice be given.

(b) The commission may authorize an applicant for a permit for an existing facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05194 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a multiple plant permit may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 2001, 77th Leg., ch. 935, Sec. 2, eff. June 14, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(d), eff. September 1, 2005.

Sec. 382.05198. STANDARD PERMIT FOR CERTAIN CONCRETE PLANTS. (a) The commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and that meets the following requirements:

(1) production records must be maintained on site while the plant is in operation until the second anniversary of the end of the period to which they relate;

(2) each cement or fly ash storage silo and weigh hopper must be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system;

(3) each fabric or cartridge filter, fabric or cartridge filter system, and suction shroud must be maintained and operated properly with no tears or leaks;

(4) excluding the suction shroud filter system, each filter system must be designed to meet a standard of at least 0.01 outlet grain loading as measured in grains per dry standard cubic foot;

(5) each filter system and each mixer loading and batch truck loading emissions control device must meet a performance standard of no visible emissions exceeding 30 seconds in a five-minute period as determined using United States Environmental Protection Agency Test Method 22 as that method existed on September 1, 2003;

(6) if a cement or fly ash silo is filled during nondaylight hours, the silo filter system exhaust must be sufficiently illuminated to enable a determination of compliance with the performance standard described by Subdivision (5);

(7) the conveying system for the transfer of cement or fly ash to and from each storage silo must be totally enclosed, operate properly, and be maintained without any tears or leaks;

(8) except during cement or fly ash tanker connection or disconnection, each conveying system for the transfer of cement or fly ash must meet the performance standard described by Subdivision (5);

(9) a warning device must be installed on each bulk storage silo to alert the operator in sufficient time for the operator to stop loading operations before the silo is filled to a level that may adversely affect the pollution abatement equipment;

(10) if filling a silo results in failure of the pollution abatement system or failure to meet the performance standard described by Subdivision (5), the failure must be documented and reported to the commission;

(11) each road, parking lot, or other area at the plant site that is used by vehicles must be paved with a cohesive hard surface that is properly maintained, cleaned, and watered so as to minimize dust emissions;

(12) each stockpile must be sprinkled with water or dust-suppressant chemicals or covered so as to minimize dust emissions;

(13) material used in the batch that is spilled must be immediately cleaned up and contained or dampened so as to minimize dust emissions;

(14) production of concrete at the plant must not exceed 300 cubic yards per hour;

(15) a suction shroud or other pickup device must be installed at the batch drop point or, in the case of a central mix plant, at the drum feed and vented to a fabric or cartridge filter system with a minimum capacity of 5,000 cubic feet per minute of air;

(16) the bag filter and capture system must be properly designed to accommodate the increased flow from the

suction shroud and achieve a control efficiency of at least 99.5 percent;

(17) the suction shroud baghouse exhaust must be located more than 100 feet from any property line;

(18) stationary equipment, stockpiles, and vehicles used at the plant, except for incidental traffic and vehicles as they enter and exit the site, must be located or operated more than 100 feet from any property line; and

(19) the central baghouse must be located at least 440 yards from any building used as a single or multifamily residence, school, or place of worship at the time the application to use the permit is filed with the commission if the plant is located in an area that is not subject to municipal zoning regulation.

(b) Notwithstanding Subsection (a)(18), the commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and does not meet the requirements of that subdivision if the plant meets the other requirements of Subsection (a) and:

(1) each road, parking lot, and other traffic area located within the distance of a property line provided by Subsection (a)(18) is bordered by dust-suppressing fencing or another barrier at least 12 feet high; and

(2) each stockpile located within the applicable distance of a property line is contained within a three-walled bunker that extends at least two feet above the top of the stockpile.

(c) An application for the issuance of a standard permit under this section must include a plot plan that meets the requirements of Section 382.05195(k).

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 159 (S.B. 952), Sec. 2, eff. September 1, 2021.

Sec. 382.05199. STANDARD PERMIT FOR CERTAIN CONCRETE BATCH PLANTS: NOTICE AND HEARING. (a) A person may not begin construction of a permanent concrete plant that performs wet batching, dry batching, or central mixing under a standard permit issued under Section 382.05198 unless the commission authorizes the person to use the permit as provided by this section. The notice and hearing requirements of Subsections (b)-(g) apply only to an applicant for authorization to use a standard permit issued under Section 382.05198. An applicant for a permit for a concrete plant that does not meet the requirements of a standard permit issued under Section 382.05198 must comply with:

(1) Section 382.058 to obtain authorization to use a standard permit issued under Section 382.05195 or a permit by rule adopted under Section 382. 05196; or

(2) Section 382.056 to obtain a permit issued under Section 382.0518.

(b) An applicant for an authorization to use a standard permit under Section 382.05198 must publish notice under this section not later than the earlier of:

(1) the 30th day after the date the applicant receives written notice from the executive director that the application is technically complete; or

(2) the 75th day after the date the executive director receives the application.

(c) The applicant must publish notice at least once in a newspaper of general circulation in the municipality in which the plant is proposed to be located or in the municipality nearest to the proposed location of the plant. If the elementary or middle school nearest to the proposed plant provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant must also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the plant is proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived

if such a publication does not exist or if the publisher refuses to publish the notice.

(d) The notice must include:

(1) a brief description of the proposed location and nature of the proposed plant;

(2) a description, including a telephone number, of the manner in which the executive director may be contacted for further information;

(3) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(4) the location and hours of operation of the commission's regional office at which a copy of the application is available for review and copying; and

(5) a brief description of the public comment process, including the time and location of the public hearing, and the mailing address and deadline for filing written comments.

(e) The public comment period begins on the first date notice is published under Subsection (b) and extends to the close of the public hearing.

(f) Section 382.056 of this code and Chapter 2001, Government Code, do not apply to a public hearing held under this section. A public hearing held under this section is not an evidentiary proceeding. Any person may submit an oral or written statement concerning the application at the public hearing. The applicant may set reasonable limits on the time allowed for oral statements at the public hearing.

(g) The applicant, in cooperation with the executive director, must hold the public hearing not less than 30 days and not more than 45 days after the first date notice is published under Subsection (b). The public hearing must be held in the county in which the plant is proposed to be located.

(h) Not later than the 35th day after the date the public hearing is held, the executive director shall approve or deny the application for authorization to use the standard permit.

The executive director shall base the decision on whether the application meets the requirements of Section 382.05198. The executive director shall consider all comments received during the public comment period and at the public hearing in determining whether to approve the application. If the executive director denies the application, the executive director shall state the reasons for the denial and any modifications to the application that are necessary for the proposed plant to qualify for the authorization.

(i) The executive director shall issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time as or as soon as practicable after the executive director grants or denies the application. Issuance of the response after the granting or denial of the application does not affect the validity of the executive director's decision to grant or deny the application. The executive director shall:

(1) mail the response to each person who filed a comment; and

(2) make the response available to the public.

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.

Sec. 382.052. PERMIT TO CONSTRUCT OR MODIFY FACILITY WITHIN 3,000 FEET OF SCHOOL. In considering the issuance of a permit to construct or modify a facility within 3,000 feet of an elementary, junior high, or senior high school, the commission shall consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors from the facility on the individuals attending the school facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.163, eff. Sept. 1, 1995.

Sec. 382.053. PROHIBITION ON ISSUANCE OF CONSTRUCTION PERMIT FOR LEAD SMELTING PLANT AT CERTAIN LOCATIONS. (a) The

commission may not grant a construction permit for a lead smelting plant at a site:

(1) located within 3,000 feet of an individual's residence; and

(2) at which lead smelting operations have not been conducted before August 31, 1987.

(b) This section does not apply to:

(1) a modification of a lead smelting plant in operation on August 31, 1987;

(2) a lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead each hour; or

(3) a lead smelting plant that, when the plant began operation, was located more than 3,000 feet from the nearest residence.

(c) In this section, "lead smelting plant" means a facility operated as a smeltery for processing lead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.164, eff. Sept. 1, 1995.

Sec. 382.054. FEDERAL OPERATING PERMIT. Subject to Section 382.0511(c), a person may not operate a federal source unless the person has obtained a federal operating permit from the commission under Section 382.0541, 382.0542, or 382.0543.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.09, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 10, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.165, eff. Sept. 1, 1995.

Sec. 382.0541. ADMINISTRATION AND ENFORCEMENT OF FEDERAL OPERATING PERMIT. (a) The commission may:

(1) require a federal source to obtain a permit under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.);

(2) require an existing facility or source to use, at a minimum, any applicable maximum achievable control technology

required by the commission or by the United States Environmental Protection Agency;

(3) require facilities or federal sources that are new or modified and are subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412) to use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions from the proposed facility or federal source; or

(B) any applicable maximum achievable control technology (MACT), including any MACT developed pursuant to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412);

(4) establish maximum achievable control technology requirements in accordance with Section 112(j) of the federal Clean Air Act (42 U.S.C. Section 7412);

(5) issue initial permits with terms not to exceed five years for federal sources under Title V of the federal Clean Air Act, with terms not to exceed five years for all subsequently issued or renewed permits;

(6) administer the use of emissions allowances under Section 408 of the federal Clean Air Act (42 U.S.C. Section 7651g);

(7) reopen and revise an affected federal operating permit if:

(A) the permit has a term of three years or more remaining in order to incorporate requirements under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) adopted after the permit is issued;

(B) additional requirements become applicable to an affected source under the acid rain program;

(C) the federal operating permit contains a material mistake;

(D) inaccurate statements were made in establishing the emissions standards or other terms or conditions of the federal operating permit; or

(E) a determination is made that the permit must be reopened and revised to assure compliance with applicable requirements;

(8) incorporate a federal implementation plan as a condition of a permit issued by the commission;

(9) exempt federal sources from the obligation to obtain a federal operating permit;

(10) provide that all representations in an application for a permit under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) are binding on the applicant until issuance or denial of the permit;

(11) provide that all terms and conditions of any federal operating permit required under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) shall be a complete and segregable section of the federal operating permit; and

(12) issue initial permits with fixed terms of five years for federal sources under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) with fixed five-year terms for all subsequently issued or renewed permits.

(b) The commission by rule shall provide for objection by the administrator to the issuance of any operating or general permit subject to Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and shall authorize the administrator to revoke and reissue, terminate, reopen, or modify a federal operating permit.

(c) This section does not affect the permit requirements of Section 382.0518, except that the commission may consolidate with an existing permit issued under this section a permit required by Section 382.0518.

(d) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies

the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(e) Subsections (a)(3) and (4) do not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 11, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.166, eff. Sept. 1, 1995.

Sec. 382.0542. ISSUANCE OF FEDERAL OPERATING PERMIT; APPEAL OF DELAY. (a) A federal source is eligible for a permit required by Section 382.054 if from the information available to the commission, including information presented at a hearing held under Section 382.0561, the commission finds that:

(1) the federal source will use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(2) for a federal source that is new or modified and subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412), the federal source will use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions from the proposed federal source; or

(B) any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency; and

(3) the federal source will comply with the following requirements, if applicable:

(A) Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and the regulations adopted under that title;

(B) each standard or other requirement provided for in the applicable implementation plan approved or adopted by rule of the United States Environmental Protection Agency under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515) that implements the relevant requirements of that Act, including any revisions to the plan;

(C) each term or condition of a preconstruction permit issued by the commission or the United States Environmental Protection Agency in accordance with rules adopted by the commission or the United States Environmental Protection Agency under Part C or D, Title I of the federal Clean Air Act (42 U.S.C. 7401-7515);

(D) each standard or other requirement established under Section 111 of the federal Clean Air Act (42 U.S.C. Section 7411), including Subsection (d) of that section;

(E) each standard or other requirement established under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) including any requirement concerning accident prevention under Subsection (r)(7) of that section;

(F) each standard or other requirement of the acid rain program established under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) or the regulations adopted under that title;

(G) each requirement established under Section 504(b) or Section 114(a)(3) of the federal Clean Air Act (42 U.S.C. Section 7661c or 7414);

(H) each standard or other requirement governing solid waste incineration established under Section 129 of the federal Clean Air Act (42 U.S.C. Section 7429);

(I) each standard or other requirement for consumer and commercial products established under Section 183(e) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(J) each standard or other requirement for tank vessels established under Section 183(f) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(K) each standard or other requirement of the program to control air pollution from outer continental shelf sources established under Section 328 of the federal Clean Air Act (42 U.S.C. Section 7627);

(L) each standard or other requirement of regulations adopted to protect stratospheric ozone under Title VI of the federal Clean Air Act (42 U.S.C. Sections 7671-7671q) unless the administrator has determined that the standard or requirement does not need to be contained in a Title V permit; and

(M) each national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470-7492), but only as the standard, increment, or requirement would apply to a temporary source permitted under Section 504(e) of the federal Clean Air Act (42 U.S.C. Section 7661c).

(b) The commission shall:

(1) take final action on an application for a permit, permit revision, or permit renewal within 18 months after the date on which the commission receives an administratively complete application;

(2) under an interim program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the interim program;

(3) under the fully approved program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the program; and

(4) take final action on a permit reopening not later than 18 months after the adoption of the requirement that prompted the reopening.

(c) If the commission fails to take final action as required by Subsection (b)(1) or (4), a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action. A reviewing court may order the commission to act on the application without additional delay if it finds that the commission's failure to act is arbitrary or unreasonable.

(d) Subsection (a)(2) does not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 12, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.0543. REVIEW AND RENEWAL OF FEDERAL OPERATING PERMIT. (a) In accordance with Section 382.0541(a)(5), a federal operating permit issued or renewed by the commission is subject to review at least every five years after the date of issuance to determine whether the authority to operate should be renewed.

(b) The commission by rule shall establish:

(1) the procedures for notifying a permit holder that the permit is scheduled for review in accordance with this section;

(2) a deadline by which the holder of a permit must submit an application for renewal of the permit that is between the date six months before expiration of the permit and the date 18 months before expiration of the permit;

(3) the general requirements for an application; and

(4) the procedures for reviewing and acting on a renewal application.

(c) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st

day after the commission receives an application, the application shall be deemed complete.

(d) The commission shall take final action on a renewal application for a federal operating permit within 18 months after the date an application is determined to be administratively complete. If the commission does not act on an application for permit renewal within 18 months after the date on which the commission receives an administratively complete application, a person who participated in the public participation process or a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action.

(e) In determining whether and under which conditions a permit should be renewed, the commission shall consider:

(1) all applicable requirements in Section 382.0542(a)(3); and

(2) whether the federal source is in compliance with this chapter and the terms of the existing permit.

(f) The commission shall impose as terms and conditions in a renewed federal operating permit any applicable requirements under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The terms or conditions of the renewed permit must provide for compliance with any applicable requirement under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Section 382.0541.

(g) If the applicant submits a timely and complete application for federal operating permit renewal, but the commission fails to issue or deny the renewal permit before the end of the term of the previous permit:

(1) all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied; and

(2) the applicant may continue to operate until the permit renewal application is issued or denied, if the applicant submits additional information that is requested in writing by the commission that the commission needs to process the application on or before the time specified in writing by the commission.

(h) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 13, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.055. REVIEW AND RENEWAL OF PRECONSTRUCTION PERMIT. (a) A preconstruction permit issued or renewed by the commission is subject to review to determine whether the authority to operate should be renewed according to the following schedule:

(1) a preconstruction permit issued before December 1, 1991, is subject to review not later than 15 years after the date of issuance;

(2) a preconstruction permit issued on or after December 1, 1991, is subject to review:

(A) every 10 years after the date of issuance; or

(B) on the filing of an application for an amendment to the permit, if:

(i) the applicant is subject to Section 382.056;

(ii) the application is filed with the commission not more than three years before the date the permit is scheduled to expire; and

(iii) the applicant does not object to having the permit subjected to review at that time; and

(3) for cause, a preconstruction permit issued on or after December 1, 1991, for a facility at a nonfederal source

may contain a provision requiring the permit to be renewed at a period of between five and 10 years.

(b) The commission by rule shall establish:

(1) a deadline by which the holder of a preconstruction permit must submit an application to renew the permit;

(2) the general requirements for an application for renewal of a preconstruction permit; and

(3) the procedures for reviewing and acting on renewal applications.

(c) Not less than 180 days before the date on which the renewal application is due, the commission shall provide written notice to the permit holder, by registered or certified mail or as provided by Subsection (c-1), that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a renewal application and the information to be included in the application.

(c-1) A notice under Subsection (c) may be sent by electronic communication if the commission develops a system that reliably replaces registered or certified mail as a means of verifying receipt of the notice.

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) the performance of the owner or operator of the facility according to the method developed by the commission under Section 5.754, Water Code; and

(2) the condition and effectiveness of existing emission control equipment and practices.

(e) The commission shall impose as a condition for renewal of a preconstruction permit only those requirements the commission determines to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area. The commission may not impose requirements more stringent than those

of the existing permit unless the commission determines that the requirements are necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements. The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Sections 382.0518 and 382.0541.

(f) On or before the 180th day after the date on which an application for renewal is filed, the commission shall renew the permit or, if the commission determines that the facility will not meet the requirements for renewing the permit, shall:

(1) set out in a report to the applicant the basis for the commission's determination; and

(2) establish a schedule, to which the applicant must adhere in meeting the commission's requirements, that:

(A) includes a final date for meeting the commission's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the commission's requirements in accordance with the schedule, the commission shall renew the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's permit is effective until:

(1) the final date specified by the commission's report to the applicant;

(2) the existing permit is renewed; or

(3) the date specified by a commission order issued following a contested case proceeding held under this section.

(h) If the holder of a preconstruction permit to whom the commission has mailed or otherwise sent notice under this section does not apply for renewal of that permit by the date specified by the commission under this section, the permit shall expire at the end of the period described in Subsection (a).

(i) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 14, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 1, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.14, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 168 (S.B. 1673), Sec. 1, eff. May 22, 2007.

Acts 2017, 85th Leg., R.S., Ch. 381 (H.B. 4181), Sec. 1, eff. September 1, 2017.

Sec. 382.056. NOTICE OF INTENT TO OBTAIN PERMIT OR PERMIT REVIEW; HEARING. (a) Except as provided by Section 382.0518(h), an applicant for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055 shall publish notice of intent to obtain the permit, permit amendment, or permit review not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under Section 382.054 to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This

requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice. The commission by rule shall prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by Section 5.135, Water Code, and will not have a significant effect on air quality. The alternative procedures must be cost-effective while ensuring adequate notice. Notice required to be published under this section shall only be required to be published in the United States.

(b) The notice must include:

(1) a description of the location or proposed location of the facility or federal source;

(2) the location at which a copy of the application is available for review and copying as provided by Subsection (d);

(3) a description, including a telephone number, of the manner in which the commission may be contacted for further information;

(4) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, that includes a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission;

(6) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(7) the time and location of any public meeting to be held under Subsection (e); and

(8) any other information the commission by rule requires.

(c) At the site of a facility, proposed facility, or federal source for which an applicant is required to publish notice under this section, the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the commission may be contacted for further information. The commission shall adopt any rule necessary to carry out this subsection.

(d) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility or federal source is located or proposed to be located.

(e) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility or federal source is located or proposed to be located in order to inform the public about the application and obtain public input.

(f) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(g) If, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person requests during the period provided by commission rule that the commission hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, the applicant shall publish notice of the preliminary decision in a newspaper, and the commission shall seek public comment on the preliminary decision. The commission shall consider the request for public hearing under the procedures provided by Subsections (i)-(n). The commission may not seek further public comment or hold a public hearing under the procedures provided by Subsections (i)-(n) in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not

result in the emission of an air contaminant not previously emitted.

(g-1) The notice of intent required by Subsection (a) and the notice of the preliminary decision described by Subsection (g) may be consolidated into one notice if:

(1) not later than the 15th day after the date the application for which the notice is required is received, the commission determines the application to be administratively complete; and

(2) the preliminary decision and draft permit related to the application are available at the time of the commission's determination under Subdivision (1).

(h) If, in response to the notice published under Subsection (a) for a permit under Section 382.054, a person requests during the public comment period provided by commission rule that the commission hold a public hearing, the commission shall consider the request under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n).

(i) The commission by rule shall establish the form and content of the notice, the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Subsection (b);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (j);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted; and

(5) any other information the commission by rule requires.

(j) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(k) During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(k-1) A permit applicant or the applicant's designated representative is required to attend a public meeting held under this section and must make a reasonable effort to respond to questions relevant to the permit application at the meeting.

(l) The executive director, in accordance with procedures adopted by the commission by rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment period.

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action; and

(4) any person who timely filed a request for a public hearing in response to the notice published under Subsection (a).

(n) Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a public hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(p) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for public hearing to the extent necessary to satisfy a requirement to obtain or maintain delegation or approval of a federal program.

(q) The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(r) This section does not apply to:

(1) the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years;

(2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3) a facility described by Section 382.065(c), unless that facility is in a county with a population of 3.3 million or more or in a county adjacent to such a county.

(s) For any permit application subject to this section, the measurement of distances to determine compliance with any location or distance restriction required by this chapter shall be taken toward structures that are in use as of the date that the application is filed with the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 15, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 2, eff. May 19, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.42, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(c), eff. Sept. 1, 1999; Acts

1999, 76th Leg., ch. 1350, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 935, Sec. 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 2.02, 16.15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 226, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1054, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(e), eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 809 (S.B. 1472), Sec. 1, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.26, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 45, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 394 (S.B. 1045), Sec. 1, eff. September 1, 2017.

Sec. 382.0561. FEDERAL OPERATING PERMIT: HEARING. (a) Public hearings on applications for issuance, revision, reopening, or renewal of a federal operating permit shall be conducted under this section only and not under Chapter 2001, Government Code.

(b) On determination that an application for a federal operating permit under Sections 382.054-382.0542 or a renewal of a federal operating permit under Section 382.0543 is administratively complete and before the beginning of the public comment period, the commission or its designee shall prepare a draft permit.

(c) The commission or its designee shall hold a public hearing on a federal operating permit, a reopening of a federal operating permit, or renewal application before granting the permit or renewal if within the public comment period a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing. The commission or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(d) The following shall be available for public inspection in at least one location in the general area where the facility is located:

(1) information submitted by the application, subject to applicable confidentiality laws;

(2) the executive director's analysis of the proposed action; and

(3) a copy of the draft permit.

(e) The commission or its designee shall hold a public comment period on a federal operating permit application, a federal operating permit reopening application, or a federal operating permit renewal application under Sections 382.054-382.0542 or 382.0543. Any person may submit a written statement to the commission during the public comment period. The commission or its designee shall receive public comment for 30 days after the date on which notice of the public comment period is published. The commission or its designee may extend or reopen the comment period if the executive director finds an extension or reopening to be appropriate.

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with Section 382.056.

(g) Any person may submit an oral or written statement concerning the application at the hearing. The individual holding the hearing may set reasonable limits on the time allowed for oral statements at the hearing. The public comment period extends to the close of the hearing and may be further extended or reopened if the commission or its designee finds an extension or reopening to be appropriate.

(h) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision of the commission or its designee to issue or deny a permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(i) The commission or its designee shall consider all comments received during the public comment period and at the

public hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 16, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.168, eff. Sept. 1, 1995.

Sec. 382.0562. NOTICE OF DECISION. (a) The commission or its designee shall send notice of a proposed final action on a federal operating permit by first-class mail or electronic communication to the applicant and all persons who comment during the public comment period or at the public hearing. The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change.

(b) The notice required by Subsection (a) shall:

(1) state that any person affected by the decision of the commission or its designee may petition the administrator in accordance with Section 382.0563 and rules adopted under that section;

(2) state the date by which the petition must be filed; and

(3) explain the petition process.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 17, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 381 (H.B. 4181), Sec. 2, eff. September 1, 2017.

Sec. 382.0563. PUBLIC PETITION TO THE ADMINISTRATOR. (a) The commission by rule may provide for public petitions to the administrator in accordance with Section 505 of the federal Clean Air Act (42 U.S.C. Section 7661d).

(b) The petition for review to the administrator under this section does not affect:

(1) a permit issued by the commission or its designee; or

(2) the finality of the commission's or its designee's action for purposes of an appeal under Section 382.032.

(c) The commission or its designee shall resolve any objection that the United States Environmental Protection Agency makes and terminate, modify, or revoke and reissue the permit in accordance with the objection not later than the 90th day after the date the commission receives the objection.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 18, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES. The commission by rule may allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits prepared under Sections 382.054-382.0543.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 19, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a) The United States Department of Energy may specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. If the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen project, as defined by Section 5.001, Water Code, that equal not more than:

(1) one percent of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10 percent of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units of energy produced at the component; and

(4) 0.005 pounds of particulate matter per million British thermal units of energy produced at the component.

(b) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) When acting under a rule adopted under Subsection (b), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 3, eff. June 18, 2005.

Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE. (a) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(b) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend the deadline set out in this subsection up to three months if it determines that the number of complex pending applications for permits under this

chapter will prevent the commission from meeting the deadline imposed by this subsection without creating an extraordinary burden on the resources of the commission.

(c) The permit process authorized by this section is subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code, as applicable.

(d) The commission shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.

Sec. 382.0567. PROOF THAT TECHNOLOGY IS COMMERCIALLY FEASIBLE NOT REQUIRED; CONSIDERATION OF TECHNOLOGY TO BE ACHIEVABLE FOR CERTAIN PURPOSES PROHIBITED. (a) An applicant for a permit under this chapter for a project in connection with which advanced clean energy technology, federally qualified clean coal technology, or another technology is proposed to be used is not required to prove, as part of an analysis of whether the project will use the best available control technology or reduce emissions to the lowest achievable rate, that the technology proposed to be used has been demonstrated to be feasible in a commercial operation.

(b) The commission may not consider any technology or level of emission reduction to be achievable for purposes of a best available control technology analysis or lowest achievable emission rate analysis conducted by the commission under another provision of this chapter solely because the technology is used or the emission reduction is achieved by a facility receiving an incentive as an advanced clean energy project or new technology project, as described by Section 391.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 4, eff. September 1, 2009.

Sec. 382.057. EXEMPTION. (a) Consistent with Section 382.0511, the commission by rule may exempt from the requirements of Section 382.0518 changes within any facility if it is found on investigation that such changes will not make a significant contribution of air contaminants to the atmosphere. The commission by rule shall exempt from the requirements of Section 382.0518 or issue a standard permit for the installation of emission control equipment that constitutes a modification or a new facility, subject to such conditions restricting the applicability of such exemption or standard permit that the commission deems necessary to accomplish the intent of this chapter. The commission may not exempt any modification of an existing facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission shall adopt rules specifically defining the terms and conditions for an exemption under this section in a nonattainment area as defined by Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.14, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 20, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 406, Sec. 6, eff. Aug. 30, 1999.

Sec. 382.058. NOTICE OF AND HEARING ON CONSTRUCTION OF CONCRETE PLANT UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION. (a) A person may not begin construction on any concrete plant that performs wet batching, dry batching, or central mixing under a standard permit under Section 382.05195 or a permit by rule adopted by the commission under Section 382.05196 unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

(b) This section does not apply to a concrete plant located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

(c) For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected.

(d) If the commission considers air dispersion modeling information in the course of adopting an exemption under Section 382.057 for a concrete plant that performs wet batching, dry batching, or central mixing, the commission may not require that a person who qualifies for the exemption conduct air dispersion modeling before beginning construction of a concrete plant, and evidence regarding air dispersion modeling may not be submitted at a hearing under Section 382.056.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 391, Sec. 1, 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 7, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 10.002, eff. Sept. 1, 2001.

For expiration of this section, see Subsection (g).

Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This section applies to a permit amendment application submitted solely to allow an electric generating facility to reduce emissions and comply with a requirement imposed by Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to use applicable maximum achievable control technology. A permit amendment application shall include a condition that the applicant is required to complete the actions needed for compliance by the time allowed under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(b) The commission shall provide an opportunity for a public hearing and the submission of public comment on the application in the manner provided by Section 382.0561.

(c) Not later than the 45th day after the date the application is received, the executive director shall issue a draft permit.

(d) Not later than the 30th day after the date of issuance of the draft permit under Subsection (c), parties may submit to the commission any legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the maximum achievable control technology required under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) and may request a contested case hearing before the commission. If a party requests a contested case hearing under this subsection, the commission shall conduct a contested case hearing and issue a final order issuing or denying the permit amendment not later than the 120th day after the date of issuance of the draft permit under Subsection (c).

(e) The commission shall send notice of a decision on an application for a permit amendment under this section in the manner provided by Section 382.0562.

(f) A person affected by a decision of the commission to issue or deny a permit amendment may move for rehearing and is entitled to judicial review under Section 382.032.

(g) This section expires on the sixth anniversary of the date the administrator adopts standards for existing electric generating facilities under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412), unless a stay of the rules is granted.

(h) The commission shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.27, eff. September 1, 2011.

Sec. 382.0591. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY FORMER OR CURRENT EMPLOYEES. (a) The commission shall deny an application for the issuance, amendment, renewal, or transfer of a permit and may not issue, amend, renew, or transfer the permit if the commission determines that:

(1) a former employee participated personally and substantially as an employee in the commission's review, evaluation, or processing of the application before leaving employment with the commission; and

(2) after leaving employment with the commission, that former employee provided assistance to the applicant for the issuance, amendment, renewal, or transfer of the permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) The commission or the executive director may not issue a federal operating permit for a solid waste incineration unit if a member of the commission or the executive director is also responsible in whole or in part for the design and construction or the operation of the unit.

(c) The commission shall provide an opportunity for a hearing to an applicant before denying an application under this section.

(d) Action taken under this section does not prejudice any application other than an application in which the former employee provided assistance.

(e) In this section, "former employee" means a person:

(1) who was previously employed by the commission as a supervisory or exempt employee; and

(2) whose duties during employment with the commission included involvement in or supervision of the commission's review, evaluation, or processing of applications.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 140, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 22, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.170, eff. Sept. 1, 1995.

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. (a) The commission may delegate to the executive director the powers and duties under Sections 382.051-382.0563 and 382.059, except for the adoption of rules.

(b) An applicant or a person affected by a decision of the executive director may appeal to the commission any decision made by the executive director, with the exception of a decision regarding a federal operating permit, under Sections 382.051-382.055 and 382.059.

(c) Any person, including the applicant, affected by a decision of the executive director regarding federal operating permits may:

(1) petition the administrator in accordance with rules adopted under Section 382.0563; or

(2) file a petition for judicial review under Section 382.032.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.16, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 23, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.171, eff. Sept. 1, 1995.

Sec. 382.062. APPLICATION, PERMIT, AND INSPECTION FEES. (a) The commission shall adopt, charge, and collect a fee for:

(1) each application for:

(A) a permit or permit amendment, revision, or modification not subject to Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.);

(B) a renewal review of a permit issued under Section 382.0518 not subject to Title IV or V of the federal Clean Air Act;

(2) inspections of a federal source performed to enforce this chapter or rules adopted by the commission under this chapter until the federal source is required to obtain an operating permit under Section 382.054; and

(3) inspections performed to enforce this chapter or rules adopted by the commission under this chapter at a facility

not required to obtain an operating permit under Section 382.054.

(b) The commission may adopt rules relating to charging and collecting a fee for an exemption, for a permit, for a permit by rule, for a voluntary emissions reduction permit, for a multiple plant permit, or for a standard permit and for a variance.

(c) For purposes of the fees, the commission shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than $25 or more than $75,000.

(e) The commission by rule shall establish the fees to be collected under Subsection (a) in amounts sufficient to recover:

(1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and

(2) not less than 50 percent of the commission's actual annual expenditures to:

(A) review and act on permits or special permits;

(B) amend and review permits;

(C) inspect permitted, exempted, and specially permitted facilities; and

(D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter, excluding rules and orders adopted and permits required under Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.18, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 24, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76,

Sec. 11.172, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 8, eff. Aug. 30, 1999.

Sec. 382.0621. OPERATING PERMIT FEE. (a) The commission shall adopt, charge, and collect an annual fee based on emissions for each source that either:

(1) is subject to permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549); or

(2) is based on plant operations, and the rate of emissions at the time the fee is due would be subject to the permitting requirements if the requirements were in effect on that date.

(b) Fees imposed under this section shall be at least sufficient to cover all reasonably necessary direct and indirect costs of developing and administering the permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), including the reasonable costs of:

(1) reviewing and acting on any application for a Title IV or V permit;

(2) implementing and enforcing the terms and conditions of a Title IV or V permit, excluding any court costs or other costs associated with any enforcement action;

(3) emissions and ambient monitoring;

(4) preparing generally applicable regulations or guidance;

(5) modeling, analyses, and demonstrations; and

(6) preparing inventories and tracking emissions.

(c) The commission by rule may provide for the automatic annual increase of fees imposed under this section by the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year 1989. For purposes of this subsection:

(1) the consumer price index for any calendar year is the average of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor as of the

close of the 12-month period ending on August 31 of each calendar year; and

(2) the revision of the consumer price index that is most consistent with the consumer price index for calendar year 1989 shall be used.

(d) Except as provided by this section, the commission may not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) in excess of 4,000 tons per year from any source. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.

(e) This section does not restrict the authority of the commission under Section 382.062 to impose fees on sources not subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(f) The commission may impose fees for emissions of greenhouse gas only to the extent the fees are necessary to cover the commission's additional reasonably necessary direct costs of implementing Section 382.05102.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.19, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.173, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 9, eff. Aug. 30, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 3, eff. June 14, 2013.

Sec. 382.0622. CLEAN AIR ACT FEES. (a) Clean Air Act fees consist of:

(1) fees collected by the commission under Sections 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided by law;

(2) $2 from the portion of each fee collected for inspections of vehicles other than mopeds and remitted to the state under Sections 548.501 and 548.503, Transportation Code; and

(3) fees collected that are required under Section 185 of the federal Clean Air Act (42 U.S.C. Section 7511d).

(b) Except as provided by Subsection (b-1), Clean Air Act fees shall be deposited in the state treasury to the credit of the clean air account and shall be used to safeguard the air resources of the state.

(b-1) Fees collected under Section 382.0621(a) on or after September 1, 2003, shall be deposited in the state treasury to the credit of the operating permit fees account. Fees collected under Section 382.0621(a) may not be commingled with any fees in the clean air account or with any other money in the state treasury.

(b-2) Money in the operating permit fees account established under Subsection (b-1) may be appropriated to the commission only to cover the costs of developing and administering the federal permit programs under Title IV or V of the federal Clean Air Act (42 U.S.C. Section 7651 et seq. and Section 7661 et seq.).

(b-3) Section 403.095, Government Code, does not apply to the operating permit fees account established under Subsection (b-1), and any balance remaining in the operating permit fees account at the end of a fiscal year shall be left in the account and used in the next or subsequent fiscal years only for the purposes stated in Subsection (b-2).

(c) The commission shall request the appropriation of sufficient money to safeguard the air resources of the state, including payments to the Public Safety Commission for incidental costs of administering the vehicle emissions inspection and maintenance program, except that after the date of delegation of the state's permitting program under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661 et seq.), fees collected under Section 382.0621(a) may be appropriated

only to cover costs of developing and administering the federal permit program under Titles IV and V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

(d)(1) Through the option of contracting for air pollution control services, including but not limited to compliance and permit inspections and complaint response, the commission may utilize appropriated money to purchase services from units of local government meeting each of the following criteria:

(A) the unit of local government received federal fiscal year 1990 funds from the United States Environmental Protection Agency pursuant to Section 105 of the federal Clean Air Act (42 U.S.C. Section 7405) for the operation of an air pollution program by formal agreement;

(B) the local unit of government is in a federally designated nonattainment area subject to implementation plan requirements, including automobile emission inspection and maintenance programs, under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515); and

(C) the local unit of government has not caused the United States Environmental Protection Agency to provide written notification that a deficiency in the quality or quantity of services provided by its air pollution program is jeopardizing compliance with a state implementation plan, a federal program delegation agreement, or any other federal requirement for which federal sanctions can be imposed.

(2) The commission may request appropriations of sufficient money to contract for services of local units of government meeting the eligibility criteria of this subsection to ensure that the combination of federal and state funds annually available for an air pollution program is equal to or greater than the program costs for the operation of an air quality program by the local unit of government. The commission is encouraged to fund an air pollution program operated by a local unit of government meeting the eligibility criteria of this subsection in a manner the commission deems an effective means of addressing federal and state requirements. The

services to be provided by an eligible local unit of government under a contractual arrangement under this subsection shall be at least equal in quality and quantity to the services the local unit of government committed to provide in agreements under which it received its federal 1990 air pollution grant. The commission and the local units of government meeting the eligibility criteria of this subsection may agree to more extensive contractual arrangements.

(3) Nothing in this subsection shall prohibit a local unit of government from voluntarily discontinuing an air pollution program and thereby relinquishing this responsibility to the state.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(1), eff. June 8, 2007.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.20, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.174, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.209, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 74, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1075, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 203, Sec. 2, eff. June 10, 2003; Acts 2003, 78th Leg., ch. 552, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 1, eff. June 18, 2005.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.02, eff. June 8, 2007.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(1), eff. June 8, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 11, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 5, eff. March 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 21, eff. September 1, 2015.

Sec. 382.063. ISSUANCE OF EMERGENCY ORDER BECAUSE OF CATASTROPHE. (a) The commission may issue an emergency order because of catastrophe under Section 5.515, Water Code.

(b) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather, explosions, fire, or similar occurrences beyond the reasonable control of the operator that makes a facility or its functionally related appurtenances inoperable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.175, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 44, eff. Sept. 1, 1997.

Sec. 382.064. INITIAL APPLICATION DATE. An application for a federal operating permit is not required to be submitted to the commission before the approval of the Title V permitting program by the United States Environmental Protection Agency.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 26, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.176, eff. Sept. 1, 1995.

Sec. 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the operation of a concrete crushing facility within 440 yards of a building in use as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the facility at a site near the residence, school, or place of worship is filed with the commission. The measurement of distance for purposes of this subsection shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place of worship that is nearest the concrete crushing facility.

(b) Subsection (a) does not apply to a concrete crushing facility:

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001;

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility; or

(3) that:

(A) uses a concrete crusher:

(i) in the manufacture of products that contain recycled materials; and

(ii) that is located in an enclosed building; and

(B) is located:

(i) within 25 miles of an international border; and

(ii) in a municipality with a population of not less than 6,100 but not more than 20,000.

(c) Except as provided by Subsection (d), Subsection (a) does not apply to a concrete crushing facility that:

(1) is engaged in crushing concrete and other materials produced by the demolition of a structure at the location of the structure and the concrete and other materials are being crushed primarily for use at that location;

(2) operates at that location for not more than 180 days;

(3) the commission determines will cause no adverse environmental or health effects by operating at that location; and

(4) complies with conditions stated in commission rules, including operating conditions.

(d) Notwithstanding Subsection (c), Subsection (a) applies to a concrete crushing facility in a county with a population of 3.3 million or more or in a county adjacent to such a county.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.07, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1054, Sec. 2, eff. June 20, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1089 (S.B. 1250), Sec. 1, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 46, eff. September 1, 2011.

Sec. 382.066. SHIPYARD FACILITIES. (a) In this section, "shipyard" means a shipbuilding or ship repair operation.

(b) In determining whether to issue, or in conducting a review of, a permit or other authorization issued or adopted under this chapter for a shipyard, the commission:

(1) may not require and may not consider air dispersion modeling results predicting ambient concentrations of noncriteria pollutants over coastal waters of the state; and

(2) shall determine compliance with noncriteria ambient air pollutant standards and guidelines according to the land-based off-property concentrations of air contaminants.

(c) This section does not limit the commission's authority to take an enforcement action in response to a condition that constitutes a nuisance.

Added by Acts 2001, 77th Leg., ch. 1166, Sec. 1, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 382.065 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(94), eff. Sept. 1, 2003.

Sec. 382.068. POULTRY FACILITY ODOR; RESPONSE TO COMPLAINTS. (a) In this section, "poultry facility" and "poultry litter" have the meanings assigned by Section 26.301, Water Code.

(b) The commission shall respond and investigate not later than 18 hours after receiving:

(1) a second complaint against a poultry facility concerning odor associated with:

(A) the facility; or

(B) the application of poultry litter to land by the poultry facility; or

(2) a complaint concerning odor from a poultry facility at which the commission has substantiated odor nuisance conditions in the previous 12 months.

(c) If after the investigation the commission determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue a notice of violation.

(d) The commission by rule or order shall require the owner or operator of a poultry facility for which the commission

has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with the commission. The compliance agreement must include an odor control plan that the executive director determines is sufficient to control odors.

(e) The owner or operator of a new poultry facility shall complete a poultry facility training course on the prevention of poultry facility odor nuisances from the poultry science unit of the Texas AgriLife Extension Service not later than the 90th day after the date the facility first accepts poultry to raise. The owner or operator of a new poultry facility shall maintain records of the training and make the records available to the commission for inspection.

(f) The poultry science unit of the Texas AgriLife Extension Service may charge an owner or operator of a poultry facility a training fee to offset the direct cost of providing the training.

Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 1, eff. September 1, 2009.

SUBCHAPTER D. PENALTIES AND ENFORCEMENT

Sec. 382.085. UNAUTHORIZED EMISSIONS PROHIBITED. (a) Except as authorized by a commission rule or order, a person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.

(b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.180, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 45, eff. Sept. 1, 1997.

SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

Sec. 382.111. INSPECTIONS; POWER TO ENTER PROPERTY. (a) A local government has the same power and is subject to the same restrictions as the commission under Section 382.015 to inspect the air and to enter public or private property in its territorial jurisdiction to determine if:

(1) the level of air contaminants in an area in its territorial jurisdiction and the emissions from a source meet the levels set by:

(A) the commission; or

(B) a municipality's governing body under Section 382.113; or

(2) a person is complying with this chapter or a rule, variance, or order issued by the commission.

(b) A local government shall send the results of its inspections to the commission when requested by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.112. RECOMMENDATIONS TO COMMISSION. A local government may make recommendations to the commission concerning a rule, determination, variance, or order of the commission that affects an area in the local government's territorial jurisdiction. The commission shall give maximum consideration to a local government's recommendations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.113. AUTHORITY OF MUNICIPALITIES. (a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

(1) abate a nuisance; and

(2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the commission's rules and orders and may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules or orders.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.115. COOPERATIVE AGREEMENTS. A local government may execute cooperative agreements with the commission or other local governments:

(1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to a party to the agreement; and

(2) for the transfer of money or property from a party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid, and education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.189, eff. Sept. 1, 1995.

SUBCHAPTER G. VEHICLE EMISSIONS

Sec. 382.201. DEFINITIONS. In this subchapter:

(1) "Affected county" means a county with a motor vehicle emissions inspection and maintenance program established under Section 548.301, Transportation Code.

(2) "Commercial vehicle" means a vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(3) "Fleet vehicle" means a motor vehicle operated as one of a group that consists of more than 10 motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(4) "Participating county" means an affected county in which the commissioners court by resolution has chosen to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Section 382.209.

(5) "Retrofit" means to equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(6) "Retrofit equipment" means emissions-reducing equipment designed to reduce air emissions and improve air quality that is installed after the manufacture of the original engine or exhaust or fuel system.

(7) "Vehicle" includes a fleet vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.202. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. (a) The commission by resolution may request the Public Safety Commission to establish a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The commission by rule may establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) and its subsequent amendments.

(b) The commission by rule may require emissions-related inspection and maintenance of land vehicles, including testing exhaust emissions, examining emission control devices and systems, verifying compliance with applicable standards, and other requirements as provided by federal law or regulation.

(c) If the program is established under this section, the commission:

(1) shall adopt vehicle emissions inspection and maintenance requirements for certain areas as required by federal law or regulation; and

(2) shall adopt vehicle emissions inspection and maintenance requirements for counties not subject to a specific federal requirement in response to a formal request by resolutions adopted by the county and the most populous municipality within the county according to the most recent federal decennial census.

(d) On adoption of a resolution by the commission and after proper notice, the Department of Public Safety of the State of Texas shall implement a system that requires, as a condition of obtaining a passing vehicle inspection report issued under Subchapter C, Chapter 548, Transportation Code, in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F of that chapter, that the vehicle, unless the vehicle is not covered by the system, be annually or biennially inspected under the vehicle emissions inspection and maintenance program as required by the state's air quality state implementation plan. The Department of Public Safety shall implement such a system when it is required by any provision of federal or state law, including any provision of the state's air quality state implementation plan.

(d-1) The commission may adopt rules providing for the inclusion on a vehicle inspection report for a vehicle inspected in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, of notification regarding whether the vehicle is subject to a safety recall for which the vehicle has

not been repaired or the repairs are incomplete. The commission may accept gifts, grants, and donations from any source, including private and nonprofit organizations, for the purpose of providing the notification described by this subsection.

(e) The commission may assess fees for vehicle emissions-related inspections performed at inspection or reinspection facilities authorized and licensed by the commission in amounts reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the vehicle emissions inspection and maintenance program. If the program relies on privately operated or contractor-operated inspection or reinspection stations, an appropriate portion of the fee as determined by commission rule may be retained by the station owner, contractor, or operator to recover the cost of performing the inspections and provide for a reasonable margin of profit. Any portion of the fee collected by the commission is a Clean Air Act fee under Section 382.0622.

(f) The commission:

(1) shall, no less frequently than biennially, review the fee established under Subsection (e); and

(2) may use part of the fee collected under Subsection (e) to provide incentives, including financial incentives, for participation in the testing network to ensure availability of an adequate number of testing stations.

(g) The commission shall:

(1) use part of the fee collected under Subsection (e) to fund low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209; and

(2) to the extent practicable, distribute available funding created under Subsection (e) to participating counties in reasonable proportion to the amount of fees collected under Subsection (e) in those counties or in the regions in which those counties are located.

(h) Regardless of whether different tests are used for different vehicles as determined under Section 382.205, the commission may:

(1) set fees assessed under Subsection (e) at the same rate for each vehicle in a county or region; and

(2) set different fees for different counties or regions.

(i) The commission shall examine the efficacy of annually inspecting diesel vehicles for compliance with applicable federal emission standards, compliance with an opacity or other emissions-related standard established by commission rule, or both and shall implement that inspection program if the commission determines the program would minimize emissions. For purposes of this subsection, a diesel engine not used in a vehicle registered for use on public highways is not a diesel vehicle.

(j) The commission may not establish, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (o) unless the fuel is specifically authorized by the legislature.

(k) The commission by rule may establish classes of vehicles that are exempt from vehicle emissions inspections and by rule may establish procedures to allow and review petitions for the exemption of individual vehicles, according to criteria established by commission rule. Rules adopted by the commission under this subsection must be consistent with federal law. The commission by rule may establish fees to recover the costs of administering this subsection. Fees collected under this subsection shall be deposited to the credit of the clean air account, an account in the general revenue fund, and may be used only for the purposes of this section.

(l) Except as provided by this subsection, a person who sells or transfers ownership of a motor vehicle for which a

passing vehicle inspection report has been issued is not liable for the cost of emission control system repairs that are required for the vehicle subsequently to receive a passing report. This subsection does not apply to repairs that are required because emission control equipment or devices on the vehicle were removed or tampered with before the sale or transfer of the vehicle.

(m) The commission may conduct audits to determine compliance with this section.

(n) The commission may suspend the emissions inspection program as it applies to pre-1996 vehicles in an affected county if:

(1) the department certifies that the number of pre-1996 vehicles in the county subject to the program is 20 percent or less of the number of those vehicles that were in the county on September 1, 2001; and

(2) an alternative testing methodology that meets or exceeds United States Environmental Protection Agency requirements is available.

(o) The commission may not require the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.

(p) The commission may consider, as an alternative method of compliance with Subsection (o), fuels to achieve equivalent emissions reductions.

(q) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(2), eff. June 8, 2007.

(r) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(2), eff. June 8, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.25, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 547, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1, Sec. 1, eff. Jan. 31, 1995; Acts 1995, 74th Leg., ch. 34, Sec. 1, 9(1), (3), eff. May 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.157, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.207, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 73, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1069, Sec. 1, eff. June 19, 1997. Renumbered from Health & Safety Code

Sec. 382.037 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 2, eff. June 18, 2005.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(2), eff. June 8, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 6, eff. March 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 971 (S.B. 711), Sec. 1, eff. September 1, 2019.

Sec. 382.203. VEHICLES SUBJECT TO PROGRAM; EXEMPTIONS. (a) The inspection and maintenance program applies to any gasoline-powered vehicle that is:

(1) required to be registered in and is primarily operated in an affected county; and

(2) at least two and less than 25 years old; or

(3) subject to test-on-resale requirements under Section 548.3011, Transportation Code.

(b) In addition to a vehicle described by Subsection (a), the program applies to:

(1) a vehicle with United States governmental plates primarily operated in an affected county;

(2) a vehicle operated on a federal facility in an affected county; and

(3) a vehicle primarily operated in an affected county that is exempt from motor vehicle registration requirements or eligible under Chapter 502, Transportation Code, to display an "exempt" license plate.

(c) The Department of Public Safety of the State of Texas by rule may waive program requirements, in accordance with standards adopted by the commission, for certain vehicles and vehicle owners, including:

(1) the registered owner of a vehicle who cannot afford to comply with the program, based on reasonable income standards;

(2) a vehicle that cannot be brought into compliance with emissions standards by performing repairs;

(3) a vehicle:

(A) on which at least $100 has been spent to bring the vehicle into compliance; and

(B) that the department:

(i) can verify was driven fewer than 5,000 miles since the last safety inspection; and

(ii) reasonably determines will be driven fewer than 5,000 miles during the period before the next safety inspection is required; and

(4) a vehicle for which parts are not readily available.

(d) The program does not apply to a:

(1) motorcycle;

(2) slow-moving vehicle as defined by Section 547.001, Transportation Code; or

(3) vehicle that is registered but not operated primarily in a county or group of counties subject to a motor vehicle emissions inspection program established under Subchapter F, Chapter 548, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0372 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.204. REMOTE SENSING PROGRAM COMPONENT. (a) The commission and the Department of Public Safety of the State of Texas jointly shall develop a program component for enforcing vehicle emissions testing and standards by use of remote or automatic emissions detection and analysis equipment.

(b) The program component may be employed in any county designated as a nonattainment area within the meaning of Section 107(d) of the Clean Air Act (42 U.S.C. Section 7407) and its subsequent amendments, in any affected county, or in any county adjacent to an affected county.

(c) If a vehicle registered in a county adjacent to an affected county is detected under the program component authorized by this section as operating and exceeding acceptable

emissions limitations in an affected county, the department shall provide notice of the violation under Section 548.306, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0373 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.205. INSPECTION EQUIPMENT AND PROCEDURES. (a) The commission by rule may adopt:

(1) standards and specifications for motor vehicle emissions testing equipment;

(2) recordkeeping and reporting procedures; and

(3) measurable emissions standards a vehicle must meet to pass the inspection.

(b) In adopting standards and specifications under Subsection (a), the commission may require different types of tests for different vehicle models.

(c) In consultation with the Department of Public Safety of the State of Texas, the commission may contract with one or more private entities to provide testing equipment, training, and related services to inspection stations in exchange for part of the testing fee. A contract under this subsection may apply to one specified area of the state or to the entire state. The commission at least once during each year shall review each contract entered into under this subsection to determine whether the contracting entity is performing satisfactorily under the terms of the contract. Immediately after completing the review, the commission shall prepare a report summarizing the review and send a copy of the report to the speaker of the house of representatives, the lieutenant governor, and the governor.

(d) The Department of Public Safety of the State of Texas by rule shall adopt:

(1) testing procedures in accordance with motor vehicle emissions testing equipment specifications; and

(2) procedures for issuing a vehicle inspection report following an emissions inspection and submitting

information to the inspection database described by Section 548.251, Transportation Code, following an emissions inspection.

(e) The commission and the Department of Public Safety of the State of Texas by joint rule may adopt procedures to encourage a stable private market for providing emissions testing to the public in all areas of an affected county, including:

(1) allowing facilities to perform one or more types of emissions tests; and

(2) any other measure the commission and the Department of Public Safety consider appropriate.

(f) Rules and procedures under this section must ensure that approved repair facilities participating in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under Section 382.209 have access to adequate testing equipment.

(g) Subject to Subsection (h), the commission and the Department of Public Safety of the State of Texas by rule may allow alternative vehicle emissions testing if:

(1) the technology provides accurate and reliable results;

(2) the technology is widely and readily available to persons interested in performing alternative vehicle emissions testing; and

(3) the use of alternative testing is not likely to substantially affect federal approval of the state's air quality state implementation plan.

(h) A rule adopted under Subsection (g) may not be more restrictive than federal regulations governing vehicle emissions testing.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Amended by Acts 1999, 76th Leg., ch. 1189, Sec. 42, eff. Sept. 1, 1999. Renumbered from Sec. 382.0374 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 7, eff. March 1, 2015.

Sec. 382.206. COLLECTION OF DATA; REPORT. (a) The commission and the Department of Public Safety of the State of Texas may collect inspection and maintenance information derived from the emissions inspection and maintenance program, including:

(1) inspection results;

(2) inspection station information;

(3) information regarding vehicles operated on federal facilities;

(4) vehicle registration information; and

(5) other data the United States Environmental Protection Agency requires.

(b) The commission shall:

(1) report the information to the United States Environmental Protection Agency; and

(2) compare the information on inspection results with registration information for enforcement purposes.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0375 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.207. INSPECTION STATIONS; QUALITY CONTROL AUDITS. (a) The Department of Public Safety of the State of Texas by rule shall adopt standards and procedures for establishing vehicle emissions inspection stations authorized and licensed by the state.

(b) A vehicle emissions inspection may be performed at a decentralized independent inspection station or at a centralized inspection facility operated or licensed by the state. In developing the program for vehicle emissions inspections, the Department of Public Safety shall make all reasonable efforts to preserve the present decentralized system.

(c) After consultation with the Texas Department of Transportation, the commission shall require state and local transportation planning entities designated by the commission to

prepare long-term projections of the combined impact of significant planned transportation system changes on emissions and air quality. The projections shall be prepared using air pollution estimation methodologies established jointly by the commission and the Texas Department of Transportation. This subsection does not restrict the Texas Department of Transportation's function as the transportation planning body for the state or its role in identifying and initiating specific transportation-related projects in the state.

(d) The Department of Public Safety may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(e) The Department of Public Safety shall develop a challenge station program to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle to ensure quality control of a vehicle emissions inspection and maintenance system.

(f) The commission may contract with one or more private entities to operate a program established under this section.

(g) In addition to other procedures established by the commission, the commission shall establish procedures by which a private entity with whom the commission has entered into a contract to operate a program established under this section may agree to perform:

(1) testing at a fleet facility or dealership using mobile test equipment;

(2) testing at a fleet facility or dealership using test equipment owned by the fleet or dealership but calibrated and operated by the private entity's personnel; or

(3) testing at a fleet facility or dealership using test equipment owned and operated by the private entity and installed at the fleet or dealership facility.

(h) The fee for a test conducted as provided by Subsection (g) shall be set by the commission in an amount not to exceed twice the fee otherwise provided by law or by rule of the commission. An appropriate portion of the fee, as determined by the commission, may be remitted by the private entity to the fleet facility or dealership.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.26, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 547, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 34, Sec. 3, eff. May 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(41), eff. Sept. 1, 1995. Renumbered from Sec. 382.038 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.208. ATTAINMENT PROGRAM. (a) Except as provided by Section 382.202(j) or another provision of this chapter, the commission shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

(b) Participating agencies include the Texas Department of Transportation and metropolitan planning organizations designated by the governor.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.26, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(42), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 15.03, eff; Sept. 1, 2001. Renumbered from Sec. 382.039 by Acts 2001, 77th Leg., ch; 1075, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(c), eff. Sept. 1, 2003.

Sec. 382.209. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM. (a) The commission and the Public Safety Commission by joint rule shall establish and authorize the commissioners court of a

participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program subject to agency oversight that may include reasonable periodic commission audits.

(b) The commission shall provide funding for local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs with available funds collected under Section 382.202, 382.302, or other designated and available funds. The programs shall be administered in accordance with Chapter 783, Government Code. Program costs may include call center management, application oversight, invoice analysis, education, outreach, and advertising. Not more than 10 percent of the money provided to a local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program under this section may be used for the administration of the programs, including program costs.

(c) The rules adopted under Subsection (a) must provide procedures for ensuring that a program implemented under authority of that subsection does not apply to a vehicle that is:

(1) registered under Section 504.501 or 504.502, Transportation Code; and

(2) not regularly used for transportation during the normal course of daily activities.

(d) Subject to the availability of funds, a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section shall provide monetary or other compensatory assistance for:

(1) repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements;

(2) a replacement vehicle or replacement assistance for a vehicle that has failed a required emissions test and for which the cost of repairs needed to bring the vehicle into compliance is uneconomical; and

(3) installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed under Subdivision (1). The commission and the Department of Public Safety of the State of Texas shall establish standards and specifications for retrofit equipment that may be used under this section.

(e) A vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section unless:

(1) the vehicle is capable of being operated;

(2) the registration of the vehicle:

(A) is current; and

(B) reflects that the vehicle has been registered in the county implementing the program for at least 12 of the 15 months preceding the application for participation in the program;

(3) the commissioners court of the county administering the program determines that the vehicle meets the eligibility criteria adopted by the commission, the Texas Department of Motor Vehicles, and the Public Safety Commission;

(4) if the vehicle is to be repaired, the repair is done by a repair facility recognized by the Department of Public Safety, which may be an independent or private entity licensed by the state; and

(5) if the vehicle is to be retired under this subsection and Section 382.213, the replacement vehicle is a qualifying motor vehicle.

(f) A fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established and implemented under this section.

(g) A participating county may contract with any appropriate entity, including the regional council of

governments or the metropolitan planning organization in the appropriate region, or with another county for services necessary to implement the participating county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program. The participating counties in a nonattainment region or counties participating in an early action compact under Subchapter H may agree to have the money collected in any one county be used in any other participating county in the same region.

(h) Participation by an affected county in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program is not mandatory. To the extent allowed by federal law, any emissions reductions attributable to a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program in a county that are attained during a period before the county is designated as a nonattainment county shall be considered emissions reductions credit if the county is later determined to be a nonattainment county.

(i) Notwithstanding the vehicle replacement requirements provided by Subsection (d)(2), the commission by rule may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, subject to the availability of funds, for the replacement of a vehicle that meets the following criteria:

(1) the vehicle is gasoline-powered and is at least 10 years old;

(2) the vehicle owner meets applicable financial eligibility criteria;

(3) the vehicle meets the requirements provided by Subsections (e)(1) and (2); and

(4) the vehicle has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(j) The commission may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program for a replacement vehicle or replacement assistance for a pre-1996 model year replacement vehicle that passes the required United States Environmental Protection Agency Start-Up Acceleration Simulation Mode Standards emissions test but that would have failed the United States Environmental Protection Agency Final Acceleration Simulation Mode Standards emissions test or failed to meet some other criterion determined by the commission; provided, however, that a replacement vehicle under this subsection must be a qualifying motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 3, eff. June 18, 2005.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.03, eff. June 8, 2007.
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.01, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.004, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 2, eff. September 1, 2011.

Sec. 382.210. IMPLEMENTATION GUIDELINES AND REQUIREMENTS. (a) The commission by rule shall adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under Section 382.209. The guidelines at a minimum shall recommend:

(1) a minimum and maximum amount for repair assistance;

(2) a minimum and maximum amount toward the purchase price of a replacement vehicle qualified for the accelerated retirement program, based on vehicle type and model year, with the maximum amount not to exceed:

(A) $3,000 for a replacement car of the current model year or the previous three model years, except as provided by Paragraph (C);

(B) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by Paragraph (C); and

(C) $3,500 for a replacement vehicle of the current model year or the previous three model years that:

(i) is a hybrid vehicle, electric vehicle, or natural gas vehicle; or

(ii) has been certified to meet federal Tier 2, Bin 3 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(3) criteria for determining eligibility, taking into account:

(A) the vehicle owner's income, which may not exceed 300 percent of the federal poverty level;

(B) the fair market value of the vehicle; and

(C) any other relevant considerations;

(4) safeguards for preventing fraud in the repair, purchase, or sale of a vehicle in the program; and

(5) procedures for determining the degree and amount of repair assistance a vehicle is allowed, based on:

(A) the amount of money the vehicle owner has spent on repairs;

(B) the vehicle owner's income; and

(C) any other relevant factors.

(b) A replacement vehicle described by Subsection (a)(2) must:

(1) except as provided by Subsection (c), be a vehicle in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(2) have a gross vehicle weight rating of less than 10,000 pounds;

(3) have an odometer reading of not more than 70,000 miles; and

(4) be a vehicle the total cost of which does not exceed:

(A) for a vehicle described by Subsection (a)(2)(A) or (B), $35,000; or

(B) for a vehicle described by Subsection (a)(2)(C), $45,000.

(c) The commission may adopt any revisions made by the federal government to the emissions standards described by Subsection (b)(1).

(d) A participating county shall provide an electronic means for distributing vehicle repair or replacement funds once all program criteria have been met with regard to the repair or replacement. The county shall ensure that funds are transferred to a participating dealer under this section not later than the 10th business day after the date the county receives proof of the sale and any required administrative documents from the participating dealer.

(e) In rules adopted under this section, the commission shall require a mandatory procedure that:

(1) produces a document confirming that a person is eligible to purchase a replacement vehicle in the manner provided by this chapter, and the amount of money available to the participating purchaser;

(2) provides that a person who seeks to purchase a replacement vehicle in the manner provided by this chapter is required to have the document required by Subdivision (1) before the person enters into negotiation for a replacement vehicle in the manner provided by this chapter; and

(3) provides that a participating dealer who relies on a document issued as required by Subdivision (1) has no duty to otherwise confirm the eligibility of a person to purchase a replacement vehicle in the manner provided by this chapter.

(f) In this section, "total cost" means the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas

Department of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Title if that form were involved.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.04, eff. June 8, 2007.
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.02, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 12, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 3, eff. September 1, 2011.

Sec. 382.211. LOCAL ADVISORY PANEL. (a) The commissioners court of a participating county may appoint one or more local advisory panels consisting of representatives of automobile dealerships, the automotive repair industry, safety inspection facilities, the public, antique and vintage car clubs, local nonprofit organizations, and locally affected governments to advise the county regarding the operation of the county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, including the identification of a vehicle make or model with intrinsic value as an existing or future collectible.

(b) The commissioners court may delegate all or part of the administrative and financial matters to one or more local advisory panels established under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.212. EMISSIONS REDUCTION CREDIT. (a) In this section, "emissions reduction credit" means an emissions reduction certified by the commission that is:

(1) created by eliminating future emissions, quantified during or before the period in which emissions reductions are made;

(2) expressed in tons or partial tons per year; and

(3) banked by the commission in accordance with commission rules relating to emissions banking.

(b) To the extent allowable under federal law, the commission by rule shall authorize:

(1) the assignment of a percentage of emissions reduction credit to a private, commercial, or business entity that purchases, for accelerated retirement, a qualified vehicle under a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program;

(2) the transferability of an assigned emissions reduction credit;

(3) the use of emissions reduction credit by the holder of the credit against any state or federal emissions requirements applicable to a facility owned or operated by the holder of the credit;

(4) the assignment of a percentage of emissions reduction credit, on the retirement of a fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle, to the owner or lessor of the vehicle; and

(5) other actions relating to the disposition or use of emissions reduction credit that the commission determines will benefit the implementation of low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs established under Section 382.209.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.213. DISPOSITION OF RETIRED VEHICLE. (a) Except as provided by Subsection (c) and Subdivision (5) of this subsection, a vehicle retired under an accelerated vehicle retirement program authorized by Section 382.209 may not be resold or reused in its entirety in this or another state. Subject to the provisions of Subsection (i), the automobile dealer who takes possession of the vehicle must submit to the program administrator proof, in a manner adopted by the

commission, that the vehicle has been retired. The vehicle must be:

(1) destroyed;

(2) recycled;

(3) dismantled and its parts sold as used parts or used in the program;

(4) placed in a storage facility of a program established under Section 382.209 and subsequently destroyed, recycled, or dismantled and its parts sold or used in the program; or

(5) repaired, brought into compliance, and used as a replacement vehicle under Section 382.209(d)(2).

(a-1) The commission shall establish a partnership with representatives of the steel industry, automobile dismantlers, and the scrap metal recycling industry to ensure that:

(1) vehicles retired under Section 382.209 are scrapped or recycled; and

(2) proof of scrapping or recycling is provided to the commission.

(b) Not more than 10 percent of all vehicles eligible for retirement under this section may be used as replacement vehicles under Subsection (a)(5).

(c) A vehicle identified by a local advisory panel as an existing or future collectible vehicle under Section 382.211 may be sold to an individual if the vehicle:

(1) is repaired and brought into compliance;

(2) is removed from the state;

(3) is removed from an affected county; or

(4) is stored for future restoration and cannot be registered in an affected county except under Section 504.501 or 504.502, Transportation Code.

(d) Notwithstanding Subsection (a)(3), the dismantler of a vehicle shall scrap the emissions control equipment and engine. The dismantler shall certify that the equipment and engine have been scrapped and not resold into the marketplace. A person who causes, suffers, allows, or permits a violation of this

subsection or of a rule adopted under this section is subject to a civil penalty under Subchapter D, Chapter 7, Water Code, for each violation. For purposes of this subsection, a separate violation occurs with each fraudulent certification or prohibited resale.

(e) Notwithstanding Subsection (d), vehicle parts not related to emissions control equipment or the engine may be resold in any state. The only cost to be paid by a recycler for the residual scrap metal of a vehicle retired under this section shall be the cost of transportation of the residual scrap metal to the recycling facility.

(f) Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in this state.

(g) In dismantling a vehicle under this section, the dismantler shall remove any mercury switches in accordance with state and federal law.

(h) The commission shall adopt rules:

(1) defining "emissions control equipment" and "engine" for the purposes of this section; and

(2) providing a procedure for certifying that emissions control equipment and vehicle engines have been scrapped or recycled.

(i) Notwithstanding any other provision of this section, and except as provided by this subsection, a dealer is in compliance with this section and incurs no civil or criminal liability as a result of the disposal of a replaced vehicle if the dealer produces proof of transfer of the replaced vehicle by the dealer to a dismantler. The defense provided by this subsection is not available to a dealer who knowingly and intentionally conspires with another person to violate this section.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.05, eff. June 8, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.005, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 4, eff. September 1, 2011.

Sec. 382.214. SALE OF VEHICLE WITH INTENT TO DEFRAUD. (a) A person who with intent to defraud sells a vehicle in an accelerated vehicle retirement program established under Section 382.209 commits an offense that is a third degree felony.

(b) Sale of a vehicle in an accelerated vehicle retirement program includes:

(1) sale of the vehicle to retire the vehicle under the program; and

(2) sale of a vehicle purchased for retirement under the program.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.215. SALE OF VEHICLE NOT REQUIRED. Nothing in this subchapter may be construed to require a vehicle that has failed a required emissions test to be sold or destroyed by the owner.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.216. INCENTIVES FOR VOLUNTARY PARTICIPATION IN VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. The commission, the Texas Department of Transportation, and the Public Safety Commission may, subject to federal limitations:

(1) encourage counties likely to exceed federal clean air standards to implement voluntary:

(A) motor vehicle emissions inspection and maintenance programs; and

(B) low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs;

(2) establish incentives for counties to voluntarily implement motor vehicle emissions inspection and maintenance

programs and low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs; and

(3) designate a county that voluntarily implements a motor vehicle emissions inspection and maintenance program or a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program as a "Clean Air County" and give preference to a county designated as a Clean Air County in any federal or state clean air grant program.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.218. REQUIRED PARTICIPATION BY CERTAIN COUNTIES. (a) This section applies only to a county with a population of 800,000 or more that borders the United Mexican States.

(b) A county that was at any time required, because of the county's designation as a nonattainment area under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), to participate in the vehicle emissions inspection and maintenance program under this subchapter and Subchapter F, Chapter 548, Transportation Code, shall continue to participate in the program even if the county is designated as an attainment area under the federal Clean Air Act.

Added by Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 4, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 47, eff. September 1, 2011.

Sec. 382.219. PURCHASE OF REPLACEMENT VEHICLE; AUTOMOBILE DEALERSHIPS. (a) An amount described by Section 382.210(a)(2) may be used as a down payment toward the purchase of a replacement vehicle.

(b) An automobile dealer that participates in the procedures and programs offered by this chapter must be located in the state. No dealer is required to participate in the procedures and programs provided by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.06, eff. June 8, 2007.

Sec. 382.220. USE OF FUNDING FOR LOCAL INITIATIVE PROJECTS. (a) Money that is made available to participating counties under Section 382.202(g) or 382.302 may be appropriated only for programs administered in accordance with Chapter 783, Government Code, to improve air quality. A participating county may agree to contract with any appropriate entity, including a metropolitan planning organization or a council of governments to implement a program under Section 382.202, 382.209, or this section.

(b) A program under this section must be implemented in consultation with the commission and may include a program to:

(1) expand and enhance the AirCheck Texas Repair and Replacement Assistance Program;

(2) develop and implement programs or systems that remotely determine vehicle emissions and notify the vehicle's operator;

(3) develop and implement projects to implement the commission's smoking vehicle program;

(4) develop and implement projects in consultation with the director of the Department of Public Safety for coordinating with local law enforcement officials to reduce the use of counterfeit registration insignia and vehicle inspection reports by providing local law enforcement officials with funds to identify vehicles with counterfeit registration insignia and vehicle inspection reports and to carry out appropriate actions;

(5) develop and implement programs to enhance transportation system improvements; or

(6) develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

(c) Money that is made available for the implementation of a program under Subsection (b) may not be expended for local government fleet or vehicle acquisition or replacement, call

center management, application oversight, invoice analysis, education, outreach, or advertising purposes.

(d) Fees collected under Sections 382.202 and 382.302 may be used in an amount not to exceed $7 million per fiscal year for projects described by Subsection (b), of which $2 million may be used only for projects described by Subsection (b)(4). The remaining $5 million may be used for any project described by Subsection (b). The fees shall be made available only to counties participating in the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209 and only on a matching basis, whereby the commission provides money to a county in the same amount that the county dedicates to a project authorized by Subsection (b). The commission may reduce the match requirement for a county that proposes to develop and implement independent test facility fraud detection programs, including the use of remote sensing technology for coordinating with law enforcement officials to detect, prevent, and prosecute the use of counterfeit registration insignia and vehicle inspection reports.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.07, eff. June 8, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 13, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1038 (H.B. 2859), Sec. 1, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 8, eff. March 1, 2015.

SUBCHAPTER H. VEHICLE EMISSIONS PROGRAMS IN CERTAIN COUNTIES

Sec. 382.301. DEFINITIONS. In this subchapter:

(1) "Early action compact" means an agreement entered into before January 1, 2003, by the United States Environmental Protection Agency, the commission, the governing body of a county that is in attainment of the one-hour national ambient air quality standard for ozone but that has incidents

approaching, or monitors incidents that exceed, the eight-hour national ambient air quality standard for ozone, and the governing body of the most populous municipality in that county that results in the submission of:

(A) an early action plan to the commission that the commission finds to be adequate; and

(B) a state implementation plan revision to the United States Environmental Protection Agency on or before December 31, 2004, that provides for attainment of the eight-hour national ambient air quality standard for ozone on or before December 31, 2007.

(2) "Participating county" means a county that is a party to an early action compact.

Added by Acts 2003, 78th Leg., ch. 203, Sec. 1, eff. June 10, 2003.

Sec. 382.302. INSPECTION AND MAINTENANCE PROGRAM. (a) A participating county whose early action plan contains provisions for a motor vehicle emissions inspection and maintenance program and has been found adequate by the commission may formally request the commission to adopt motor vehicle emissions inspection and maintenance program requirements for the county. The request must be made by a resolution adopted by the governing body of the participating county and the governing body of the most populous municipality in the county.

(b) After approving a request made under Subsection (a), the commission by resolution may request the Public Safety Commission to establish motor vehicle emissions inspection and maintenance program requirements for the participating county under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The motor vehicle emissions inspection and maintenance program requirements for the participating county may include exhaust emissions testing, emissions control devices and systems inspections, or other testing methods that meet or exceed United States Environmental Protection Agency requirements, and a

remote sensing component as provided by Section 382.204. The motor vehicle emissions inspection and maintenance program requirements adopted for the participating county may apply to all or to a defined subset of vehicles described by Section 382.203.

(c) The commission may assess a fee for a vehicle inspection performed in accordance with a program established under this section. The fee must be in an amount reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the participating county's motor vehicle emissions inspection and maintenance program. An appropriate part of the fee as determined by commission rule may be retained by the station owner, contractor, or operator to recover the cost of performing the inspection and provide for a reasonable margin of profit.

(d) The incentives for voluntary participation established under Section 382.216 shall be made available to a participating county.

(e) A participating county may participate in the program established under Section 382.209.

Added by Acts 2003, 78th Leg., ch. 203, Sec. 1, eff. June 10, 2003.

SUBCHAPTER I. PROGRAMS TO ENCOURAGE THE USE OF INNOVATIVE TECHNOLOGIES

Sec. 382.401. ALTERNATIVE LEAK DETECTION TECHNOLOGY. (a) In this section, "alternative leak detection technology" means technology, including optical gas imaging technology, designed to detect leaks and emissions of air contaminants.

(b) The commission by rule shall establish a program that allows the owner or operator of a facility regulated under this chapter to use voluntarily as a supplemental detection method any leak detection technology that has been incorporated and adopted by the United States Environmental Protection Agency into a program for detecting leaks or emissions of air

contaminants. The program must provide regulatory incentives to encourage voluntary use of the alternative leak detection technology at a regulated facility that is capable of detecting leaks or emissions that may not be detected by methods or technology approvable under the commission's regulatory program for leak detection and repair in effect on the date the commission adopts the program. The incentives may include:

(1) on-site technical assistance; and

(2) to the extent consistent with federal requirements:

(A) inclusion of the facility's use of alternative leak detection technology in the owner or operator's compliance history and compliance summaries;

(B) consideration of the implementation of alternative leak detection technology in scheduling and conducting compliance inspections; and

(C) credits or offsets to the facility's emissions reduction requirements based on the emissions reductions achieved by voluntary use of alternative leak detection technology.

(c) The owner or operator of a facility using an alternative leak detection technology shall repair and record an emission or leak of an air contaminant from a component subject to the commission's regulatory program for leak detection and repair that is detected by the alternative technology as provided by the commission's leak detection and repair rules in effect at the time of the detection. A repair to correct an emission or leak detected by the use of alternative leak detection technology may be confirmed using the same technology.

(d) As part of the program of incentives adopted under Subsection (b), the commission shall:

(1) ensure that the owner or operator of a facility records and repairs, if possible and within a reasonable period, any leak or emission of an air contaminant at the facility that is detected by the voluntary use of alternative leak detection

technology from a component not subject to commission rules for leak detection and repair in effect on the date of detection;

(2) establish the reasonable period allowed for the repair of a component causing a leak or emission in a way that includes consideration of the size and complexity of the repair required;

(3) subject to commission reporting requirements only those components that are not repairable within the reasonable time frame established by the commission; and

(4) exempt from commission enforcement a leak or emission that is repaired within the reasonable period established by the commission.

(e) To the extent consistent with federal requirements, the commission may not take an enforcement action against an owner or operator of a facility participating in the program established under this section for a leak or an emission of an air contaminant that would otherwise be punishable as a violation of the law or of the terms of the permit under which the facility operates if the leak or emission was detected by using alternative technology and it would not have been detected under the commission's regulatory program for leak detection and repair in effect on the date of the detection.

Added by Acts 2007, 80th Leg., R.S., Ch. 870 (H.B. 1526), Sec. 1, eff. June 15, 2007.

SUBCHAPTER J. FEDERAL GREENHOUSE GAS REPORTING RULE

Sec. 382.451. DEVELOPMENT OF FEDERAL GREENHOUSE GAS REPORTING RULE. (a) The commission and the Railroad Commission of Texas, the Department of Agriculture, and the Public Utility Commission of Texas shall jointly participate in the federal government process for developing federal greenhouse gas reporting requirements and the federal greenhouse gas registry requirements.

(b) The commission shall adopt rules as necessary to comply with any federal greenhouse gas reporting requirements adopted by the federal government for private and public facilities eligible to participate in the federal greenhouse gas registry. In adopting the rules, the commission shall adopt and incorporate by reference rules implementing the federal reporting requirements and the federal registry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 29, eff. September 1, 2009.
Redesignated from Health and Safety Code, Section 382.501 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(29), eff. September 1, 2011.

Sec. 382.452. VOLUNTARY ACTIONS INVENTORY. The commission shall:

(1) establish an inventory of voluntary actions taken by businesses in this state or by state agencies since September 1, 2001, to reduce carbon dioxide emissions; and

(2) work with the United States Environmental Protection Agency to give credit for early action under any federal rules that may be adopted for federal greenhouse gas regulation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 29, eff. September 1, 2009.
Redesignated from Health and Safety Code, Section 382.502 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(29), eff. September 1, 2011.

SUBCHAPTER K. OFFSHORE GEOLOGIC STORAGE OF CARBON DIOXIDE

Sec. 382.501. DEFINITIONS. In this subchapter:

(1) "Board" means the School Land Board.

(2) "Bureau" means the Bureau of Economic Geology at The University of Texas at Austin.

(3) "Carbon dioxide repository" means an offshore deep subsurface geologic repository for the storage of anthropogenic carbon dioxide.

(4) "Land commissioner" means the commissioner of the General Land Office.

(5) "Offshore" has the meaning assigned by Section 27.040, Water Code.

(6) "Railroad commission" means the Railroad Commission of Texas.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 1, eff. June 9, 2021.

Sec. 382.502. RULES; ENFORCEMENT. (a) The railroad commission by rule may adopt standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository.

(b) If the United States Environmental Protection Agency issues requirements regarding carbon dioxide sequestration, the railroad commission shall ensure that the construction, maintenance, monitoring, and operation of the carbon dioxide repository under this subchapter comply with those requirements.

(c) Subchapter F, Chapter 27, Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by the railroad commission under this section in the same manner as Subchapter F, Chapter 27, Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by the railroad commission under Chapter 27, Water Code.

(d) A penalty collected under this section shall be deposited to the credit of the anthropogenic carbon dioxide storage trust fund established under Section 121.003, Natural Resources Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 2, eff. June 9, 2021.

Sec. 382.503. STUDY; SELECTION OF LOCATION. (a) The land commissioner shall contract with the bureau to conduct a study of state-owned offshore submerged land to identify potential locations for a carbon dioxide repository.

(b) The land commissioner shall recommend suitable sites for carbon dioxide storage to the board based on the findings of the study.

(c) The board shall make the final determination of suitable locations for carbon dioxide storage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.504. CONTRACT FOR NECESSARY INFRASTRUCTURE AND OPERATION. (a) Once the location has been established for the carbon dioxide repository, the board may issue requests for proposals for the lease of permanent school fund land for the construction of any necessary infrastructure for the transportation and storage of carbon dioxide to be stored in the carbon dioxide repository.

(b) The board may contract for construction or operational services for the repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.505. ACCEPTANCE OF CARBON DIOXIDE FOR STORAGE; FEES AND CARBON CREDITS. (a) Once the carbon dioxide repository is established, the board may accept carbon dioxide for storage.

(b) The board by rule may establish a fee for the storage of carbon dioxide in the carbon dioxide repository. If this state participates in a program that facilitates the trading of carbon credits, a fee under this subsection may be established as a percentage of the carbon credits associated with the storage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.506. MEASURING, MONITORING, AND VERIFICATION; ROLE OF BUREAU. (a) The railroad commission by rule may establish standards for the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository.

(b) The bureau shall review any measurement, monitoring, and verification of the permanent storage status of carbon dioxide in the carbon dioxide repository performed by another person at the direction of the state.

(c) The bureau shall serve as a scientific advisor for the measuring, monitoring, and permanent storage status verification of the carbon dioxide repository.

(d) The bureau shall provide to the board data relating to the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository, as determined by the board.

(e) The board may use revenue from the fee authorized by Section 382.505 to contract with the bureau to perform the functions described by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 3, eff. June 9, 2021.

Sec. 382.507. OWNERSHIP OF CARBON DIOXIDE. (a) The board shall acquire title to carbon dioxide stored in the carbon dioxide repository on a determination by the board that permanent storage has been verified and that the storage location has met all applicable state and federal requirements for closure of carbon dioxide storage sites.

(b) The right, title, and interest in carbon dioxide acquired under this section are the property of the permanent

school fund and shall be administered and controlled by the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.508. LIABILITY. (a) The transfer of title to the state under Section 382.507 does not relieve a producer of carbon dioxide of liability for any act or omission regarding the generation of stored carbon dioxide performed before the carbon dioxide was stored.

(b) On the date the permanent school fund, under Section 382.507, acquires the right, title, and interest in carbon dioxide, the producer of the carbon dioxide is relieved of liability for any act or omission regarding the carbon dioxide in the carbon dioxide repository.

(c) This section does not relieve a person who contracts with the board under Section 382.504(b) of liability for any act or omission regarding the construction or operation, as applicable, of the carbon dioxide repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.509. RATES FOR TRANSPORTATION. Neither the railroad commission nor the board may establish or regulate the rates charged for the transportation of carbon dioxide to the carbon dioxide repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 4, eff. June 9, 2021.

Sec. 382.510. ANNUAL REPORT. The land commissioner shall issue annually a report regarding the carbon dioxide repository. The report may be submitted electronically by posting on the

General Land Office's Internet website. The report must include information regarding:

(1) the total volume of carbon dioxide stored;

(2) the total volume of carbon dioxide received for storage during the year; and

(3) the volume of carbon dioxide received from each producer of carbon dioxide.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

SUBCHAPTER L. REGULATION OF HYDROFLUOROCARBONS

Text of section effective on January 01, 2023

Sec. 382.551. SUBSTITUTES FOR HYDROFLUOROCARBON REFRIGERANTS APPLICABLE TO COMMERCIAL OR RESIDENTIAL BUILDINGS OR CONSTRUCTION. A building code or other requirement applicable to commercial or residential buildings or construction may not prohibit the use of a substitute refrigerant authorized pursuant to 42 U.S.C. Section 7671k.

Added by Acts 2021, 87th Leg., R.S., Ch. 100 (S.B. 1210), Sec. 1, eff. January 1, 2023.

APPENDIX B.2

Texas Water Code, Title 2, Chapter 5, Texas Commission on Environmental Quality

APPENDIX B.2

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE A. EXECUTIVE AGENCIES

CHAPTER 5. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY[1]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Clean coal project" means the installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(5) "Coal" has the meaning assigned by Section 134.004, Natural Resources Code.

(6) "Component of the FutureGen project" means a process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

[1] Text downloaded from https://statutes.capitol.texas.gov/ on February 10, 2022, as current through the 87th 3rd Called Legislative Session, 2021. Minor formatting changes made for easier reading.

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(7) "FutureGen project profile" means a standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.001, eff. Aug. 12, 1991.
Amended by:
Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 6, eff. June 18, 2005.

Sec. 5.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER B. ORGANIZATION OF THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Sec. 5.011. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide an organizational structure for the commission that will provide more efficient and effective administration of the conservation of natural resources and the protection of the environment in this state and to define the duties, responsibilities, authority, and functions of the commission and the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.003, eff. Aug. 12, 1991.

Sec. 5.012. DECLARATION OF POLICY. The commission is the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.004, eff. Aug. 12, 1991.

Sec. 5.013. GENERAL JURISDICTION OF COMMISSION.

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(6) conduct of the state's hazardous spill prevention and control program;

(7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(8) the administration of a portion of the state's injection well program;

(9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(10) the state's responsibilities relating to regional waste disposal;

(11) the responsibilities assigned to the commission by Chapters 361, 363, 382, 401, 505, 506, and 507, Health and Safety Code; and

(12) any other areas assigned to the commission by this code and other laws of this state.

(b) The rights, powers, duties, and functions delegated to the Texas Department of Water Resources by this code or by any

other law of this state that are not expressly assigned to the board are vested in the commission.

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.005, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 376, Sec. 3.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1067, Sec. 22, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 2, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.01, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 32, eff. September 1, 2015.

Sec. 5.014. SUNSET PROVISION. The Texas Commission on Environmental Quality is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2023.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 2.20(46), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.006, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 5.19(a), eff. Nov. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.02, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.12, eff. July 10, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.02, eff. September 1, 2011.

Sec. 5.015. CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the commission and the executive director to carry out their powers and duties in an efficient and effective manner.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER C. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Sec. 5.051. COMMISSION. The Texas Natural Resource Conservation Commission is created as an agency of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.008, eff. Aug. 12, 1991.

Sec. 5.052. MEMBERS OF THE COMMISSION; APPOINTMENT. (a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate to represent the general public.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 485, Sec. 1, eff. June 9, 1993; Acts 2001, 77th Leg., ch. 965, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 5.053. ELIGIBILITY FOR MEMBERSHIP. (a) A person may not be a member of the commission if the person or the person's spouse:

(1) is registered, certified, licensed, permitted, or otherwise authorized by the commission;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) In addition to the eligibility requirements in Subsection (a) of this section, persons who are appointed to serve on the commission for terms which expire after August 31, 2001, must comply at the time of their appointment with the eligibility requirements established under 33 U.S.C. Sections 1251-1387, as amended.

(c) Subsection (a)(2) does not apply to an employee of a political subdivision of this state. If the United States Environmental Protection Agency determines that there will be a negative impact on the State of Texas' National Pollution Discharge Elimination Systems delegation, this subsection does not apply.

Added by Acts 1995, 74th Leg., ch. 310, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 1.04, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1278 (H.B. 3769), Sec. 1, eff. June 15, 2007.

Sec. 5.0535. REQUIRED TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of recent significant internal and external audits of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.05, eff. Sept. 1, 2001.

Sec. 5.054. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 5.053(b);

(2) does not maintain during the service on the commission the qualifications required by Section 5.053(b);

(3) is ineligible for membership under Section 5.053(a), 5.059, or 5.060;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than one-half of the regularly scheduled commission meetings that the member is

eligible to attend during each calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a member of the commission exists.

(c) If the executive director or a member has knowledge that a potential ground for removal exists, the executive director or member shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director or another member of the commission shall notify the member of the commission with the most seniority, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.06, eff. Sept. 1, 2001.

Sec. 5.055. OFFICERS OF STATE; OATH. Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.056. TERMS OF OFFICE. (a) The members of the commission hold office for staggered terms of six years, with the term of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) A person appointed to the commission may not serve for more than two six-year terms.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.057. FULL-TIME SERVICE. Each member of the commission shall serve on a full-time basis.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.058. OFFICERS; MEETINGS. (a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) The presiding officer may designate another commissioner to act for the presiding officer in the presiding officer's absence.

(c) The presiding officer shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The presiding officer or acting presiding officer shall give the other members reasonable notice before holding a special meeting.

(e) A majority of the commission is a quorum.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.07, eff. Sept. 1, 2001.

Sec. 5.059. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime

provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 5.060. LOBBYIST PROHIBITION. A person may not be a member of the commission or act as general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 2.19(24), eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 965, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN CONTRIBUTIONS. A member of the commission may not accept a contribution to a campaign for election to an elected office. If a member of the commission accepts a campaign contribution, the person is considered to have resigned from the office and the office immediately becomes vacant. The vacancy shall be filled in the manner provided by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.03, eff. September 1, 2011.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF THE COMMISSION

Sec. 5.101. SCOPE OF SUBCHAPTER. The powers and duties provided by this subchapter are the general powers and duties of

the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of the code and other laws of this state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.102. GENERAL POWERS. (a) The commission has the powers to perform any acts whether specifically authorized by this code or other law or implied by this code or other law, necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws.

(b) The commission may call and hold hearings, receive evidence at hearings, administer oaths, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to its jurisdiction under this code and other laws and rules, orders, permits, licenses, certificates, and other actions adopted, issued, or taken by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.103. RULES. (a) The commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state.

(b) The commission shall adopt reasonable procedural rules to be followed in a commission hearing. The executive director may recommend to the commission for its consideration any rules that he considers necessary.

(c) Rules shall be adopted in the manner provided by Chapter 2001, Government Code. As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of an agency. The commission

shall follow its own rules as adopted until it changes them in accordance with that Act.

(d) The commission shall include as a part of each rule the commission adopts, and each proposed rule for adoption after the effective date of this subsection, a citation to the statute that grants the specific regulatory authority under which the rule is justified and a citation of the specific regulatory authority that will be exercised. If no specific statutory authority exists and the agency is depending on this section, citation of this section, or Section 5.102 or 5.013, is sufficient. A rule adopted in violation of this subsection is void.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 802, Sec. 1, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 1.09, eff. Sept. 1, 2001.

Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.04, eff. September 1, 2011.

Sec. 5.1035. RULES REGARDING DRINKING-WATER STANDARDS. Before adopting rules regarding statewide drinking-water standards, the commission shall hold public meetings, if requested, at its regional offices to allow municipalities, water supply corporations, and other interested persons to submit data or comments concerning the proposed drinking-water standards.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.41, eff. Sept. 1, 1997.

Sec. 5.104. MEMORANDA OF UNDERSTANDING. (a) The commission and board by rule shall develop memoranda of understanding as necessary to clarify and provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission or board that is not expressly assigned to either the commission or board.

(b) The commission may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the commission and any other state agency.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.105. GENERAL POLICY. Except as otherwise specifically provided by this code, the commission, by rule, shall establish and approve all general policy of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.106. BUDGET APPROVAL. The commission shall examine and approve all budget recommendations for the commission that are to be transmitted to the legislature.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.107. ADVISORY COMMITTEES, WORK GROUPS, AND TASK FORCES. (a) The commission or the executive director may create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the executive director may consider appropriate.

(b) The commission shall identify affected groups of interested persons for advisory committees, work groups, and task forces and shall make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces. This subsection does not require the commission to ensure that all representatives attend a scheduled meeting. A rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

(c) The commission shall monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and shall maintain that information in a form and location that is easily accessible to the public, including making the information available on the Internet.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.10, eff. Sept. 1, 2001.

Sec. 5.108. EXECUTIVE DIRECTOR. (a) The commission shall appoint an executive director to serve at the will of the commission.

(b) The board shall exercise the powers of appointment which the Texas Water Rights Commission had the authority to

exercise on August 30, 1977, except for those powers of appointment expressly provided to the Texas Water Rights Commission in Chapters 50 through 63 inclusive, of the Water Code, which are delegated to the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.109. CHIEF CLERK. (a) The commission shall appoint a chief clerk who shall serve at the will of the commission.

(b) The chief clerk shall assist the commission in carrying out its duties under this code and other law.

(c) The chief clerk shall issue notice of public hearings held under the authority of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.009, eff. Aug. 12, 1991.

Sec. 5.110. GENERAL COUNSEL. (a) The commission shall appoint a general counsel who shall serve at the will of the commission.

(b) The general counsel is the chief legal officer for the commission.

(c) The general counsel must be an attorney licensed to practice law in this state.

(d) The general counsel shall perform the duties and may exercise the powers specifically authorized by this code or delegated to the general counsel by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.111. STANDARDS OF CONDUCT. The commission shall provide to its members, appointees, and employees as often as is necessary information regarding their qualifications under this code and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.112. PUBLIC TESTIMONY POLICY. The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 1, eff. June 19, 1987.

Sec. 5.113. COMMISSION AND STAFF RESPONSIBILITY POLICY. The commission shall develop and implement policies that clearly separate the respective responsibilities of the commission and the staff.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.114. APPLICATIONS AND OTHER DOCUMENTS. Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided by this code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.115. PERSONS AFFECTED IN COMMISSION HEARINGS; NOTICE OF APPLICATION. (a) For the purpose of an administrative hearing held by or for the commission involving a contested case, "affected person," or "person affected," or "person who may be affected" means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.

(a-1) The commission shall adopt rules specifying factors which must be considered in determining whether a person is an affected person in any contested case arising under the air, waste, or water programs within the commission's jurisdiction

and whether an affected association is entitled to standing in contested case hearings. For a matter referred under Section 5.556, the commission:

(1) may consider:

(A) the merits of the underlying application, including whether the application meets the requirements for permit issuance;

(B) the likely impact of regulated activity on the health, safety, and use of the property of the hearing requestor;

(C) the administrative record, including the permit application and any supporting documentation;

(D) the analysis and opinions of the executive director; and

(E) any other expert reports, affidavits, opinions, or data submitted on or before any applicable deadline to the commission by the executive director, the applicant, or a hearing requestor; and

(2) may not find that:

(A) a group or association is an affected person unless the group or association identifies, by name and physical address in a timely request for a contested case hearing, a member of the group or association who would be an affected person in the person's own right; or

(B) a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the permit application.

(b) At the time an application for a permit or license under this code is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license. A state agency that receives notice under this subsection may submit comments to the commission in response to the notice but may not contest the issuance of a permit or license by the commission. For the

purposes of this subsection, "state agency" does not include a river authority.

(c) At the time an application for any formal action by the commission that will affect lands dedicated to the permanent school fund is filed with the executive director or the commission and is administratively complete, the commission shall give notice of the application to the School Land Board. Notice shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office. Delivery is not complete until the return receipt is signed by the deputy commissioner of the asset management division of the General Land Office and returned to the commission.

(d) The commission shall adopt rules for the notice required by this section. The rules must provide for the notice required by this section to be posted on the Internet by the commission.

(e) The notice must state:

(1) the identifying number given the application by the commission;

(2) the type of permit or license sought under the application;

(3) the name and address of the applicant;

(4) the date on which the application was submitted; and

(5) a brief summary of the information included in the permit application.

(f) The notice to the School Land Board under this section shall additionally:

(1) state the location of the permanent school fund land to be affected; and

(2) describe any foreseeable impact or effect of the commission's action on permanent school fund land.

(g) A formal action or ruling by the commission on an application affecting permanent school fund land that is made without the notice required by this section is voidable by the

School Land Board as to any permanent school fund lands affected by the action or ruling.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.010, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 991, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 882, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1350, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.01, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 2, eff. September 1, 2015.

Sec. 5.116. HEARINGS; RECESS. The commission may recess any hearing or examination from time to time and from place to place.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.117. MANDATORY ENFORCEMENT HEARING. (a) The executive director shall monitor compliance with all permits and licenses issued by the commission under this code, and if the evidence available to the executive director through this monitoring process indicates that a permittee or licensee is in substantial noncompliance with his permit or license for a period of four months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance.

(b) On receiving a report from the executive director under Subsection (a) of this section, the commission shall call and hold a hearing to determine whether the permittee or licensee who is the subject of the executive director's report has been in substantial noncompliance with his permit or license.

(c) At the conclusion of the hearing, the commission shall issue one of the following orders stating that:

(1) no violation of the permit or license has occurred;

(2) a violation of the permit or license has occurred but has been corrected and no further action is necessary to protect the public interest;

(3) the executive director is authorized to enter into a compliance agreement with the permittee or licensee;

(4) a violation of the permit or license has occurred and an administrative penalty is assessed as provided by this code; or

(5) a violation of the permit or license has occurred, and the executive director is directed to have enforcement proceedings instituted against the permittee or licensee.

(d) A compliance agreement under Subsection (c)(3) of this section is not effective unless it is approved by the commission. If the commission determines at a hearing that a permittee or licensee has not complied with the terms of the compliance agreement, the commission may direct the executive director to institute enforcement proceedings.

(e) The executive director, on receiving an order from the commission directing institution of enforcement proceedings, shall take all necessary steps to have enforcement proceedings instituted.

(f) The commission may compel the attendance of the governing body or any other officer of any permittee or licensee at any hearing held under this section.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.011, eff. Aug. 12, 1991.

Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) The commission by rule may allow a person who owes a monetary civil or administrative penalty imposed for a violation of law within the commission's jurisdiction or for a violation of a license, permit, or order issued or rule adopted by the commission to pay the penalty in periodic installments. The rule must provide a

procedure for a person to apply for permission to pay the penalty over time.

(b) The rule may vary the period over which the penalty may be paid or the amount of the periodic installments according to the amount of the penalty owed and the size of the business that owes the penalty. The period over which the penalty may be paid may not exceed 36 months.

Added by Acts 1995, 74th Leg., ch. 112, Sec. 1, eff. May 17, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 4, eff. September 1, 2009.

Sec. 5.118. POWER TO ADMINISTER OATHS. Each member of the commission, the chief clerk, or a hearings examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.119. COMMISSION TO BE KNOWLEDGEABLE. The commission shall be knowledgeable of the watercourses and natural resources of the state and of the needs of the state concerning the use, storage and conservation of water and the use and conservation of other natural resources and of the need to maintain the quality of the environment in the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.012, eff. Aug. 12, 1991.

Sec. 5.1191. RESEARCH MODEL. (a) In this section, "research model" means a mechanism for developing a plan to address the commission's practical regulatory needs. The commission's plan shall be prioritized by need and shall identify short-term, medium-term, and long-term research goals. The plan may address preferred methods of conducting the identified research.

(b) The commission shall develop a research model. The commission may appoint a research advisory board to assist the commission in providing appropriate incentives to encourage various interest groups to participate in developing the research model and to make recommendations regarding research topics specific to this state. The research advisory board must include representatives of the academic community, representatives of the regulated community, and public representatives of the state at large.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.1192. COORDINATION OF RESEARCH. (a) The commission shall facilitate and coordinate environmental research in the state according to the research model developed under Section 5.1191.

(b) The commission shall explore private and federal funding opportunities for research needs identified in the research model. The commission may conduct, direct, and facilitate research to implement the commission's research model by administering grants or by contracting for research if money is appropriated to the commission for those purposes.

(c) To the degree practicable, the commission, through the research model, shall coordinate with or make use of any research activities conducted under existing state initiatives, including research by state universities, the Texas Higher Education Coordinating Board, the United States Department of Agriculture, the Texas Department of Agriculture, and other state and federal agencies as appropriate.

(d) This section does not authorize the commission to initiate or direct the research efforts of another entity except under the terms of a grant or contract.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.1193. REPORT. The commission shall include in the reports required by Section 5.178 a description of cooperative research efforts, an accounting of money spent on research, and a review of the purpose, implementation, and results of particular research projects conducted.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.120. CONSERVATION AND QUALITY OF ENVIRONMENT. The commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.013, eff. Aug. 12, 1991.

Sec. 5.121. PUBLIC INFORMATION. (a) The commission shall comply with Section 2001.004, Government Code, by indexing and making available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the commission in the discharge of its functions.

(b) The commission shall comply with Section 2001.004, Government Code, by indexing and making available for public inspection all of the commission's final orders, decisions, and opinions.

Added by Acts 1987, 70th Leg., ch. 638, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(71), (72), eff. Sept. 1, 1995.

Sec. 5.122. DELEGATION OF UNCONTESTED MATTERS TO EXECUTIVE DIRECTOR. (a) The commission by rule or order may delegate to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration, or other authorization or approval if:

(1) required notice of the application or request for the authorization or approval has been given;

(2) the holder of or applicant for the authorization or approval agrees in writing to the action to be taken by the executive director; and

(3) the application or request:

(A) is uncontested and does not require an evidentiary hearing;

(B) has become uncontested before parties are named because each person who requested a contested case hearing within the time allowed by law has:

(i) withdrawn the request for a contested case hearing without condition;

(ii) withdrawn the request for a contested case hearing conditioned only on the withdrawal of all other hearing requests; or

(iii) agreed in writing to allow the executive director to make a final decision on the matter; or

(C) has become uncontested because all parties have agreed in writing to the action to be taken by the executive director.

(b) A person affected by an action the executive director takes on a matter delegated under this section may appeal the executive director's action to the commission unless the action is a decision:

(1) regarding a federal operating permit under Subchapter C, Chapter 382, Health and Safety Code; or

(2) specified as final and appealable by the commission rule that delegates the decision to the executive director.

(c) A person affected by a decision of the executive director on a matter delegated under this section that regards a federal operating permit under Subchapter C, Chapter 382, Health and Safety Code, may:

(1) petition the administrator of the United States Environmental Protection Agency in accordance with rules adopted under Section 382.0563, Health and Safety Code; or

(2) file a petition for judicial review under Section 382.032, Health and Safety Code.

(d) The commission's authority under this section is cumulative of the commission's authority to delegate its powers, duties, or rights under any other law.

Added by Acts 1995, 74th Leg., ch. 860, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 1997, 75th Leg., ch. 302, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1065 (H.B. 3177), Sec. 1, eff. September 1, 2017.

Sec. 5.124. AUTHORITY TO AWARD GRANTS. (a) With the consent of the commission, the executive director may award grants for any purpose regarding resource conservation or environmental protection in accordance with this section.

(b) The commission by rule shall establish procedures for awarding a grant, for making any determination related to awarding a grant, and for making grant payments.

(c) Each activity funded by a grant must directly relate to a purpose specified in the grant. A grant may be awarded only for a purpose consistent with the commission's jurisdiction and purposes under law, including:

(1) the development or implementation of a comprehensive conservation and management plan under Section 320, Federal Water Pollution Control Act (33 U.S.C. Section 1330), for a designated national estuary in this state;

(2) a demonstration project that involves new techniques for pollution prevention, energy or resource conservation, or waste management;

(3) an environmental purpose identified in a federal grant that is intended as a pass-through grant;

(4) development or improvement of monitoring or modeling techniques for water or air quality;

(5) support of a local air pollution program; or

(6) a study or program related to efforts to prevent an area that is near nonattainment with federal air quality standards from reaching nonattainment status.

(d) A grant may be awarded to any person that meets the eligibility requirements of the grant. The executive director shall establish eligibility requirements for each grant appropriate to the purposes of and activities under the grant and the method of selecting the recipient.

(e) Selection of grant recipients must be by solicitation of a proposal or application except as provided by Subsections (f) and (g). The executive director may specify any selection criterion the executive director considers relevant to the grant. Selection criteria must address:

(1) evaluation and scoring of:

(A) fiscal controls;

(B) project effectiveness;

(C) project cost; and

(D) previous experience with grants and contracts; and

(2) the possibility and method of making multiple awards.

(f) A grant may be made by direct award only if:

(1) the executive director determines that:

(A) selection of recipients by the solicitation of proposals or applications is not feasible; and

(B) awarding the grant directly is in the best interest of the state;

(2) eligibility for the grant is limited to:

(A) an agency or political subdivision of this state or of another state;

(B) a state institution of higher learning of this state or of another state, including any part or service of the institution; or

(C) an agency of the United States; or

(3) the grant is awarded to a person established or authorized to develop or implement a comprehensive conservation and management plan under Section 320, Federal Water Pollution Control Act (33 U.S.C. Section 1330), for a national estuary in this state.

(g) If a solicitation of a proposal is made for the purpose of identifying a partner for a joint application for a federal grant that is subsequently awarded to the commission, the executive director is not required to make an additional solicitation for entering into a pass-through grant with an identified partner.

(h) The executive director shall publish information regarding a solicitation related to a grant to be awarded under this section on the commission's electronic business daily in the manner provided by Section 2155.074, Government Code, as added by Section 1, Chapter 508, Acts of the 75th Legislature, Regular Session, 1997.

(i) For a grant awarded under this section, the commission may use:

(1) money appropriated for grant-making purposes;

(2) federal money granted for making pass-through grants; and

(3) state or federal grant money appropriated for a purpose that the executive director determines is consistent with a purpose of the grant from the commission.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 28, eff. Sept. 1, 1999.

Sec. 5.125. COST-SHARING FOR ENVIRONMENTAL COMPLIANCE ASSESSMENTS BY CERTAIN BUSINESSES. (a) In this section, "environmental compliance assessment" means an environmental compliance audit, pollution prevention assessment, or environmental management system audit performed by a small business. The term does not include an audit conducted under Chapter 1101, Health and Safety Code.

(b) The commission may implement cost-sharing to assist with payment of costs for an environmental compliance assessment performed by a business subject to regulation by the commission that employs at least 100 but not more than 250 individuals.

Added by Acts 1999, 76th Leg., ch. 104, Sec. 2, eff. May 17, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(d), eff. September 1, 2017.

Sec. 5.126. REPORT ON ENFORCEMENT ACTIONS. (a) Not later than December 1 of each year, the commission shall:

(1) prepare an electronic report on its enforcement actions for the preceding fiscal year, including a comparison with its enforcement actions for each of the preceding five fiscal years; and

(2) provide the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The report shall separately describe the enforcement actions for each type of regulatory program, including programs under Chapters 26 and 27 of this code and Chapters 361, 382, and 401, Health and Safety Code.

(c) The description of enforcement actions for each type of regulatory program shall include:

(1) the number of inspections;

(2) the number of notices of violations;

(3) the number of enforcement actions;

(4) the type of enforcement actions;

(5) the amount of penalties assessed, deferred, or collected; and

(6) any other information the commission determines relevant.

(d) As soon as possible after the end of each fiscal year, the attorney general shall provide the commission information on enforcement actions referred by the commission to the attorney general that were resolved during the preceding fiscal year or are pending at the end of that fiscal year.

Added by Acts 1997, 75th Leg., ch. 304, Sec. 1, eff. May 26, 1997; Acts 1997, 75th Leg., ch. 1082, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 5.123 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(112), eff. Sept. 1, 2001.

Sec. 5.127. ENVIRONMENTAL MANAGEMENT SYSTEMS. (a) In this section, "environmental management system" means a documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(b) The commission by rule shall adopt a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems by regulated entities, state agencies, local governments, and other entities as determined by the commission. The incentives may include:

(1) on-site technical assistance;

(2) accelerated access to information about programs; and

(3) to the extent consistent with federal requirements:

(A) inclusion of information regarding an entity's use of an environmental management system in the entity's compliance history and compliance summaries; and

(B) consideration of the entity's implementation of an environmental management system in scheduling and conducting compliance inspections.

(c) The rules must provide that an environmental management system, at a minimum, must require the entity implementing the system to:

(1) adopt a written environmental policy;

(2) identify the environmental aspects and impacts of the entity's activities;

(3) set priorities, goals, and targets for continuous improvement in environmental performance and for ensuring

compliance with environmental laws, regulations, and permit terms applicable to the facility;

(4) assign clear responsibilities for implementation, training, monitoring, and corrective action and for ensuring compliance with environmental laws, regulations, and permit terms applicable to the facility;

(5) document implementation of procedures and results; and

(6) evaluate and refine implementation over time to improve attainment of environmental goals and targets and the system itself.

(d) The commission shall:

(1) integrate the use of environmental management systems into its regulatory programs, including permitting, compliance assistance, and enforcement;

(2) develop model environmental management systems for small businesses and local governments; and

(3) establish environmental performance indicators to measure the program's performance.

Added by Acts 2001, 77th Leg., ch. 1161, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.128. ELECTRONIC REPORTING TO COMMISSION; ELECTRONIC TRANSMISSION OF INFORMATION BY COMMISSION; REDUCTION OF DUPLICATE REPORTING.

(a) The commission shall encourage the use of electronic reporting through the Internet, to the extent practicable, for reports required by the commission. Notwithstanding any other law, the commission may adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. An electronic report must be submitted in a format prescribed by the commission. The commission may consult with the Department of Information Resources on developing a simple format for use in implementing this subsection.

(a-1) Notwithstanding any other law, the commission may utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission.

(a-2) The commission shall utilize electronic means of transmission for any notice issued or sent by the commission to a state senator or representative, unless the senator or representative has requested to receive notice by mail.

(a-3) If the notice issued or sent under Subsection (a-2) concerns a permit for a facility, the notice must include an Internet link to an electronic map indicating the location of the facility.

(b) The commission shall strive to reduce duplication in reporting requirements throughout the agency.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 664 (H.B. 1254), Sec. 1, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 962 (H.B. 3544), Sec. 1, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 108 (H.B. 610), Sec. 1, eff. September 1, 2011.

Sec. 5.129. SUMMARY FOR PUBLIC NOTICES. (a) The commission by rule shall provide for each public notice issued or published by the commission or by a person under the jurisdiction of the commission as required by law or by commission rule to include at the beginning of the notice a succinct statement of the subject of the notice. The rules must provide that a summary statement must be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice.

(b) The summary statement may not be grounds for challenging the validity of the proposed action for which the notice was published.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. The commission shall:

(1) develop and implement policies, by specific environmental media, to protect the public from cumulative risks in areas of concentrated operations; and

(2) give priority to monitoring and enforcement in areas in which regulated facilities are concentrated.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.

Sec. 5.132. CREATION OF PERFORMANCE MEASURES FOR INNOVATIVE REGULATORY PROGRAMS. The commission shall work with the Legislative Budget Board to create performance measures that assess the improvements in environmental quality achieved by innovative regulatory programs implemented by the commission.

Added by Acts 2001, 77th Leg., ch. 1483, Sec. 1, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(138), eff. Sept. 1, 2003.

Sec. 5.133. ACTIONS IN MEXICO. The commission may take and finance any action in Mexico, in cooperation with governmental authorities of Mexico, that in the opinion of the commission:

(1) is necessary or convenient to accomplish a duty of the commission imposed by law; and

(2) will yield benefits to the environment in this state.

Added by Acts 2001, 77th Leg., ch. 728, Sec. 1, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(139), eff. Sept. 1, 2003.

Sec. 5.134. USE OF ENVIRONMENTAL TESTING LABORATORY DATA AND ANALYSIS. (a) The commission may accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations,

compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission under Subchapter R or an environmental testing laboratory described in Subsection (b) or (e).

(b) The commission may accept for use in commission decisions data and analysis prepared by:

(1) an on-site or in-house environmental testing laboratory if the laboratory:

(A) is periodically inspected by the commission; or

(B) is located in another state and is accredited or periodically inspected by that state;

(2) an environmental testing laboratory that is accredited under federal law; or

(3) if the data and analysis are necessary for emergency response activities and the required data and analysis are not otherwise available, an environmental testing laboratory that is not accredited by the commission under Subchapter R or under federal law.

(c) The commission by rule may require that data and analysis used in other commission decisions be obtained from an environmental testing laboratory accredited by the commission under Subchapter R.

(d) The commission shall periodically inspect on-site or in-house environmental testing laboratories described in Subsection (b).

(e) The commission may accept for use in commission decisions data from an on-site or in-house laboratory if the laboratory is performing the work:

(1) for another company with a unit located on the same site; or

(2) without compensation for a governmental agency or a charitable organization if the laboratory is periodically inspected by the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(140), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 912, Sec. 1, eff. Sept. 1, 2005.

Sec. 5.135. SMALL BUSINESS COMPLIANCE ASSISTANCE PROGRAM. (a) The commission shall establish a small business compliance assistance program.

(b) The program shall include:

(1) mechanisms to develop, collect, and coordinate information about compliance methods and technologies for small businesses and to encourage cooperation between those small businesses and other persons to achieve compliance with applicable air quality, water quality, and solid waste laws;

(2) mechanisms to assist small businesses with pollution prevention and the prevention and detection of accidental releases, including information about alternative technologies, process changes, products, and methods of operation to reduce air pollution, water pollution, and improper disposal of solid waste;

(3) an ombudsman to help small businesses meet the requirements of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended, the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), as amended, and the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), as amended;

(4) a compliance assistance program to help small businesses identify the requirements for and obtain required permits in a timely and efficient manner;

(5) notification procedures to assure that small businesses receive notice of their rights and obligations under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended, the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), as amended, and the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), as amended, in time to identify applicable requirements and evaluate and implement appropriate compliance methods;

(6) auditing services or referrals for small business stationary source operations to determine compliance with the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended; and

(7) procedures for considering a request by a small business to modify work practices, technological compliance methods, or an implementation schedule requirement that precedes a compliance date, taking into account the technological and financial capability of that source.

(c) The program shall include a small business compliance assistance advisory panel that consists of the following seven members:

(1) two members who are not owners or representatives of owners of small business stationary sources, selected by the governor to represent the public;

(2) two members who are owners or who represent owners of small business stationary sources, selected by the speaker of the house of representatives;

(3) two members who are owners or who represent owners of small business stationary sources, selected by the lieutenant governor; and

(4) one member selected by the chairman of the commission to represent the commission.

(d) The small business compliance assistance advisory panel shall:

(1) give advisory opinions on the effectiveness of the program, the difficulties of implementing the program, and the incidence and severity of enforcement;

(2) report periodically to the administrator regarding the program's compliance with requirements of the Paperwork Reduction Act of 1980 (Pub.L. No. 96-511), as amended, the Regulatory Flexibility Act (5 U.S.C. Section 601 et seq.), as amended, and the Equal Access to Justice Act (Pub.L. No. 96-481), as amended;

(3) review information the program provides to small businesses to assure the information is understandable to nonexperts; and

(4) distribute opinions, reports, and information developed by the panel.

(e) The commission shall enter into a memorandum of understanding with the Texas Department of Economic Development to coordinate assistance to any small business in applying for permits from the commission.

(f) The commission may adopt rules reasonably necessary to implement this section. Rules relating to air pollution must comply with Section 507 of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended, and regulations adopted under that Act.

(g) In this section:

(1) "Program" means the small business compliance assistance program.

(2) "Small business" means:

(A) a small business stationary source; or

(B) a business that employs at least 100 but not more than 250 individuals.

(3) "Small business stationary source" has the meaning assigned by Section 507(c) of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.05, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.156, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 104, Sec. 3, eff. May 17, 1999. Renumbered from Health & Safety Code, Sec. 382.0365 and amended by Acts 2003, 78th Leg., ch. 81, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER E. ADMINISTRATIVE PROVISIONS FOR COMMISSION

Sec. 5.171. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 584, Sec. 73, eff. Sept. 1, 1989.

Sec. 5.172. FUNDS FROM OTHER STATE AGENCIES. Any state agency that has statutory responsibilities for environmental pollution or environmental quality control and that receives a legislative appropriation for these purposes may transfer to the commission any amount mutually agreed on by the commission and the agency, subject to the approval of the governor.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.014, eff. Aug. 12, 1991.

Sec. 5.173. PUBLIC INFORMATION RELATING TO COMMISSION. The commission shall prepare information of public interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and the appropriate state agencies.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.1733. ELECTRONIC POSTING OF INFORMATION. The commission shall post public information on its website. Such information shall include but not be limited to the minutes of advisory committee meetings, pending permit and enforcement actions, compliance histories, and emissions inventories by county and facility name.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.13, eff. Sept. 1, 2001.

Sec. 5.174. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided by this code and subject to the specific limitations provided by this code, on application of any person the commission shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the commission. A certified copy with the seal of the commission and the signature of the presiding officer of the commission or the executive director or chief clerk is admissible as evidence in any court or administrative proceeding.

(b) The commission shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the commission, except that the fees set by the commission for copies prepared by the commission may not exceed those prescribed in Chapter 603, Government Code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(13), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.01, eff. Sept. 1, 2001.

Sec. 5.175. INSPECTION OF WATER POLLUTION RECORDS. (a) All information, documents, and data collected by the commission in the performance of its duties are the property of the state.

(b) Except as provided by Subsection (c) of this section, records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours.

(c) If a showing satisfactory to the executive director is made by any person that those records, reports, data, or other information, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commission shall consider those records, reports, data, or other information as confidential.

(d) This chapter may not be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications.

(e) Records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the state or of the United States with responsibilities in water pollution control. However, this disclosure or transmittal may be made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity.

(f) The executive director may not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, 1.168; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.016, eff. Aug. 12, 1991.

Sec. 5.176. COMPLAINT FILE. (a) The commission shall maintain a file on each written complaint filed with the commission about a matter within the commission's regulatory jurisdiction. The file must include:

(1) the name of the person who filed the complaint, unless the person has specifically requested anonymity;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(b) The commission shall establish and implement procedures for receiving complaints submitted by means of the Internet and orally and shall maintain files on those complaints as provided by Subsection (a).

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 5.1765. PUBLICATION OF INFORMATION REGARDING COMPLAINT PROCEDURES AND POLICIES. The commission shall establish a process for educating the public regarding the commission's complaint policies and procedures. As part of the public education process, the commission shall make available to the public in pamphlet form an explanation of the complaint policies and procedures, including information regarding and standards applicable to the collection and preservation of credible evidence of environmental problems by members of the public.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.14, eff. Sept. 1, 2001.

Sec. 5.177. NOTICE OF COMPLAINT PROCEDURES; NOTICE OF INVESTIGATION STATUS. (a) The agency shall provide to the person filing the complaint about a matter within the commission's regulatory jurisdiction and to each person who is the subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(b) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(c) The commission is not required to provide the information described in Subsection (a) or (b) to a complainant who files an anonymous complaint or provides inaccurate contact information.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 5.1771. COORDINATION OF COMPLAINT INVESTIGATIONS WITH LOCAL ENFORCEMENT OFFICIALS: TRAINING. (a) The commission shall share information regarding a complaint about a matter within the commission's regulatory jurisdiction made to the commission with local officials with authority to act on the complaint in the county or municipality in which the alleged action or omission that is the subject of the complaint occurred or is threatening to occur.

(b) On request, the commission shall provide training for local enforcement officials in investigating complaints and enforcing environmental laws relating to matters under the commission's jurisdiction under this code or the Health and Safety Code. The training must include, at a minimum:

(1) procedures for local enforcement officials to use in addressing citizen complaints if the commission is unavailable or unable to respond to the complaint; and

(2) an explanation of local government authority to enforce state laws and commission rules relating to the environment.

(c) The commission may charge a reasonable fee for providing training to local enforcement officials as required by Subsection (b) in an amount sufficient to recover the costs of the training.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.1772. AFTER-HOURS RESPONSE TO COMPLAINTS. (a) The commission shall adopt and implement a policy to provide timely

response to complaints during periods outside regular business hours.

(b) This section does not:

(1) require availability of field inspectors for response 24 hours a day, seven days a week, in all parts of the state; or

(2) authorize additional use of overtime.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.1773. COMPLAINT ASSESSMENT. (a) The commission annually shall conduct a comprehensive analysis of the complaints it receives, including analysis by the following categories:

(1) air;

(2) water;

(3) waste;

(4) priority classification;

(5) region;

(6) commission response;

(7) enforcement action taken; and

(8) trends by complaint type.

(b) In addition to the analysis required by Subsection (a), the commission shall assess the impact of changes made in the commission's complaint policy.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.178. BIENNIAL REPORTS. (a) On or before December 1 of each even-numbered year, the commission shall file with the governor and the members of the legislature a written report that includes a statement of the activities of the commission during the preceding fiscal biennium.

(b) The report due by December 1 of an even-numbered year shall include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Section 361.0219(c), Health and Safety Code;

(B) the reports required by Section 26.0135(d) and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985; and

(C) a summary of the analyses and assessments required by Section 5.1773.

(c) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(b).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(164), eff. June 17, 2011.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1082, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 1.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.02, 7.03, 7.04(b), eff. Jan. 11, 2004.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(164), eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 21.001, eff. September 1, 2013.

Sec. 5.1781. APPLICATION REQUIREMENT FOR COLONIAS PROJECTS. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

(d) Regarding any projects funded by the commission that provide assistance to colonias, the commission shall require an applicant for the funds to submit to the commission a colonia classification number, if one exists, for each colonia that may be served by the project proposed in the application. If a colonia does not have a classification number, the commission may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the commission, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

Added by Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 12, eff. June 15, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.13, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.14, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

Sec. 5.179. SEAL. The commission shall have a seal bearing the words Texas Natural Resource Conservation Commission encircling the oak and olive branches common to other official seals.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.017, eff. Aug. 12, 1991.

SUBCHAPTER F. EXECUTIVE DIRECTOR

Sec. 5.221. GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR. The executive director shall manage the administrative affairs of the commission subject to this code and other laws and under the general supervision and direction of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.222. DELEGATION OF EXECUTIVE DIRECTOR'S AUTHORITY OR DUTY. The executive director may delegate to the executive director's staff any authority or duty assigned to the executive director unless the statute, rule, or order assigning or delegating the authority or duty specifies otherwise.

Added by Acts 1997, 75th Leg., ch. 302, Sec. 2, eff. Sept. 1, 1997. Renumbered from Sec. 5.238 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(109), eff. Sept. 1, 1999.

Sec. 5.223. ADMINISTRATIVE ORGANIZATION OF COMMISSION. Subject to approval of the commission, the executive director may organize and reorganize the administrative sections and divisions of the commission in a manner and in a form that will achieve the greatest efficiency and effectiveness.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.224. INFORMATION REQUEST TO BOARD. (a) With regard to any matter pending before the commission, the executive director may obtain from the board information relating to that matter.

(b) On receiving a request from the executive director, the board should make the requested information available within 30 days after the information is requested and shall make the requested information available not later than 90 days after the information is requested.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.225. CAREER LADDER PROGRAM. The executive director or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.226. MERIT PAY. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this section.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.227. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or his designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) a comprehensive analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.18, eff. Sept. 1, 2001.

Sec. 5.228. APPEARANCES AT HEARINGS. (a) The position of and information developed by the commission shall be presented by the executive director or his designated representative at hearings of the commission and the hearings held by federal,

state, and local agencies on matters affecting the public's interest in the state's environment and natural resources, including matters that have been determined to be policies of the state.

(b) The executive director shall be named a party in hearings before the commission in a matter in which the executive director bears the burden of proof.

(c) The executive director shall participate as a party in contested case permit hearings before the commission or the State Office of Administrative Hearings to:

(1) provide information to complete the administrative record; and

(2) support the executive director's position developed in the underlying proceeding, unless the executive director has revised or reversed that position.

(d) In a contested case hearing relating to a permit application, the executive director or the executive director's designated representative may not rehabilitate the testimony of a witness unless the witness is a commission employee.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1021, Sec. 10.04, eff. September 1, 2011.

(f) The fact that the executive director is not named as a party in a hearing before the commission is not grounds for appealing a commission decision.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.018, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.20, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.02, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.04, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 3, eff. September 1, 2015.

Sec. 5.229. CONTRACTS. (a) The executive director, on behalf of the commission, may negotiate with and with the consent of the commission enter into contracts with the United

States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the commission.

(b) The executive director, on behalf of the commission, may negotiate with and with the consent of the commission enter into contracts or other agreements with states and political subdivisions of this state or any other entity for the purpose of carrying out the powers, duties, and responsibilities of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.2291. SCIENTIFIC AND TECHNICAL SERVICES. (a) In this section, "scientific and technical environmental services" means services, other than engineering services, of a scientific or technical nature the conduct of which requires technical training and professional judgment. The term includes modeling, risk assessment, site characterization and assessment, studies of the magnitude, source, and extent of contamination, contaminant fate and transport analysis, watershed assessment and analysis, total maximum daily load studies, scientific data analysis, and similar tasks, to the extent those tasks are not defined as the "practice of engineering" under Chapter 1001, Occupations Code.

(b) Except as provided by Section 5.2292, the procurement of a contract for scientific and technical environmental services shall be conducted under the procedures for professional services selection provided in Subchapter A, Chapter 2254, Government Code.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.21, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.842, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.05, eff. September 1, 2011.

Sec. 5.2292. CONTRACTS FOR SERVICES UNDER PETROLEUM STORAGE TANK STATE-LEAD PROGRAM. (a) The executive director may

directly award a contract for scientific and technical environmental services to a person if:

(1) the contract is for the performance of services related to the remediation of a site that has been placed in the state-lead program under Section 26.3573(r-1);

(2) the person has registered to perform corrective action under Section 26.364;

(3) the person is eligible to receive a contract award from the state;

(4) the person was performing related work at the site on or before July 1, 2011; and

(5) the contract includes all contract provisions required for state contracts.

(b) Notwithstanding Section 2254.004, Government Code, the executive director may directly award a contract for engineering services to a person if:

(1) the contract is for the performance of services related to the remediation of a site that has been placed in the state-lead program under Section 26.3573(r-1);

(2) the person is licensed under Chapter 1001, Occupations Code;

(3) the person has registered to perform corrective action under Section 26.364;

(4) the person is eligible to receive a contract award from the state;

(5) the person was performing related work at the site on or before July 1, 2011; and

(6) the contract includes all contract provisions required for state contracts.

(c) Nothing in Subsection (a) or (b) requires the executive director to make an award at a site or prevents the executive director from negotiating additional contract terms, including qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.06, eff. September 1, 2011.

Sec. 5.230. ENFORCEMENT. On approval of the commission, the executive director may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, or rule by injunction or other appropriate remedy in a court of competent jurisdiction.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.231. TRAVEL EXPENSES. The executive director is entitled to receive actual and necessary travel expenses. Other employees of the commission are entitled to receive travel expenses as provided in the General Appropriations Act.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.232. EMPLOYEE MOVING EXPENSES. If provided by legislative appropriation, the commission may pay the costs of transporting and delivering the household goods and effects of employees transferred by the executive director from one permanent station to another when, in the judgment of the executive director, the transfer will serve the best interest of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.233. GIFTS AND GRANTS. The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code and other law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.019, eff. Aug. 12, 1991.

Sec. 5.234. APPLICATIONS AND OTHER DOCUMENTS. (a) An application, petition, or other document requiring action of the commission shall be presented to the executive director and

handled as provided by this code or other law and in the rules adopted by the commission.

(b) After an application, petition, or other document is processed, it shall be presented to the commission for action as required by law and rules of the commission. If, in the course of reviewing an application and preparing a draft permit, the executive director has required changes to be made to the applicant's proposal, the executive director shall prepare a summary of the changes that were made to increase protection of public health and the environment.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.020, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.22, eff. Sept. 1, 2001.

Sec. 5.236. GROUNDWATER CONTAMINATION REPORTS. (a) If the executive director acquires information that confirms that a potential public health hazard exists because usable groundwater has been or is being contaminated, the executive director, not later than the 30th day after the date on which the executive director acquires the information confirming contamination, shall give written notice of the contamination to the following persons:

(1) the county judge and the county health officer, if any, in each county in which the contamination has occurred or is occurring;

(2) any person under the commission's jurisdiction who is suspected of contributing to the contamination;

(3) any other state agency with jurisdiction over any person who is suspected of contributing to the contamination; and

(4) a groundwater conservation district, if the contamination has occurred or is occurring in the jurisdiction of the district.

(b) The executive director shall give the notice in the manner and form, and include the information, required by rule of the commission.

Added by Acts 1987, 70th Leg., ch. 393, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 607 (S.B. 430), Sec. 1, eff. September 1, 2011.

Sec. 5.237. OPERATING FUND. (a) The Texas Natural Resource Conservation Commission Operating Fund is established in the treasury. At the request of the commission, the comptroller is authorized to transfer to an account in the operating fund any appropriations made to the commission for the purpose of making expenditures. After expenditures have been made from the operating fund and proper line-item appropriations identified, the commission shall submit periodic adjustments to the comptroller in summary amounts to record accurate cost allocations to the appropriate funds and accounts. Periodic adjustments under this section shall be made at least quarterly.

(b) The commission will establish and maintain accounting records adequate to support the periodic reconciliation of operating fund transfers and document expenditures from each fund or account. All expenditures shall be made consistent with provisions of law relating to the authorized use of each fund or account from which appropriations are made to the commission.

Added by Acts 1993, 73rd Leg., ch. 746, Sec. 2, eff. Aug. 30, 1993.

Sec. 5.238. ADMINISTRATIVE ACCOUNT. The commission administrative account is an account in the general revenue fund. The account consists of reimbursements to the commission for services provided by the commission and other sources specified by law and authorized by legislative appropriation.

Added by Acts 1997, 75th Leg., ch. 333, Sec. 2, eff. Sept. 1, 1997.

Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The executive director shall ensure that the agency is responsive to environmental and citizens' concerns, including environmental quality and consumer protection.

(b) The executive director shall develop and implement a program to:

(1) provide a centralized point for the public to access information about the commission and to learn about matters regulated by the commission;

(2) identify and assess the concerns of the public in regard to matters regulated by the commission; and

(3) respond to the concerns identified by the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.01, eff. September 1, 2011.

SUBCHAPTER G. OFFICE OF PUBLIC INTEREST COUNSEL

Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest counsel is created to ensure that the commission promotes the public's interest. The primary duty of the office is to represent the public interest as a party to matters before the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.02, eff. September 1, 2011.

Sec. 5.272. PUBLIC INTEREST COUNSEL. The office shall be headed by a public interest counsel appointed by the commission. The executive director may submit the names and qualifications of candidates for public interest counsel to the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.

Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The office of public interest counsel shall report to the commission each year in a public meeting held on a date

determined by the commission to be timely for the commission to include the reported information in the commission's reports under Sections 5.178(a) and (b) and in the commission's biennial legislative appropriations requests as appropriate:

(1) an evaluation of the office's performance in representing the public interest in the preceding year;

(2) an assessment of the budget needs of the office, including the need to contract for outside expertise; and

(3) any legislative or regulatory changes recommended under Section 5.273.

(b) The commission and the office of public interest counsel shall work cooperatively to identify performance measures for the office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.03, eff. September 1, 2011.

Sec. 5.273. DUTIES OF THE PUBLIC INTEREST COUNSEL. (a) The counsel shall represent the public interest and be a party to all proceedings before the commission.

(b) The counsel may recommend needed legislative and regulatory changes.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 965, Sec. 1.23, eff. Sept. 1, 2001.

Sec. 5.274. STAFF; OUTSIDE TECHNICAL SUPPORT. (a) The office shall be adequately staffed to carry out its functions under this code.

(b) The counsel may obtain and use outside technical support to carry out its functions under this code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 965, Sec. 1.23, eff. Sept. 1, 2001.

Sec. 5.275. APPEAL. A ruling, decision, or other act of the commission may not be appealed by the counsel.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.

Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION. (a) The commission by rule, after consideration of recommendations from the office of public interest counsel, shall establish factors the public interest counsel must consider before the public interest counsel decides to represent the public interest as a party to a commission proceeding.

(b) Rules adopted under this section must include:

(1) factors to determine the nature and extent of the public interest; and

(2) factors to consider in prioritizing the workload of the office of public interest counsel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.04, eff. September 1, 2011.

SUBCHAPTER H. DELEGATION OF HEARINGS

Sec. 5.311. DELEGATION OF RESPONSIBILITY. (a) The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility to hear any matter before the commission.

(b) Except as provided in Subsection (a), the administrative law judge shall report to the commission on the hearing in the manner provided by law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985. Renumbered from Water Code Sec. 5.313 and amended by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.01, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.02, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 2, eff. September 1, 2013.

Sec. 5.312. TIME LIMIT FOR ISSUANCE OR DENIAL OF PERMITS. (a) Except as provided in Subsection (b), all permit decisions shall be made within 180 days of the receipt of the permit application or application amendment or the determination of administrative completeness, whichever is later.

(b) This section does not apply to permits issued under federally delegated or approved programs unless allowed under that program.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.022, eff. Aug. 12, 1991. Renumbered from Water Code Sec. 5.314 by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995.

Sec. 5.313. HEARING EXAMINERS REFERENCED IN LAW. Any reference in law to a hearing examiner who has a duty related to a case pending before the commission means an administrative law judge of the State Office of Administrative Hearings.

Amended by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995.

Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN TESTIMONY. In a contested case hearing delegated by the commission to the State Office of Administrative Hearings that uses prefiled written testimony, all discovery must be completed before the deadline for the submission of that testimony.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.03, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 1, eff. September 1, 2015.

SUBCHAPTER I. JUDICIAL REVIEW

Sec. 5.351. JUDICIAL REVIEW OF COMMISSION ACTS. (a) A person affected by a ruling, order, decision, or other act of the commission may file a petition to review, set aside, modify, or suspend the act of the commission.

(b) A person affected by a ruling, order, or decision of the commission must file a petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file a petition within 30 days after the date the commission performed the act.

(c) Notwithstanding Subsection (b) or another provision of law to the contrary, a person affected by a ruling, order, or decision on a matter delegated to the executive director under Section 5.122 or other law may, after exhausting any administrative remedies, file a petition to review, set aside, modify, or suspend the ruling, order, or decision not later than the 30th day after:

(1) the effective date of the ruling, order, or decision; or

(2) if the executive director's ruling, order, or decision is appealed to the commission as authorized by Section 5.122(b) or other law, the earlier of:

(A) the date the commission denies the appeal; or

(B) the date the appeal is overruled by operation of law in accordance with commission rules.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1065 (H.B. 3177), Sec. 2, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 174 (S.B. 211), Sec. 4, eff. September 1, 2021.

Sec. 5.352. REMEDY FOR COMMISSION OR EXECUTIVE DIRECTOR INACTION. A person affected by the failure of the commission or the executive director to act in a reasonable time on an application to appropriate water or to perform any other duty with reasonable promptness may file a petition to compel the commission or the executive director to show cause why it should not be directed by the court to take immediate action.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.353. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 5.351 or 5.352 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.354. VENUE. A suit instituted under Section 5.351 or 5.352 of this code must be brought in a district court in Travis County.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.355. APPEAL OF DISTRICT COURT JUDGMENT. A judgment or order of a district court in a suit brought for or against the commission is appealable as are other civil cases in which the district court has original jurisdiction.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.356. APPEAL BY EXECUTIVE DIRECTOR PRECLUDED. A ruling, order, decision, or other act of the commission may not be appealed by the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.357. LAW SUITS; CITATION. Law suits filed by and against the commission or executive director shall be in the name of the commission. In suits against the commission or executive director, citation may be served on the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER J. CONSOLIDATED PERMIT PROCESSING

Sec. 5.401. CONSOLIDATED PERMIT PROCESSING. (a) If a plant, facility, or site is required to have more than one permit issued by the commission and the applications for all permits required by the commission are filed within a 30-day period, the commission, on request of the applicant, shall conduct coordinated application reviews and one consolidated permit hearing on all permits requested to be consolidated by the applicant and may issue one consolidated permit. On request of the applicant, the commission shall issue one consolidated permit.

(b) The executive director shall designate one permit program as the lead program for coordination, and that program is the point of contact regarding the consolidated permit.

(c) The executive director may require separate processing of consolidated applications or may return to the applicant parts of an application if the executive director determines that the applicant has submitted an incomplete application or if the applicant does not respond as requested to notices of deficiency.

(d) A federal operating permit governed by the requirements of Sections 382.054-382.0543, Health and Safety Code, may not be consolidated with other permits under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.402. REQUEST FOR SEPARATE PROCESSING. (a) At any time before the public notice of the opportunity to request a hearing on a permit application, the applicant may request that consolidated applications be processed separately as determined by the executive director. The executive director shall process

the applications separately if the applicant submits a timely request under this subsection.

(b) At any time after the notice of opportunity to request a hearing but before referral of the matter to the State Office of Administrative Hearings, the executive director may separate the applications for processing on a showing of good cause by the applicant that the applications should be processed separately. For purposes of this subsection, "good cause" includes a change in the statutory or regulatory requirements governing a permit or a substantial change in the factual circumstances surrounding the applications for permits.

(c) After an application has been referred to the State Office of Administrative Hearings, the applicant may have the applications processed separately only on a showing of compliance with commission procedural rules regarding the withdrawal of applications.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.403. RENEWAL PERIOD FOR CONSOLIDATED PERMIT. The renewal period for a consolidated permit issued under this subchapter is the shortest term set by any state or federal statute or rule governing one or more of the authorizations sought in the consolidated permit.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.404. RENEWAL OF PERMITS. A permit issued under this subchapter or a permit issued before and effective on September 1, 1997, that authorizes more than one permit program may be renewed, amended, or modified as a consolidated permit or may be separated by program and the permits may be processed separately and subject to the renewal, amendment, or modification requirements of applicable law governing operations at the facility, plant, or site.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.405. FEES. (a) Except as provided by Subsection (b), the fee for a consolidated permit shall be computed as if the permits consolidated had been processed separately.

(b) The commission by rule may reduce the fee for a consolidated permit below the total amount that the applicant would have paid for processing the applications separately if the commission finds that consolidated processing results in savings to the agency.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.406. RULES. The commission may adopt rules to effectuate the purposes of this subchapter, including rules providing for:

(1) combined public notices of permits issued under the authority of this section; or

(2) procedures for the processing and issuing of consolidated permits.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER L. EMERGENCY AND TEMPORARY ORDERS

Sec. 5.501. EMERGENCY AND TEMPORARY ORDER OR PERMIT; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITION. (a) For the purposes and in the manner provided by this subchapter, the commission:

(1) may issue a temporary or emergency mandatory, permissive, or prohibitory order; and

(2) by temporary or emergency order may:

(A) issue a temporary permit; or

(B) temporarily suspend or amend a permit condition.

(b) The commission may issue an emergency order under this subchapter after providing the notice and opportunity for hearing that the commission considers practicable under the

circumstances or without notice or hearing. Except as provided by Section 5.506, notice must be given not later than the 10th day before the date set for a hearing if the commission requires notice and hearing before issuing the order. The commission shall give notice not later than the 20th day before the date set for a hearing on a temporary order.

(c) The commission by order or rule may delegate to the executive director the authority to:

(1) receive applications and issue emergency orders under this subchapter and Section 13.041(h); and

(2) authorize, in writing, a representative or representatives to act on the executive director's behalf under this subchapter and Section 13.041(h).

(d) Chapter 2001, Government Code, does not apply to the issuance of an emergency order under this subchapter without a hearing.

(e) A law under which the commission acts that requires notice of hearing or that sets procedures for the issuance of permits does not apply to a hearing on an emergency order issued under this subchapter unless the law specifically requires notice for an emergency order. The commission shall give the general notice of the hearing that the commission considers practicable under the circumstances.

(f) An emergency or temporary order issued under this subchapter does not vest in the permit holder or recipient any rights and expires in accordance with its terms.

(g) The commission may prescribe rules and adopt fees necessary to carry out and administer this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 967 (S.B. 700), Sec. 12, eff. September 1, 2019.

Sec. 5.502. APPLICATION FOR EMERGENCY OR TEMPORARY ORDER. A person other than the executive director or the executive director's representative who desires an emergency or temporary

order under this subchapter must submit a sworn written application to the commission. The application must:

(1) describe the condition of emergency or other condition justifying the issuance of the order;

(2) allege facts to support the findings required under this subchapter;

(3) estimate the dates on which the proposed order should begin and end;

(4) describe the action sought and the activity proposed to be allowed, mandated, or prohibited; and

(5) include any other statement or information required by this subchapter or by the commission.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.503. NOTICE OF ISSUANCE. Notice of the issuance of an emergency order shall be provided in accordance with commission rules.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.504. HEARING TO AFFIRM, MODIFY, OR SET ASIDE ORDER. (a) If the commission, the executive director, or the executive director's representative issues an emergency order under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the emergency order to be held before the commission or its designee as soon as practicable after the order is issued.

(b) At or following the hearing required under Subsection (a), the commission shall affirm, modify, or set aside the emergency order.

(c) A hearing to affirm, modify, or set aside an emergency order shall be conducted in accordance with Chapter 2001, Government Code, and commission rules. Commission rules concerning a hearing to affirm, modify, or set aside an emergency order must provide for presentation of evidence by the

applicant under oath, presentation of rebuttal evidence, and cross-examination of witnesses.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.505. TERM OF ORDER. An emergency or temporary order issued under this subchapter must be limited to a reasonable time specified by the order. Except as otherwise provided by this subchapter, the term of an emergency order may not exceed 180 days. An emergency order may be renewed once for a period not to exceed 180 days.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES. (a) The commission by emergency or temporary order may suspend a permit condition relating to beneficial inflows to affected bays and estuaries and instream uses if the commission finds that an emergency exists that cannot practicably be resolved in another way.

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) The commission must give written notice of the proposed action to the Parks and Wildlife Department before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1). The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action for a period of 72 hours from receipt of the notice and must consider

those comments before issuing an order implementing the proposed action.

(c) The commission may suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice except as required by Subsection (b).

(d) The commission shall notify all affected persons immediately by publication.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.01, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.02, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.01, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.02, eff. September 1, 2007.

Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. The commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 13.4132. Notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.03, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 3, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 2, eff. September 1, 2015.

Sec. 5.509. TEMPORARY OR EMERGENCY ORDER RELATING TO DISCHARGE OF WASTE OR POLLUTANTS. (a) The commission may issue an emergency or temporary order relating to the discharge of waste or pollutants into or adjacent to water in the state if:

(1) the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Chapter 18 or 26, as applicable, to effectuate the policy and purposes of that chapter; and

(2) the commission finds that:

(A) the discharge is unavoidable to:

(i) prevent loss of life, serious injury, or severe property damage;

(ii) prevent severe economic loss or ameliorate serious drought conditions, to the extent consistent with the requirements for United States Environmental Protection Agency authorization of a state permit program; or

(iii) make necessary and unforeseen repairs to a facility;

(B) there is no feasible alternative to the proposed discharge;

(C) the discharge will not cause significant hazard to human life and health, unreasonable damage to the property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant; and

(D) the discharge will not present a significant hazard to the uses that will be made of the receiving water after the discharge.

(b) A person desiring a temporary or emergency order under this section must submit an application under Section 5.502 that, in addition to complying with that section:

(1) states the volume and quality of the proposed discharge;

(2) explains the measures proposed to minimize the volume and duration of the discharge; and

(3) explains the measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 2, eff. June 17, 2015.

Sec. 5.510. EMERGENCY ORDER CONCERNING UNDERGROUND OR ABOVEGROUND STORAGE TANKS. (a) The commission may issue an emergency order to the owner or operator of an underground or aboveground storage tank regulated under Chapter 26 prohibiting the owner or operator from allowing or continuing a release or threatened release and requiring the owner or operator to take the actions necessary to eliminate the release or threatened release, if the commission finds that:

(1) there is an actual or threatened release of a regulated substance; and

(2) more expeditious action than is otherwise provided under Chapter 26 is necessary to protect the public health or safety or the environment from harm.

(b) An emergency order issued under this section must be:

(1) mailed by certified mail, return receipt requested, to each person identified in the order;

(2) hand delivered to each person identified in the order; or

(3) on failure of service by certified mail or hand delivery, served by publication one time in the Texas Register and one time in a newspaper with general circulation in each county in which any of the persons identified in the order has a last known address.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.511. EMERGENCY ADMINISTRATIVE ORDER CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT. The commission or the executive director may issue an emergency administrative order under Section 361.272, Health and Safety Code, in the manner provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.512. EMERGENCY ORDER CONCERNING ACTIVITY OF SOLID WASTE MANAGEMENT. The commission may issue an emergency order concerning an activity of solid waste management under the commission's jurisdiction, even if that activity is not covered by a permit, if the commission finds that an emergency requiring immediate action to protect the public health and safety exists.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.513. EMERGENCY ORDER CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The commission may issue an emergency order suspending the registration of the installer of an on-site sewage disposal system, regulating an on-site sewage disposal system, or both, if the commission finds that an emergency exists and that the public health and safety is endangered because of the operation of an on-site sewage disposal system that does not comply with Chapter 366, Health and Safety Code, or a rule adopted under that chapter.

(b) If an order issued under this section is adopted without notice or hearing, the order must set a time, not more than 30 days after the order is issued, for a hearing to affirm, modify, or set aside the order.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.514. ORDER ISSUED UNDER AIR EMERGENCY. (a) If the commission finds that a generalized condition of air pollution exists that creates an emergency requiring immediate action to protect human health or safety, the commission, with the concurrence of the governor, may issue an emergency order requiring a person causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants.

(b) If the commission finds that emissions from one or more sources are causing imminent danger to human health or safety but that there is not a generalized condition of air

pollution under Subsection (a), the commission may issue an emergency order requiring the persons responsible for the emissions to immediately reduce or discontinue the emissions.

(c) Notwithstanding Section 5.504, the commission shall affirm, modify, or set aside an order issued under this section not later than 24 hours after the hearing under that section begins and without adjournment of the hearing.

(d) This section does not limit any power that the governor or another officer may have to declare an emergency and to act on that declaration if the power is conferred by law or inheres in the office.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.5145. EMERGENCY ORDER CONCERNING OPERATION OF ROCK CRUSHER OR CONCRETE PLANT WITHOUT PERMIT. The commission may issue an emergency order under this subchapter suspending operations of a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under Section 382.0518, Health and Safety Code, and is operating without the necessary permit.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.08(a), eff. Sept. 1, 2001 and Acts 2001, 77th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1072 (S.B. 1003), Sec. 2, eff. June 17, 2011.

Sec. 5.5146. EMERGENCY ORDER CONCERNING OPERATION OF CERTAIN TREATMENT FACILITIES WITHOUT PERMIT. The commission may issue an emergency order under this subchapter suspending operations of a treatment facility that:

(1) handles waste and wastewater from humans or household operations;

(2) is required to obtain a permit from the commission; and

(3) is operating without the required permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 806 (H.B. 3264), Sec. 1, eff. June 17, 2015.

Sec. 5.515. EMERGENCY ORDER BECAUSE OF CATASTROPHE. (a) The commission may issue an emergency order authorizing immediate action for the addition, replacement, or repair of facilities or control equipment or the repair or replacement of roads, bridges, or other infrastructure improvements necessitated by a catastrophe occurring in this state and the emission of air contaminants during the addition, replacement, or repair of those facilities, that equipment, or those improvements if the actions and emissions are otherwise precluded under Chapter 382, Health and Safety Code.

(b) An order issued under this section:

(1) may authorize action only:

(A) on property on which a catastrophe has occurred;

(B) on other property that is owned by the owner or operator of the damaged facility and that produces the same intermediates, products, or by-products; or

(C) for a public works project needed to repair or replace a damaged road, bridge, or other infrastructure improvement destroyed during a catastrophe; and

(2) must contain a schedule for submitting a complete application for a permit under Section 382.0518, Health and Safety Code.

(c) The person applying for an emergency order must demonstrate that there will be no more than a de minimis increase in the predicted concentration of air contaminants at or beyond the property line of the other property on which action is authorized under Subsection (b)(1)(B). The commission shall review and act on an application submitted as provided by Subsection (b)(2) without regard to construction activity under an order under this section.

(d) An applicant desiring an emergency order under this section must submit an application under Section 5.502 that, in addition to complying with that section:

(1) describes the catastrophe;

(2) states that:

(A) the construction and emissions are essential to prevent loss of life, serious injury, severe property damage, loss of a critical transportation thoroughfare, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of a facility or control equipment or the repair or replacement of a road, bridge, or other infrastructure improvement necessitated by the catastrophe;

(B) there is no practicable alternative to the proposed construction and emissions; and

(C) the emissions will not cause or contribute to air pollution;

(3) estimates the dates on which the proposed construction or emissions, or both, will begin and end;

(4) estimates the date on which the facility, equipment, or infrastructure improvement will begin operation; and

(5) describes the quantity and type of air contaminants proposed to be emitted.

(e) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather, explosions, fire, or similar occurrences beyond the reasonable control of the applicant, that makes a facility or its related appurtenances or a road, bridge, or other infrastructure improvement inoperable.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 158 (H.B. 2949), Sec. 1, eff. September 1, 2005.

Sec. 5.516. EMERGENCY ORDER UNDER SECTION 401.056, HEALTH AND SAFETY CODE. The commission may issue an emergency order under Section 401.056, Health and Safety Code, in the manner provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER M. ENVIRONMENTAL PERMITTING PROCEDURES

Sec. 5.551. PERMITTING PROCEDURES; APPLICABILITY. (a) This subchapter establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing under Subchapters C-H, Chapter 2001, Government Code, regarding commission actions relating to a permit issued under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code. This subchapter is procedural and does not expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code.

(a-1) Notwithstanding Section 18.002, this subchapter does not apply to a permit issued under Section 18.005(c)(2) if the point of discharge is not located within three miles of any point located on the coast of this state.

(b) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for hearing to the extent necessary to satisfy a requirement for United States Environmental Protection Agency authorization of a state permit program.

(c) In this subchapter, "permit" means a permit, approval, registration, or other form of authorization required by law for a person to engage in an action.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 3, eff. June 17, 2015.

Sec. 5.552. NOTICE OF INTENT TO OBTAIN PERMIT. (a) The executive director shall determine when an application is administratively complete.

(b) Not later than the 30th day after the date the executive director determines the application to be administratively complete:

(1) the applicant shall publish notice of intent to obtain a permit at least once in the newspaper of largest circulation in the county in which the facility to which the application relates is located or proposed to be located or, if the facility to which the application relates is located or proposed to be located in a municipality, at least once in a newspaper of general circulation in the municipality; and

(2) the chief clerk of the commission shall mail notice of intent to obtain a permit to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located;

(B) the mayor and health authorities of the municipality in which the facility is located or proposed to be located;

(C) the county judge and health authorities of the county in which the facility is located or proposed to be located; and

(D) the river authority in which the facility is located or proposed to be located if the application is under Chapter 26, Water Code.

(c) The commission by rule shall establish the form and content of the notice. The notice must include:

(1) the location and nature of the proposed activity;

(2) the location at which a copy of the application is available for review and copying as provided by Subsection (e);

(3) a description, including a telephone number, of the manner in which a person may contact the commission for further information;

(4) a description, including a telephone number, of the manner in which a person may contact the applicant for further information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(6) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(7) the time and location of any public meeting to be held under Subsection (f); and

(8) any other information the commission by rule requires.

(d) In addition to providing notice under Subsection (b)(1), the applicant shall comply with any applicable public notice requirements under Chapters 26 and 27 of this code, Chapter 361, Health and Safety Code, and rules adopted under those chapters.

(e) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(f) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 679, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.553. PRELIMINARY DECISION; NOTICE AND PUBLIC COMMENT. (a) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(b) The applicant shall publish notice of the preliminary decision in a newspaper.

(c) The commission by rule shall establish the form and content of the notice, the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Sections 5.552(c)(1)-(5);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (e);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted; and

(5) any other information the commission by rule requires.

(d) In addition to providing notice under this section, the applicant shall comply with any applicable public notice requirements under Chapters 26 and 27 of this code, Chapter 361, Health and Safety Code, and rules adopted under those chapters.

(e) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.554. PUBLIC MEETING. During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.555. RESPONSE TO PUBLIC COMMENTS. (a) The executive director, in accordance with procedures provided by commission rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment period.

(b) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period; and

(3) any person who requested to be on the mailing list for the permit action.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.5553. NOTICE OF DRAFT PERMIT. (a) This section applies only to a permit application that is eligible to be referred for a contested case hearing under Section 5.556 or 5.557.

(b) Notwithstanding any other law, not later than the 30th day before the date the commission issues a draft permit in connection with a permit application, the executive director shall provide written notice to the state senator and state representative of the area in which the facility that is the subject of the permit is located.

Added by Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 4, eff. September 1, 2015.

Sec. 5.556. REQUEST FOR RECONSIDERATION OR CONTESTED CASE HEARING. (a) A person may request that the commission reconsider the executive director's decision or hold a contested case hearing. A request must be filed with the commission during the period provided by commission rule.

(b) The commission shall act on a request during the period provided by commission rule.

(c) The commission may not grant a request for a contested case hearing unless the commission determines that the request was filed by an affected person as defined by Section 5.115.

(d) The commission may not refer an issue to the State Office of Administrative Hearings for a hearing unless the commission determines that the issue:

(1) involves a disputed question of fact;

(2) was raised during the public comment period; and

(3) is relevant and material to the decision on the application.

(e) If the commission grants a request for a contested case hearing it shall:

(1) limit the number and scope of the issues to be referred to the State Office of Administrative Hearings for a hearing; and

(2) consistent with the nature and number of the issues to be considered at the hearing, specify the maximum expected duration of the hearing.

(f) This section does not preclude the commission from holding a hearing if it determines that the public interest warrants doing so.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.557. DIRECT REFERRAL TO CONTESTED CASE HEARING. (a) Immediately after the executive director issues a preliminary decision on an application under Section 5.553, the commission, on the request of the applicant or the executive director, shall refer the application directly to the State

Office of Administrative Hearings for a contested case hearing on whether the application complies with all applicable statutory and regulatory requirements.

(b) Sections 5.554, 5.555, and 5.556 of this code and Sections 2003.047(e) and (f), Government Code, do not apply to an application referred for a hearing under Subsection (a).

(c) Notwithstanding Subsection (b), the commission by rule shall provide for public comment and the executive director's response to public comment to be entered into the administrative record of decision on an application.

Added by Acts 2001, 77th Leg., ch. 935, Sec. 3, eff. June 14, 2001.

Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile as defined by Section 382.0565, Health and Safety Code.

(b) When acting under a rule adopted under Subsection (a), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(c) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 382, Health and Safety Code, or Subchapters C-G, Chapter 2001, Government Code.

(d) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 7, eff. June 18, 2005.

SUBCHAPTER N. ESTUARY MANAGEMENT PLANS

Sec. 5.601. DEFINITIONS. In this subchapter:

(1) "Approved implementation program" means an implementation plan identified as part of an approved comprehensive conservation and management plan.

(2) "Approved comprehensive conservation and management plan" means an estuary management plan that is prepared through the efforts of citizens, organizations, industries, local governments, and state and national agencies working together as part of the National Estuary Program to develop long-term comprehensive conservation and management plans (CCMPs) and that has been approved by the governor of Texas and the administrator of the United States Environmental Protection Agency to protect the environment and the economies of the state and of the regions with estuaries. The term includes the plans for Galveston Bay and the Coastal Bend estuaries.

(3) "Implementing agency" means the entity identified for day-to-day administration of an estuary program. An implementing agency may be a state agency or other local or regional entity, as identified in an approved estuary management plan.

(4) "National Estuary Program" means the cooperative estuary management program authorized by and developed under Section 320 of the Federal Water Pollution Control Act (33 U.S.C. Section 1330), as amended.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.551 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.602. RECOGNITION OF NATIONAL SIGNIFICANCE OF ESTUARIES OF TEXAS COAST. The state recognizes the state and national significance of estuaries on the Texas coast and that the cooperative efforts created by the National Estuary Program serve a public and state purpose. By virtue of that state

purpose, an approved implementation program established under the National Estuary Program is eligible to receive state funds through a grant program administered by the commission.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.552 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.603. FINDING OF BENEFIT AND PUBLIC PURPOSE. The state recognizes the importance of implementing estuary management plans by protecting and improving water quality and restoring estuarine habitat that makes the bays and estuaries productive, protecting the economies of those areas, and continuing the involvement of the public and the many interests who use and appreciate the estuarine resources of Texas. State and local government participation in estuary programs to protect natural resources serves a public use and benefit. The state and the implementing agencies recognize the prerogatives of local governments and the sanctity of private property rights. No action by an estuary program is intended to usurp the authority of any local government. A local government's participation in or withdrawal from an estuary program is at the sole discretion of the local government and is subject only to the local government's obligation to complete any financial commitment it has made.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.553 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.604. LEAD STATE AGENCY. The commission is the lead state agency for the implementation of approved comprehensive conservation and management plans developed under the National Estuary Program. The commission may accept federal grants for purposes of this subchapter and may award grants and enter into contracts with an implementing agency for the implementation of approved plans under this subchapter.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.554 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.605. STATE AGENCY PARTICIPATION. (a) The following state agencies shall participate and provide assistance to the estuary programs in implementing approved comprehensive conservation and management plans:

(1) the General Land Office;

(2) the Parks and Wildlife Department;

(3) the Texas Department of Transportation;

(4) the Railroad Commission of Texas;

(5) the State Soil and Water Conservation Board;

(6) the Texas Water Development Board; and

(7) the Texas Department of Health.

(b) Other state agencies may participate as necessary or convenient.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.555 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.606. ESTUARY PROGRAM OFFICES. To accomplish the purposes of this subchapter, the estuary program office of any estuary of the state included in the National Estuary Program and for which the commission is the implementing agency shall be maintained in the region of the estuary involved.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.556 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.607. IMPLEMENTATION FUNDING. Funding for the implementation of approved comprehensive conservation and management plans is to be shared by the state, local governments in the area of the estuaries, the federal government, and other participants.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.557 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.608. ELIGIBILITY FOR STATE FUNDING. A comprehensive conservation and management plan is eligible for state funding to assist in implementation of the plan if:

(1) the estuary involved has been designated jointly by the governor and the United States Environmental Protection Agency as an estuary of national significance in accordance with Section 320 of the Federal Water Pollution Control Act (33 U.S.C. Section 1330), as amended; and

(2) the comprehensive conservation and management plan for the estuary involved, together with the accompanying implementation plan, has been completed and approved.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.558 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.609. ADMINISTRATION. The commission, as the lead state agency for administering the state's share of funds, and any state agency designated as an implementing agency for an approved comprehensive conservation and management plan may accept and make grants and enter into contracts to accomplish the actions identified in the approved plan and to further the purposes of this subchapter.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.559 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

SUBCHAPTER P. FEES

Sec. 5.701. FEES. (a) The executive director shall charge and collect the fees prescribed by law. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees

unless provided otherwise. Except as otherwise provided, a fee assessed and collected under this section shall be deposited to the credit of the water resource management account.

(1) Notwithstanding other provisions, the commission by rule may establish due dates, schedules, and procedures for assessment, collection, and remittance of fees due the commission to ensure the cost-effective administration of revenue collection and cash management programs.

(2) Notwithstanding other provisions, the commission by rule shall establish uniform and consistent requirements for the assessment of penalties and interest for late payment of fees owed the state under the commission's jurisdiction. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Except as otherwise provided by law, the fee for filing an application or petition is $100 plus the cost of any required notice. The fee for a by-pass permit shall be set by the commission at a reasonable amount to recover costs, but not less than $100.

(c) The fee for filing a water permit application is $100 plus the cost of required notice.

(d) The fee for filing an application for fixing or adjusting rates is $100 plus the cost of required notice.

(e) A person who files with the commission a petition for the creation of a water district or addition of sewage and drainage powers or a resolution for a water district conversion must pay a one-time nonrefundable application fee. The commission by rule may establish the application fee in an amount sufficient to cover the costs of reviewing and processing the application, plus the cost of required notice. The commission may also use the application fee to cover other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Subsection (p). This fee is the only fee

that the commission may charge with regard to the processing of an application for creation of a water district, addition of sewage or drainage powers, or conversion under this code.

(f) A person who files a bond issue application with the commission must pay an application fee set by the commission. The commission by rule may set the application fee in an amount not to exceed the costs of reviewing and processing the application, plus the cost of required notice. If the bonds are approved by the commission, the seller shall pay to the commission a percentage of the bond proceeds not later than the seventh business day after receipt of the bond proceeds. The commission by rule may set the percentage of the proceeds in an amount not to exceed 0.25 percent of the principal amount of the bonds actually issued. Proceeds of the fees shall be used to supplement any other funds available for paying expenses of the commission in supervising the various bond and construction activities of the districts filing the applications.

(g) The fee for recording an instrument in the office of the commission is $1.25 per page.

(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(i) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level.

(j) The fee for other uses of water not specifically named in this section is $1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution. A fee is not required for a water right that is deposited into the Texas Water Trust.

(k) A fee charged under Subsections (h) through (j) of this section for one use of water under a permit from the commission may not exceed $50,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed $10,000.

(l) The fees prescribed by Subsections (h) through (j) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds $1,000, the applicant shall pay one-half of the fee when the application is filed and one-half within 180 days after notice is mailed to him that the permit is granted. If the applicant does not pay all of the amount owed before beginning to use water under the permit, the permit is annulled.

(m) If a permit is annulled, the matter reverts to the status of a pending, filed application and, on the payment of use fees as provided by Subsections (h) through (l) of this section together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

(n)(1) Each provider of potable water or sewer utility service shall collect a regulatory assessment from each retail customer as follows:

(A) A public utility as defined in Section 13.002 shall collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) A water supply or sewer service corporation as defined in Section 13.002 shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(C) A district as defined in Section 49.001 that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(2) The regulatory assessment may be listed on the customer's bill as a separate item and shall be collected in addition to other charges for utility services.

(3) The assessments collected under this subsection may be appropriated by a rider to the General Appropriations Act to an agency with duties related to water and sewer utility

regulation or representation of residential and small commercial consumers of water and sewer utility services solely to pay costs and expenses incurred by the agency in the regulation of districts, water supply or sewer service corporations, and public utilities under Chapter 13.

(4) The commission shall annually use a portion of the assessments to provide on-site technical assistance and training to public utilities, water supply or sewer service corporations, and districts. The commission shall contract with others to provide the services.

(5) The commission by rule may establish due dates, collection procedures, and penalties for late payment related to regulatory assessments under this subsection. The executive director shall collect all assessments from the utility service providers.

(6) Repealed by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(c), eff. December 1, 2017.

(7) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(o) A fee imposed under Subsection (j) of this section for the use of saline tidal water for industrial processes shall be $1 per acre-foot of water diverted for the industrial process, not to exceed a total fee of $5,000.

(p) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsection (b), to the extent those fees are paid by water districts, and Subsections (e), (f), and (n); or

(2) Section 54.037(c).

(q) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality,

reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsections (b) and (c), to the extent those fees are collected in connection with water use or water quality permits;

(2) Subsections (h)-(l);

(3) Section 11.138(g);

(4) Section 11.145;

(5) Section 26.0135(h);

(6) Sections 26.0291, 26.044, and 26.0461; or

(7) Sections 341.041, 366.058, 366.059, 371.024, 371.026, and 371.062, Health and Safety Code.

(r) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1021, Sec. 2.07, eff. September 1, 2011.

Amended by Acts 1985, 69th Leg., ch. 239, Sec. 38, eff. Sept. 1, 1985. Renumbered from Sec. 5.182 and amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 399, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 710, Sec. 10, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.021, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 564, Sec. 1.02, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 772, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1010, Sec. 4.42, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 4.03, eff. Sept. 1, 2001. Redesignated from Sec. 5.235 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 3.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 6(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.03, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.03, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.07, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 6.03, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 6, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 867 (H.B. 2771), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(c), eff. December 1, 2017.

Sec. 5.702. PAYMENT OF FEES REQUIRED WHEN DUE. (a) A fee due the commission under this code or the Health and Safety Code shall be paid on the date the fee is due, regardless of whether the fee is billed by the commission to the person required to pay the fee or is calculated and paid to the commission by the person required to pay the fee.

(b) A person required to pay a fee to the commission may not dispute the assessment of or amount of a fee before the fee has been paid in full.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.703. FEE ADJUSTMENTS. (a) The commission may not consider adjusting the amount of a fee due the commission under this code or the Health and Safety Code:

(1) before the fee has been paid in full; or

(2) if the request for adjustment is received after the first anniversary of the date on which the fee was paid in full.

(b) A person who pays an amount that exceeds the amount of the fee due because the commission incorrectly calculated the fee or the person made a duplicate payment may request a refund of the excess amount paid before the fourth anniversary of the date on which the excess amount was paid.

(c) A request for a refund or credit in an amount that exceeds $5,000 shall be forwarded for approval to the commission fee audit staff, together with an explanation of the grounds for the requested refund or credit. Approval of a refund or credit does not prevent the fee audit staff from conducting a subsequent audit of the person for whom the refund or credit was approved.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.704. NOTICE OF CHANGE IN PAYMENT PROCEDURE. The commission shall promptly notify each person required to pay a

commission fee under this code or the Health and Safety Code of any change in fee payment procedures.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.705. NOTICE OF VIOLATION. (a) The commission may issue a notice of violation to a person required to pay a commission fee under this code or the Health and Safety Code for knowingly violating reporting requirements or knowingly calculating the fee in an amount less than the amount actually due.

(b) The executive director may modify audit findings reported by a commission fee auditor only if the executive director provides a written explanation showing good cause for the modification.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.706. PENALTIES AND INTEREST ON DELINQUENT FEES. (a) Except as otherwise provided by law, the commission may collect, for a delinquent fee due the commission under this code or the Health and Safety Code:

(1) a penalty in an amount equal to five percent of the amount of the fee due, if the fee is not paid on or before the day on which the fee is due; and

(2) an additional penalty in an amount equal to five percent of the amount due, if the fee is not paid on or before the 30th day after the date on which the fee was due.

(b) Unless otherwise required by law interest accrues, beginning on the 61st day after the date on which the fee was due, on the total amount of fee and penalties that have not been paid on or before the 61st day after the date on which the fee was due. The yearly interest rate is the rate of interest established for delinquent taxes under Section 111.060, Tax Code.

(c) The executive director may modify a penalty or interest on a fee and penalties authorized by this section if the executive director provides a written explanation showing good cause for the modification.

(d) Penalties and interest collected by the commission under this section or under other law, unless that law otherwise provides, shall be deposited to the credit of the fund or account to which the fee is required to be deposited.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.707. TRANSFERABILITY OF APPROPRIATIONS AND FUNDS DERIVED FROM FEES. Notwithstanding any law that provides specific purposes for which a fund, account, or revenue source may be used and expended by the commission and that restricts the use of revenues and balances by the commission, the commission may transfer a percentage of appropriations from one appropriation item to another appropriation item consistent with the General Appropriations Act for any biennium authorizing the commission to transfer a percentage of appropriations from one appropriation item to another appropriation item. The use of funds in dedicated accounts under this section for purposes in addition to those provided by statutes restricting their use may not exceed seven percent or $20 million, whichever is less, of appropriations to the commission in the General Appropriations Act for any biennium. A transfer of $500,000 or more from one appropriation item to another appropriation item under this section must be approved by the commission at an open meeting subject to Chapter 551, Government Code.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.708. PERMIT FEE EXEMPTION FOR CERTAIN RESEARCH PROJECTS. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(2) "State agency" has the meaning assigned by Section 572.002, Government Code.

(b) If a permit issued by the commission is required for a research project by an institution of higher education or a state agency, payment of a fee is not required for the permit.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

SUBCHAPTER Q. PERFORMANCE-BASED REGULATION

Sec. 5.751. APPLICABILITY. This subchapter applies to programs under the jurisdiction of the commission under Chapters 26, 27, and 32 of this code and Chapters 361, 375, 382, and 401, Health and Safety Code. It does not apply to occupational licensing programs under the jurisdiction of the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.01, eff. September 1, 2011.

Sec. 5.752. DEFINITIONS. In this subchapter:

(1) "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement.

(2) "Innovative program" means:

(A) a program developed by the commission under this subchapter, Chapter 26 or 27 of this code, or Chapter 361, 382, or 401, Health and Safety Code, that provides incentives to a person in return for benefits to the environment that exceed benefits that would result from compliance with applicable legal requirements under the commission's jurisdiction;

(B) the flexible permit program administered by the commission under Chapter 382, Health and Safety Code;

(C) the regulatory flexibility program administered by the commission under Section 5.758; or

(D) a program established under Section 382.401, Health and Safety Code, to encourage the use of alternative technology for detecting leaks or emissions of air contaminants.

(3) "Permit" includes a license, certificate, registration, approval, permit by rule, standard permit, or other form of authorization issued by the commission under this code or the Health and Safety Code.

(4) "Region" means a region of the commission's field operations division or that division's successor.

(5) "Strategically directed regulatory structure" means a program that is designed to use innovative programs to provide maximum environmental benefit and to reward compliance performance.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 870 (H.B. 1526), Sec. 2, eff. June 15, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.02, eff. September 1, 2011.

Sec. 5.753. STANDARDS FOR EVALUATING AND USING COMPLIANCE HISTORY. (a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop standards for evaluating and using compliance history that ensure consistency. In developing the standards, the commission may account for differences among regulated entities.

(b) The components of compliance history must include:

(1) enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under the jurisdiction of the commission;

(2) notwithstanding any other provision of this code, orders issued under Section 7.070;

(3) to the extent readily available to the commission, enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of

environmental rules of the United States Environmental Protection Agency; and

(4) changes in ownership.

(c) The set of components must also include any information required by other law or any requirement necessary to maintain federal program authorization.

(d) Except as provided by this subsection, notices of violation must be included as a component of compliance history for a period not to exceed one year from the date of issuance of each notice of violation. The listing of a notice of violation must be preceded by the following statement prominently displayed: "A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action nor proof that a violation has actually occurred." A notice of violation administratively determined to be without merit may not be included in a compliance history. A notice of violation that is included in a compliance history shall be removed from the compliance history if the commission subsequently determines the notice of violation to be without merit.

(d-1) For purposes of listing compliance history, the commission may not include as a notice of violation information received by the commission as required by Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) unless the commission issues a written notice of violation. Final enforcement orders or judgments resulting from self-reported Title V deviations or violations may be considered as compliance history components for purposes of determining compliance history.

(e) Except as required by other law or any requirement necessary to maintain federal program authorization, the commission by rule shall establish a period for compliance history.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.04, eff. September 1, 2011.

Sec. 5.754. CLASSIFICATION AND USE OF COMPLIANCE HISTORY. (a) The commission by rule shall establish a set of standards for the classification of a person's compliance history as a means of evaluating compliance history. The commission may consider the person's classification when using compliance history under Subsection (e).

(b) Rules adopted under Subsection (a):

(1) must, at a minimum, provide for three classifications of compliance history in a manner adequate to distinguish among:

(A) unsatisfactory performers, or regulated entities that in the commission's judgment perform below minimal acceptable performance standards established by the commission;

(B) satisfactory performers, or regulated entities that generally comply with environmental regulations; and

(C) high performers, or regulated entities that have an above-satisfactory compliance record;

(2) may establish a category of unclassified performers, or regulated entities for which the commission does not have adequate compliance information about the site; and

(3) must take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.).

(c) In classifying a person's compliance history, the commission shall:

(1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;

(2) establish criteria for classifying a repeat violator, giving consideration to the size and complexity of the site at which the violations occurred, and limiting

consideration to violations of the same nature and the same environmental media that occurred in the preceding five years; and

(3) consider:

(A) the significance of the violation and whether the person is a repeat violator;

(B) the size and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.); and

(C) the potential for a violation at the site that is attributable to the nature and complexity of the site.

(d) The commission by rule may require a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.

(e) The commission by rule shall provide for the use of compliance history in commission decisions regarding:

(1) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(2) enforcement;

(3) the use of announced inspections; and

(4) participation in innovative programs.

(e-1) The amount of the penalty enhancement or escalation attributed to compliance history may not exceed 100 percent of the base penalty for an individual violation as determined by the commission's penalty policy.

(f) The assessment methods shall specify the circumstances in which the commission may revoke the permit of a repeat violator and shall establish enhanced administrative penalties for repeat violators.

(g) Rules adopted under Subsection (e) for the use of compliance history shall provide for additional oversight of, and review of applications regarding, facilities owned or operated by a person whose compliance performance is classified as unsatisfactory according to commission standards.

(h) The commission by rule shall, at a minimum, prohibit a person whose compliance history is classified as unsatisfactory according to commission standards from obtaining or renewing a flexible permit under the program administered by the commission under Chapter 382, Health and Safety Code, or participating in the regulatory flexibility program administered by the commission under Section 5.758.

(i) The commission shall consider the compliance history of a regulated entity when determining whether to grant the regulated entity's application for a permit or permit amendment for any activity under the commission's jurisdiction to which this subchapter applies. Notwithstanding any provision of this code or the Health and Safety Code relating to the granting of permits or permit amendments by the commission, the commission, after an opportunity for a hearing, shall deny a regulated entity's application for a permit or permit amendment if the regulated entity's compliance history is unacceptable based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.05, eff. September 1, 2011.

Sec. 5.755. STRATEGICALLY DIRECTED REGULATORY STRUCTURE. (a) The commission by rule shall develop a strategically directed regulatory structure to provide incentives for enhanced environmental performance.

(b) The strategically directed regulatory structure shall offer incentives based on:

(1) a person's compliance history; and

(2) any voluntary measures undertaken by the person to improve environmental quality.

(c) An innovative program offered as part of the strategically directed regulatory structure must be consistent with other law and any requirement necessary to maintain federal program authorization.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.06, eff. September 1, 2011.

Sec. 5.756. COLLECTION AND ANALYSIS OF COMPLIANCE PERFORMANCE INFORMATION. (a) The commission shall collect data on:

(1) the results of inspections conducted by the commission; and

(2) whether inspections are announced or unannounced.

(b) The commission shall collect data on and make available to the public on the Internet:

(1) the number and percentage of all violations committed by persons who previously have committed the same or similar violations;

(2) the number and percentage of enforcement orders issued by the commission that are issued to entities that have been the subject of a previous enforcement order;

(3) whether a violation is of major, moderate, or minor significance, as defined by commission rule;

(4) whether a violation relates to an applicable legal requirement pertaining to air, water, or waste; and

(5) the region in which the facility is located.

(c) The commission annually shall prepare a comparative analysis of data evaluating the performance, over time, of the commission and of entities regulated by the commission.

(d) The commission shall include in the annual enforcement report required by Section 5.126 the comparative performance analysis required by Subsection (c), organized by region and regulated medium.

(e) Before compliance performance information about a site may be placed on the Internet under this subchapter, the information must be evaluated through a quality assurance and control procedure, including a 30-day period for the owner or operator of the site to review and comment on the information.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 22.001, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.07, eff. September 1, 2011.

Sec. 5.757. COORDINATION OF INNOVATIVE PROGRAMS. (a) The commission shall designate a single point of contact within the agency to coordinate all innovative programs.

(b) The coordinator shall:

(1) inventory, coordinate, and market and evaluate all innovative programs;

(2) provide information and technical assistance to persons participating in or interested in participating in those programs; and

(3) work with the pollution prevention advisory committee to assist the commission in integrating the innovative programs into the commission's operations, including:

(A) program administration;

(B) strategic planning; and

(C) staff training.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Sec. 5.758. REGULATORY FLEXIBILITY. (a) The commission by order may exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is:

(1) as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply; and

(2) not inconsistent with federal law.

(b) The commission may not exempt an applicant under this section unless the applicant can present to the commission evidence that the alternative the applicant proposes is as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply.

(c) The commission by rule shall specify the procedure for obtaining an exemption under this section. The rules must provide for public notice and for public participation in a proceeding involving an application for an exemption under this section.

(d) The commission's order must provide a description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.

(e) The commission by rule may establish a reasonable fee for applying for an exemption under this section.

(f) A violation of an order issued under this section is punishable as if it were a violation of the statute or rule from which the order grants an exemption.

(g) This section does not authorize exemptions to statutes or regulations for storing, handling, processing, or disposing of low-level radioactive materials.

(h) In implementing the program of regulatory flexibility authorized by this section, the commission shall:

(1) promote the program to businesses in the state through all available appropriate media;

(2) endorse alternative methods that will clearly benefit the environment and impose the least onerous restrictions on business;

(3) fix and enforce environmental standards, allowing businesses flexibility in meeting the standards in a manner that clearly enhances environmental outcomes; and

(4) work to achieve consistent and predictable results for the regulated community and shorter waits for permit issuance.

Added by Acts 1997, 75th Leg., ch. 1203, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 5.123 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 4.02, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.08, eff. September 1, 2011.

SUBCHAPTER R. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

Sec. 5.801. DEFINITION. In this subchapter, "environmental testing laboratory" means a scientific laboratory that performs analyses to determine the chemical, molecular, or pathogenic components of environmental media for regulatory compliance purposes.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.001 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.802. ADMINISTRATION BY COMMISSION. The commission shall adopt rules for the administration of the voluntary environmental testing laboratory accreditation program established by this chapter. The program must be consistent with national accreditation standards approved by the National Environmental Laboratory Accreditation Program.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.002 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.803. APPLICATION; FEE. (a) To be accredited under the accreditation program adopted under this subchapter, an

environmental testing laboratory must submit an application to the commission on a form prescribed by the commission, accompanied by the accreditation fee. The application must contain the information that the commission requires.

(b) The commission by rule shall establish a schedule of reasonable accreditation fees designed to recover the costs of the accreditation program, including the costs associated with:

(1) application review;

(2) initial, routine, and follow-up inspections by the commission; and

(3) preparation of reports.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.003 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.804. ISSUANCE OF ACCREDITATION; RECIPROCITY. (a) The commission may accredit an environmental testing laboratory that complies with the commission requirements established under this subchapter.

(b) The commission by rule may provide for the accreditation of an environmental testing laboratory that is accredited or licensed in another state by an authority that is approved by the National Environmental Laboratory Accreditation Program.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.004 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.805. RULES; MINIMUM STANDARDS. The commission shall adopt rules to implement this subchapter and minimum performance and quality assurance standards for accreditation of an environmental testing laboratory.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.005 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.806. DISCIPLINE. After notice and an opportunity for hearing, the commission may suspend or revoke the accreditation of an environmental testing laboratory that does not comply with the minimum performance and quality assurance standards established under this subchapter.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.006 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.807. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION ACCOUNT. All fees collected under this subchapter shall be deposited to the credit of the environmental testing laboratory accreditation account and may be appropriated to the commission only for paying the costs of the accreditation program.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

APPENDIX B.3

Texas Water Code, Title 2, Chapter 7, Enforcement

APPENDIX B.3

WATER CODE
TITLE 2. WATER ADMINISTRATION
SUBTITLE A. EXECUTIVE AGENCIES
CHAPTER 7. ENFORCEMENT[1]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Permit" includes a license, certificate, registration, approval, or other form of authorization. This definition does not apply to Subchapter G.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.002. ENFORCEMENT AUTHORITY. The commission may initiate an action under this chapter to enforce provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions. The commission or the executive director may institute legal proceedings to compel compliance with the relevant provisions of this code and the Health and Safety Code and rules, orders, permits, or other decisions of the commission. The commission may delegate to the executive director the authority to issue an administrative order, including an administrative order that assesses penalties or orders corrective measures, to ensure compliance with the provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

[1] Text downloaded from https://statutes.capitol.texas.gov/ on February 10, 2022, as current through the 87th 3rd Called Legislative Session, 2021. Minor formatting changes made for easier reading.

Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 5, eff. September 1, 2009.

Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) The commission may initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on information it receives from a private individual if that information, in the commission's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

(b) The executive director or the executive director's designated representative may evaluate the value and credibility of information received from a private individual and the merits of any proposed enforcement action based on that information.

(c) The commission by rule may adopt criteria for the executive director to use in evaluating the value and credibility of information received from a private individual and for use of that information in an enforcement action.

(d) A private individual who submits information on which the commission relies for all or part of an enforcement case may be called to testify in the enforcement proceedings and is subject to all sanctions under law for knowingly falsifying evidence. If the commission relies on the information submitted by a private individual to prove an enforcement case, any physical or sampling data must have been collected or gathered in accordance with commission protocols.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.24, eff. Sept. 1, 2001.

Sec. 7.00251. INITIATION OF CERTAIN CLEAN AIR ACT ENFORCEMENT ACTIONS USING INFORMATION PROVIDED BY A PERSON. If the commission determines that there are multiple violations based on information it receives as required by Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) from a person, as defined in Section 382.003, Health and Safety Code,

only those that require initiation of formal enforcement will be included in any proposed enforcement action. For all other violations that do not require initiation of formal enforcement, the commission may not include in the enforcement action the following:

(1) violations that are not repeat violations due to the same root cause from two consecutive investigations within the most recent five-year period; or

(2) violations that have been corrected within the time frame specified by the commission or for which the facility has not had the time specified by the commission to correct the violations.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 6.01, eff. June 8, 2007.

Sec. 7.0026. SUSPENSION OF ENFORCEMENT ACTION AGAINST CERTAIN REGIONAL WATER, SEWER, OR SOLID WASTE SERVICES. If a water supply, sewer, wastewater treatment, or solid waste disposal service operated by or for a municipality or county is being integrated into a regional water supply, sewer, wastewater treatment, or solid waste disposal service, the commission may enter into a compliance agreement with the regional service under which the commission will not initiate an enforcement action against the regional service for existing or anticipated violations resulting from the operation by the regional service of the service being integrated. A compliance agreement under this section must include provisions necessary to bring the service being integrated into compliance.

Added by Acts 2003, 78th Leg., ch. 1115, Sec. 1, eff. June 20, 2003.

Sec. 7.003. ENFORCEMENT REPORT. (a) The commission shall report at least once each month on enforcement actions taken by the commission or others and the resolution of those actions.

(b) The report shall be an item for commission discussion at a meeting of the commission for which public notice is given.

(c) If an enforcement action involves a suit filed for injunctive relief or civil penalties, or both, the report shall state the actual or projected time for resolution of the suit. A copy of the report and of the minutes of the meeting reflecting commission action relating to the report shall be filed with the governor and the attorney general.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.004. REMEDIES CUMULATIVE. The remedies under this chapter are cumulative of all other remedies. Nothing in this chapter affects the right of a private corporation or individual to pursue any available common law remedy to abate a condition of pollution or other nuisance, to recover damages to enforce a right, or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.005. EFFECT ON OTHER LAW. This chapter does not exempt a person from complying with or being subject to other law.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by rule shall adopt a general enforcement policy that describes the commission's approach to enforcement.

(b) The commission shall assess, update, and publicly adopt specific enforcement policies regularly, including policies regarding the calculation of penalties and deterrence to prevent the economic benefit of noncompliance.

(c) The commission shall make the policies available to the public, including by posting the policies on the commission's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.09, eff. September 1, 2011.

SUBCHAPTER B. CORRECTIVE ACTION AND INJUNCTIVE RELIEF

Sec. 7.031. CORRECTIVE ACTION RELATING TO HAZARDOUS WASTE. (a) The commission shall require corrective action for a release of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of when the waste is placed in the unit.

(b) The commission shall establish schedules for compliance for the corrective action if the corrective action cannot be completed before permit issuance and shall require assurances of financial responsibility for completing the corrective action.

(c) If the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:

(1) issue an order requiring corrective action or other response measures considered necessary to protect human health or the environment; or

(2) institute a civil action under Subchapter D.

(d) An order issued under this section:

(1) may include a suspension or revocation of authorization to operate;

(2) must state with reasonable specificity the nature of the required corrective action or other response measure; and

(3) must specify a time for compliance.

(e) If a person named in the order does not comply with the order, the commission may assess an administrative penalty or seek a civil penalty in accordance with this chapter.

(f) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 9.07, eff. Sept. 1, 2001.

Sec. 7.032. INJUNCTIVE RELIEF. (a) The executive director may enforce a commission rule or a provision of a permit issued by the commission by injunction or other appropriate remedy.

(b) If it appears that a violation or threat of violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute has occurred or is about to occur, the executive director may have a suit instituted in district court for injunctive relief to restrain the violation or threat of violation.

(c) The suit may be brought in the county in which the defendant resides or in the county in which the violation or threat of violation occurs.

(d) In a suit brought under this section to enjoin a violation or threat of violation described by Subsection (b), the court may grant the commission, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including a temporary restraining order and, after notice and hearing, a temporary injunction or permanent injunction.

(e) On request of the executive director, the attorney general or the prosecuting attorney in a county in which the violation occurs shall initiate a suit in the name of the state

for injunctive relief. The suit may be brought independently of or in conjunction with a suit under Subchapter D.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.033. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH AND SAFETY CODE, VIOLATION. The commission shall seek reimbursement, either by a commission order or by a suit filed under Subchapter D by the attorney general at the commission's request, of security from the radiation and perpetual care account used by the commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive material resulting from a violation of Chapter 401, Health and Safety Code, relating to an activity under the commission's jurisdiction or a rule adopted or a license, registration, or order issued by the commission under that chapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 580, Sec. 12, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 23, eff. Sept. 1, 2003.

Sec. 7.034. DEFERRAL OF PENALTY FOR CERTAIN UTILITY FACILITIES. (a) In this section:

(1) "District" means any district or authority created under either Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law or any conservation and reclamation district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that Chapter 49 applies to the district.

(2) "Municipally owned utility" and "water supply or sewer service corporation" have the meanings assigned by Section 13.002.

(b) The commission may allow a municipally owned utility, a water supply or sewer service corporation, or a district to defer the payment of all or part of an administrative penalty imposed under Subchapter C for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violation.

(c) In determining whether deferral of a penalty under this section is appropriate, the commission shall consider the factors to be considered under Section 7.053 and the following factors:

(1) the financial position of the entity and its ability to reasonably pay the costs of corrective action under the terms of a commission order;

(2) risks to public health and the environment of any delay in addressing the corrective actions as a result of limited financial resources;

(3) alternatives reasonably available to the entity for paying both the costs of corrective action and the penalty; and

(4) potential effects of the payment of the penalty on other essential public health and safety services for which the entity is responsible.

(d) At the discretion of the commission, any penalty deferred under this section becomes due and payable on a commission determination that the entity is not in compliance with a provision for corrective action in a commission order to address the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1005 (H.B. 147), Sec. 1, eff. September 1, 2007.

Sec. 7.035. INJUNCTION AND ENFORCEMENT RELATING TO CERTAIN TREATMENT FACILITIES. (a) Except as provided by Subsection (b), if the commission determines that a treatment facility that handles waste and wastewater from humans or household operations

is operating without a permit required by the commission, the commission shall:

(1) issue an order:

(A) enjoining further operation of the facility until the commission issues the required permit; and

(B) imposing an administrative penalty under this chapter; or

(2) institute a civil action under Subchapter D to:

(A) enjoin further operation of the facility until the commission issues the required permit; and

(B) impose a civil penalty.

(b) If the commission determines there is no feasible alternative treatment or disposal option for the wastewater being sent to the treatment facility, including the option of hauling the wastewater to a permitted facility, the commission is not required to enjoin the operation of the facility under Subsection (a) and may impose other applicable penalties under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 806 (H.B. 3264), Sec. 2, eff. June 17, 2015.

SUBCHAPTER C. ADMINISTRATIVE PENALTIES

Sec. 7.051. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person as provided by this subchapter if:

(1) the person violates:

(A) a provision of this code or of the Health and Safety Code that is within the commission's jurisdiction;

(B) a rule adopted or order issued by the commission under a statute within the commission's jurisdiction; or

(C) a permit issued by the commission under a statute within the commission's jurisdiction; and

(2) a county, political subdivision, or municipality has not instituted a lawsuit and is not diligently prosecuting that lawsuit under Subchapter H against the same person for the same violation.

(b) This subchapter does not apply to violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.052. MAXIMUM PENALTY. (a) The amount of the penalty for a violation of Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, or Chapter 1903, Occupations Code, may not exceed $5,000 a day for each violation.

(b) Except as provided by Subsection (b-3), the amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is $10,000. Each day that a continuing violation occurs is a separate violation.

(b-1) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or covered television equipment or adopt and implement a recovery plan as required by Section 361.955, 361.975, or 361.978, Health and Safety Code, as applicable, may not exceed $10,000 for the second violation or $25,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-2) Except as provided by Subsection (b-1), the amount of the penalty for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code, may not exceed $1,000 for the second violation or $2,000 for each subsequent violation. A penalty under this subsection is in addition to any other

penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-3) If a person operating a facility as described by Subsection (b) holds any type of permit issued by the commission other than the permit required for the facility, the commission may assess a penalty under Subsection (b) or (c).

(b-4) The amount of the penalty against a facility operator who violates Chapter 505, Health and Safety Code, or a rule adopted or order issued under that chapter may not exceed $500 a day for each day a violation continues with a total not to exceed $5,000 for each violation. The amount of a penalty against a facility operator who violates Chapter 506 or 507, Health and Safety Code, or a rule adopted or order issued under those chapters may not exceed $50 a day for each day a violation continues with a total not to exceed $1,000 for each violation.

(c) The amount of the penalty for all other violations within the jurisdiction of the commission to enforce may not exceed $25,000 a day for each violation.

(d) Except as provided by Subsection (b), each day that a continuing violation occurs may be considered a separate violation. The commission may authorize an installment payment schedule for an administrative penalty assessed under this subchapter, except for an administrative penalty assessed under Section 7.057.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 376, Sec. 3.02, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 880, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 5.08(b), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1271, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.843, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 333 (S.B. 739), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1072 (S.B. 1003), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 33, eff. September 1, 2015.

Sec. 7.0525. PENALTIES FOR VIOLATIONS RELATED TO CERTAIN DRY CLEANING FACILITIES. (a) Except as provided by Subsection (b), the amount of the penalty for a violation of Section 374.252, Health and Safety Code, may not exceed $5,000.

(b) The amount of the penalty for a violation of Section 374.252(a)(3), Health and Safety Code, may not exceed $10,000.

(c) In assessing an administrative penalty under this section, the commission shall consider, in addition to the factors prescribed by Section 7.053, the following factors, if applicable:

(1) the extent to which the violation has or may have an adverse effect on the environment; and

(2) the amount of the reasonable costs incurred by this state in detection and investigation of the violation.

Acts 2003, 78th Leg., ch. 540, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 18, eff. September 1, 2005.

Sec. 7.053. FACTORS TO BE CONSIDERED IN DETERMINATION OF PENALTY AMOUNT. In determining the amount of an administrative penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on:

(A) air quality in the region;

(B) a receiving stream or underground water reservoir;

(C) instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or

(D) affected persons;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D) economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.054. REPORT OF VIOLATION. If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report in accordance with commission rules that includes recommendations regarding any penalty or corrective action.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.055. NOTICE OF REPORT. Not later than the 10th day after the date on which the report of a violation is issued, the executive director shall give written notice of the report, in accordance with commission rules, to the person charged with the violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.056. CONSENT. Not later than the 20th day after the date on which notice is received, the person charged may

give to the commission written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.057. DEFAULT. If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission by order shall assess the penalty or order a hearing to be held on the recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice of its decision to the person charged.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.058. HEARING. If the person charged requests or the commission orders a hearing, the commission shall order and shall give notice of the hearing. The commission by order may find that a violation has occurred and may assess a penalty, may find that a violation has occurred but that a penalty should not be assessed, or may find that a violation has not occurred. In making a penalty decision, the commission shall analyze each factor prescribed by Section 7.053. All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept.1, 1997.

Sec. 7.059. NOTICE OF DECISION. The commission shall give notice of its decision to the person charged. If the commission finds that a violation has occurred and assesses a penalty, the commission shall give written notice to the person charged of:

(1) the commission's findings;

(2) the amount of the penalty;

(3) the right to judicial review of the commission's order; and

(4) other information required by law.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.060. NOTICE OF PENALTY. If the commission is required to give notice of a penalty under Section 7.057 or 7.059, the commission shall publish notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.061. PAYMENT OF PENALTY; PETITION FOR REVIEW. Within the 30-day period immediately following the date on which the commission's order is final, as provided by Section 2001.144, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full;

(2) pay the first installment penalty payment in full;

(3) pay the penalty and file a petition for judicial review, contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty; or

(4) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation and the amount of the penalty.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.062. STAYS. Within the 30-day period described by Section 7.061, a person who acts under Section 7.061(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that

is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the executive director by certified mail.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.063. CONSENT TO AFFIDAVIT. If the executive director receives a copy of an affidavit under Section 7.062(2), the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or give the supersedeas bond.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.064. JUDICIAL REVIEW. Judicial review of the order or decision of the commission assessing the penalty is under Subchapter G, Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.065. PENALTY REDUCED OR NOT ASSESSED. (a) If the person paid the penalty and if the penalty is reduced or not assessed by the court, the executive director shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted.

(b) The accrued interest on amounts remitted by the executive director under this section shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the executive director under Section 7.061 and ending on the day the penalty is remitted.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.066. REFERRAL TO ATTORNEY GENERAL. A person who does not comply with Section 7.061 waives the right to judicial review, and the commission or the executive director may refer the matter to the attorney general for enforcement.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred. The commission may encourage the cleanup of contaminated property through the use of supplemental environmental projects. The commission may approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). Except as provided by Subsection (a-1), the commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the

respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(a-1) For a respondent that is a local government, the commission:

(1) may approve a supplemental environmental project that is necessary to bring the respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the local government's alleged violation; and

(2) shall approve a supplemental environmental project described by Subdivision (1) if the local government:

(A) has not previously committed a violation at the same site with the same underlying cause in the preceding five years, as documented in a commission order; and

(B) did not agree, before the date that the commission initiated the enforcement action, to perform the project.

(a-2) The commission shall develop a policy to prevent regulated entities from systematically avoiding compliance through the use of supplemental environmental projects under Subsection (a-1)(1), including a requirement for an assessment of:

(1) the respondent's financial ability to pay administrative penalties;

(2) the ability of the respondent to remediate the harm or come into compliance; and

(3) the need for corrective action.

(b) In this section:

(1) "Local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(2) "Supplemental environmental project" means a project that prevents pollution, reduces the amount of pollutants reaching the environment, enhances the quality of the

environment, or contributes to public awareness of environmental matters.

(c) The commission may allow a local government or an organization exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, that receives money from a respondent to implement a supplemental environmental project under this section to use a portion of the money, not to exceed 10 percent of the direct cost of the project, for administrative costs, including overhead costs, personnel salary and fringe benefits, and travel and per diem expenses, associated with implementing the project. Money used for administrative costs under this subsection must be used in accordance with Chapter 783, Government Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 290, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 483, Sec. 7, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 4.03, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.11, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 350 (H.B. 2290), Sec. 1, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1145 (S.B. 394), Sec. 1, eff. June 19, 2015.

Sec. 7.068. FULL AND COMPLETE SATISFACTION. Payment of an administrative penalty under this subchapter is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the same violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.069. DISPOSITION OF PENALTY. (a) Except as provided by Subsection (b), a penalty collected under this subchapter shall be deposited to the credit of the general revenue fund.

(b) A penalty collected under Section 7.052(b-1) or (b-2) shall be paid to the commission and deposited to the credit of the waste management account.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 3, eff. September 1, 2007.

Sec. 7.070. FINDINGS OF FACT NOT REQUIRED; RESERVATIONS. Notwithstanding any other provision to the contrary, the commission is not required to make findings of fact or conclusions of law other than an uncontested finding that the commission has jurisdiction in an agreed order compromising or settling an alleged violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute. An agreed administrative order may include a reservation that:

(1) the order is not an admission of a violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute;

(2) the occurrence of a violation is in dispute; or

(3) the order is not intended to become a part of a party's or a facility's compliance history.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.071. INADMISSIBILITY. An agreed administrative order issued by the commission under this subchapter is not admissible against a party to that order in a civil proceeding unless the proceeding is brought by the attorney general's office to:

(1) enforce the terms of that order; or

(2) pursue a violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.072. RECOVERY OF PENALTY. An administrative penalty owed under this subchapter may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.073. CORRECTIVE ACTION. If a person violates any statute or rule within the commission's jurisdiction, the commission may:

(1) assess against the person an administrative penalty under this subchapter; and

(2) order the person to take corrective action.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.074. HEARING POWERS. The commission may exercise under this subchapter the hearing powers authorized by Section 26.020.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.075. PUBLIC COMMENT. (a) Before the commission approves an administrative order or proposed agreement to settle an administrative enforcement action initiated under this subchapter to which the commission is a party, the commission shall allow the public to comment in writing on the proposed order or agreement. Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(b) The commission shall promptly consider any written comments and may withdraw or withhold consent to the proposed order or agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this subchapter, another statute within the commission's

jurisdiction, or a rule adopted or an order or a permit issued under such a statute. Further notice of changes to the proposed order or agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(c) This section does not apply to:

(1) a criminal enforcement proceeding; or

(2) an emergency order or other emergency relief that is not a final order of the commission.

(d) Chapter 2001, Government Code, does not apply to public comment under this section.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER D. CIVIL PENALTIES

Sec. 7.101. VIOLATION. A person may not cause, suffer, allow, or permit a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued under such a statute.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.102. MAXIMUM PENALTY. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, Subchapter G, Chapter 382, Health and Safety Code, or Chapter 1903, Occupations Code, shall be assessed for each violation a civil penalty not less than $50 nor greater than $5,000 for each day of each violation as the court or jury considers proper. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation a

civil penalty not less than $50 nor greater than $25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 376, Sec. 3.03, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 880, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.844, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.09, eff. June 8, 2007.

Sec. 7.1021. MAXIMUM CIVIL PENALTY: VIOLATION OF COMMUNITY RIGHT-TO-KNOW LAWS. (a) A person who knowingly discloses false information or negligently fails to disclose a hazard as required by Chapter 505 or 506, Health and Safety Code, is subject to a civil penalty of not more than $5,000 for each violation.

(b) This section does not affect any other right of a person to receive compensation under other law.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 34, eff. September 1, 2015.

Sec. 7.103. CONTINUING VIOLATIONS. If it is shown on a trial of a defendant that the defendant has previously been assessed a civil penalty for a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute within the year before the date on which the violation being tried occurred, the defendant shall be assessed a civil penalty not less than $100 nor greater than $25,000 for each subsequent day and for each subsequent violation. Each day of a continuing violation is a separate violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.104. NO PENALTY FOR FAILURE TO PAY CERTAIN FEES. A civil penalty may not be assessed for failure to:

(1) pay a fee under Section 371.062, Health and Safety Code; or

(2) file a report under Section 371.024, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.105. CIVIL SUIT. (a) On the request of the executive director or the commission, the attorney general shall institute a suit in the name of the state for injunctive relief under Section 7.032, to recover a civil penalty, or for both injunctive relief and a civil penalty.

(b) The commission, through the executive director, shall refer a matter to the attorney general's office for enforcement through civil suit if a person:

(1) is alleged to be making or to have made an unauthorized discharge of waste into or adjacent to the waters in the state at a new point of discharge without a permit in violation of state law;

(2) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 26 occurring at the same wastewater management system or other point of discharge within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;

(3) is alleged to be operating a new solid waste facility, as defined in Section 361.003, Health and Safety Code, without a permit in violation of state law;

(4) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 361, Health and Safety Code, occurring at the same facility within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;

(5) is alleged to be constructing or operating a facility at a new plant site without a permit required by

Chapter 382, Health and Safety Code, in violation of state law; or

(6) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 382, Health and Safety Code, for violations occurring at the same plant site within the two years immediately preceding the date of the first alleged violation currently under investigation at that site.

(c) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.106. RESOLUTION THROUGH ADMINISTRATIVE ORDER. The attorney general's office and the executive director may agree to resolve any violation, before or after referral, by an administrative order issued under Subchapter C by the commission with the approval of the attorney general.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.107. DIVISION OF CIVIL PENALTY. Except in a suit brought for a violation of Chapter 28 of this code or of Chapter 401, Health and Safety Code, a civil penalty recovered in a suit brought under this subchapter by a local government shall be divided as follows:

(1) the first $4.3 million of the amount recovered shall be divided equally between:

(A) the state; and

(B) the local government that brought the suit; and

(2) any amount recovered in excess of $4.3 million shall be awarded to the state.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 543 (H.B. 1794), Sec. 1, eff. September 1, 2015.

Sec. 7.108. ATTORNEY'S FEES. If the state prevails in a suit under this subchapter it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.109. PARKS AND WILDLIFE DEPARTMENT JURISDICTION. (a) If it appears that a violation or a threat of violation of Section 26.121 or a rule, permit, or order of the commission has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the commission under this chapter, may have a suit instituted in a district court for injunctive relief or civil penalties, or both, as authorized by this subchapter, against the person who committed or is committing or threatening to commit the violation.

(b) In a suit brought under this section for a violation that is the proximate cause of injury to aquatic life or wildlife normally taken for commercial or sport purposes or to species on which this life is directly dependent for food, the Parks and Wildlife Department is entitled to recover damages for the injury. In determining damages, the court may consider the valuation of the injured resources established in rules adopted by the Parks and Wildlife Department under Subchapter D, Chapter 12, Parks and Wildlife Code, or the replacement cost of the injured resources. Any recovery of damages for injury to aquatic life or wildlife shall be deposited to the credit of the game, fish, and water safety account under Section 11.032, Parks and Wildlife Code, and the Parks and Wildlife Department shall use money recovered in a suit brought under this section to replenish or enhance the injured resources.

(c) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees may also be recovered, and those recovered amounts shall be credited to the same operating accounts from which expenditures occurred.

(d) This section does not limit recovery for damages available under other laws.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.110. COMMENTS. (a) Before the commission approves an agreed final judgment, consent order, voluntary settlement agreement, or other voluntary settlement agreement, or other voluntary agreement that would finally settle a civil enforcement action initiated under this chapter to which the State of Texas is a party or before the court signs a judgment or other agreement settling a judicial enforcement action other than an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), the attorney general shall permit the public to comment in writing on the proposed order, judgment, or other agreement.

(b) Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(c) The attorney general shall promptly consider any written comments and may withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter, the statutes within the commission's jurisdiction, or a rule adopted or an order or a permit issued under such a statute. Further notice of changes to the proposed order, judgment, or other agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(d) The attorney general may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

(e) This section does not apply to:

(1) criminal enforcement proceedings; or

(2) proposed temporary restraining orders, temporary injunctions, emergency orders, or other emergency relief that is not a final judgment or final order of the court or commission.

(f) Chapter 2001, Government Code, does not apply to public comment under this section.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.111. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH AND SAFETY CODE, VIOLATION. On request by the commission, the attorney general shall file suit to recover security under Section 7.033.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES

Sec. 7.141. DEFINITIONS. In this subchapter:

(1) "Appropriate regulatory agency" means the commission, the Texas Department of Health, or any other agency authorized to regulate the handling and disposal of medical waste.

(2) "Corporation" and "association" have the meanings assigned by Section 1.07, Penal Code, except that the terms do not include a government.

(3) "Large quantity generator" means a person who generates more than 50 pounds of medical waste each month.

(4) "Medical waste" has the meaning assigned by Section 361.003, Health and Safety Code.

(5) "Serious bodily injury" has the meaning assigned by Section 1.07, Penal Code.

(6) "Small quantity generator" means a person who generates 50 pounds or less of medical waste each month.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 407 (H.B. 2244), Sec. 3, eff. June 10, 2015.

Sec. 7.142. VIOLATIONS RELATING TO UNLAWFUL USE OF STATE WATER. (a) A person commits an offense if the person violates:

(1) Section 11.081;

(2) Section 11.083;

(3) Section 11.084;

(4) Section 11.087;

(5) Section 11.088;

(6) Section 11.089;

(7) Section 11.090;

(8) Section 11.091;

(9) Section 11.092;

(10) Section 11.093;

(11) Section 11.094;

(12) Section 11.096;

(13) Section 11.203; or

(14) Section 11.205.

(b) An offense under Subsection (a)(9), (a)(10), or (a)(14) is punishable under Section 7.187(1)(A) or Section 7.187(2)(B) or both.

(c) An offense under Subsection (a)(1), (a)(2), (a)(4), (a)(6), (a)(7), or (a)(8) is punishable under Section 7.187(1)(A) or Section 7.187(2)(C) or both.

(d) An offense under Subsection (a)(3) or (a)(11) is punishable under Section 7.187(1)(A) or Section 7.187(2)(D) or both.

(e) An offense under Subsection (a)(5) is punishable under Section 7.187(1)(A) or Section 7.187(2)(E) or both.

(f) Possession of state water when the right to its use has not been acquired according to Chapter 11 is prima facie evidence of a violation of Section 11.081.

(g) Possession or use of water on a person's land by a person not entitled to the water under this code is prima facie evidence of a violation of Section 11.083.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.143. VIOLATION OF MINIMUM STATE STANDARDS OR MODEL POLITICAL SUBDIVISION RULES. (a) A person commits an offense if the person knowingly or intentionally violates a rule adopted under Subchapter J, Chapter 16.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.145. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant:

(1) into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency; or

(2) from a point source in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 934, Sec. 1, eff. June 14, 2001.

Sec. 7.147. UNAUTHORIZED DISCHARGE. (a) A person commits an offense if the person discharges or allows the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant:

(1) is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency; or

(2) consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.

(b) An offense under this section may be prosecuted without alleging or proving any culpable mental state.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 366 (S.B. 1297), Sec. 1, eff. September 1, 2005.

Sec. 7.148. FAILURE TO PROPERLY USE POLLUTION CONTROL MEASURES. (a) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use pollution control or monitoring devices, systems, methods, or practices required by Chapter 26 or a rule adopted or a permit or an order issued under Chapter 26 by the commission or one of its predecessor agencies unless done in strict compliance with the rule, permit, or order.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.149. FALSE STATEMENT. (a) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits or causes to be omitted material information from, an application, notice, record, report, plan, or other document, including monitoring device data, filed or required to be maintained by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.150. FAILURE TO NOTIFY OR REPORT. (a) A person commits an offense if the person intentionally or knowingly fails to notify or report to the commission as required under Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.151. FAILURE TO PAY FEE. (a) A person commits an offense if the person intentionally or knowingly fails to pay a fee required by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(H) or Section 7.187(2)(B) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(H).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.152. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE AND KNOWING ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action knowingly places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) For purposes of Subsection (a), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this

section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(I) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.153. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE AND ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.154. RECKLESS UNAUTHORIZED DISCHARGE AND ENDANGERMENT. (a) A person commits an offense if the person, acting recklessly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(E).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.155. VIOLATION RELATING TO DISCHARGE OR SPILL. (a) A person commits an offense if the person:

(1) operates, is in charge of, or is responsible for a facility or vessel that causes a discharge or spill as defined by Section 26.263 and does not report the spill or discharge on discovery; or

(2) knowingly falsifies a record or report concerning the prevention or cleanup of a discharge or spill.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.156. VIOLATION RELATING TO UNDERGROUND STORAGE TANK. (a) A person or business entity commits an offense if:

(1) the person or business entity engages in the installation, repair, or removal of an underground storage tank and the person or business entity:

(A) does not hold a registration under Section 26.452; and

(B) is not under the substantial control of a person or business entity who holds a registration under Section 26.452;

(2) the person or business entity:

(A) authorizes or allows the installation, repair, or removal of an underground storage tank to be conducted by a person or business entity who does not hold a registration under Section 26.452; or

(B) authorizes or allows the installation, repair, or removal of an underground storage tank to be performed or supervised by a person or business entity who does not hold a license under Section 26.456; or

(3) the conduct of the person or business entity makes the person or business entity responsible for a violation of Subchapter K, Chapter 26, or of a rule adopted or order issued under that subchapter.

(b) A person commits an offense if the person performs or supervises the installation, repair, or removal of an underground storage tank unless:

(1) the person holds a license under Section 26.456; or

(2) another person who holds a license under Section 26.456 is substantially responsible for the performance or supervision of the installation, repair, or removal.

(c) A person commits an offense if the person is an owner or operator of an underground storage tank regulated under Chapter 26 into which any regulated substance is delivered unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

(d) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1441, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 880, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 1, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 1, eff. September 1, 2005.

Sec. 7.1565. PRESUMPTION. If in the exercise of good faith a person depositing or causing to be deposited a regulated substance into an underground storage tank regulated under Chapter 26 receives a certificate of compliance for that underground storage tank under Section 26.346, the receipt of the certificate of compliance shall be considered prima facie evidence of compliance with this section.

Added by Acts 1999, 76th Leg., ch. 1441, Sec. 5, eff. Sept. 1, 1999.

Sec. 7.157. VIOLATION RELATING TO INJECTION WELLS. (a) A person commits an offense if the person knowingly or intentionally violates Chapter 27 or a rule adopted or an order or a permit issued under Chapter 27.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.158. VIOLATION RELATING TO PLUGGING WELLS. (a) A person commits an offense if the person is the owner of a well

that is required to be cased or plugged by Chapter 28 and the person:

(1) fails or refuses to case or plug the well within the 30-day period following the date of the commission's order to do so; or

(2) fails to comply with any other order issued by the commission under Chapter 28 within the 30-day period following the date of the order.

(b) An offense under this section is a misdemeanor and is punishable under Section 7.187(1)(A).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.159. VIOLATION RELATING TO WATER WELLS OR DRILLED OR MINED SHAFTS. (a) A person commits an offense if the person knowingly or intentionally violates Chapter 28 or a commission rule adopted or an order or a permit issued under that chapter.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.160. VIOLATION RELATING TO CERTAIN SUBSURFACE EXCAVATIONS. (a) A person commits an offense if the person knowingly or intentionally violates Chapter 31 or a commission rule adopted or an order or a permit issued under that chapter.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.161. VIOLATION RELATING TO SOLID WASTE IN ENCLOSED CONTAINERS OR VEHICLES. (a) An operator of a solid waste facility or a solid waste hauler commits an offense if the operator or hauler disposes of solid waste in a completely enclosed container or vehicle at a solid waste site or operation permitted as a Type IV landfill:

(1) without having in possession the special permit required by Section 361.091, Health and Safety Code;

(2) on a date or time not authorized by the commission; or

(3) without a commission inspector present to verify that the solid waste is free of putrescible, hazardous, and infectious waste.

(b) An offense under this section is a Class B misdemeanor.

(c) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under Section 361.091, Health and Safety Code, issued by the commission, on certification to the commission by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the commission to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the commission that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(d) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.162. VIOLATIONS RELATING TO HAZARDOUS WASTE. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

(1) transports, or causes or allows to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have all required permits;

(2) stores, processes, exports, or disposes of, or causes to be stored, processed, exported, or disposed of, any hazardous waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;

(3) omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, plan, or other document filed, maintained, or used to comply with any requirement of Chapter 361, Health and Safety Code, applicable to hazardous waste;

(4) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous waste, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document required to be maintained or filed to comply with the rules of the appropriate regulatory agency adopted under Chapter 361, Health and Safety Code;

(5) transports without a manifest, or causes or allows to be transported without a manifest, any hazardous waste required by rules adopted under Chapter 361, Health and Safety Code, to be accompanied by a manifest;

(6) tampers with, modifies, disables, or fails to use required pollution control or monitoring devices, systems, methods, or practices, unless done in strict compliance with Chapter 361, Health and Safety Code, or with an order, rule, or permit of the appropriate regulatory agency;

(7) releases, causes, or allows the release of a hazardous waste that causes or threatens to cause pollution,

unless the release is made in strict compliance with all required permits or an order, rule, or permit of the appropriate regulatory agency; or

(8) does not notify or report to the appropriate regulatory agency as required by Chapter 361, Health and Safety Code, or by a rule adopted or an order or a permit issued by the appropriate regulatory agency under that chapter.

(b) An offense under Subsection (a)(1) or (a)(2) is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(G) or both. An offense under Subsection (a)(3), (a)(4), or (a)(5) is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(E) or both. An offense under Subsection (a)(6), (a)(7), or (a)(8) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, an offense under Subsection (a)(1) or (a)(2) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(G) or both, and an offense under Subsection (a)(3), (a)(4), or (a)(5) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.

(d) An offense under Subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) is punishable for a person other than an individual under Section 7.187(1)(D). If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under Subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), the offense is punishable under Section 7.187(1)(E). An offense under Subsection (a)(6), (a)(7), or (a)(8) is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.163. VIOLATIONS RELATING TO HAZARDOUS WASTE AND ENDANGERMENT. (a) A person commits an offense if:

(1) acting intentionally or knowingly, the person transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of Chapter 361, Health and Safety Code, and by that action knowingly places another person in imminent danger of death or serious bodily injury;

(2) acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of Chapter 361, Health and Safety Code, and by that action places another person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency;

(3) acting intentionally or knowingly with respect to the person's conduct, releases or causes or allows the release of a hazardous waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or a rule adopted by the appropriate regulatory agency; or

(4) acting recklessly with respect to the person's conduct, releases or causes or allows the release of a hazardous waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or a rule adopted by the appropriate regulatory agency.

(b) An offense under Subsection (a)(1) is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(H) or both. An offense under Subsection (a)(1) is punishable for a person other than an individual under Section 7.187(1)(F). If an offense committed by an individual under Subsection (a)(1) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(F) or Section

7.187(2)(J) or both. If an offense committed by a person other than an individual under Subsection (a)(1) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(G). For purposes of Subsection (a)(1), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under Subsection (a)(2) is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. An offense under Subsection (a)(2) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed under Subsection (a)(2) results in death or serious bodily injury to another person, an individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both. If an offense committed by a person other than an individual under Subsection (a)(2) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

(d) An offense under Subsection (a)(3) is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. An offense under Subsection (a)(3) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by an individual under Subsection (a)(3) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both. If an offense committed by a person other than an individual under Subsection (a)(3) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

(e) An offense under Subsection (a)(4) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. An offense under Subsection (a)(4) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by an individual under Subsection (a)(4) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(E) or both. If an offense committed by a person other than an individual under Subsection (a)(4) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.164. VIOLATIONS RELATING TO MEDICAL WASTE: LARGE GENERATOR. (a) A person commits an offense if the person is a large quantity generator and the person, acting intentionally or knowingly with respect to the person's conduct:

(1) generates, collects, stores, processes, exports, or disposes of, or causes or allows to be generated, collected, stored, processed, exported, or disposed of, any medical waste without all permits required by the appropriate regulatory agency or in knowing violation of a material condition or requirement of a permit or of an applicable interim status rule or standard; or

(2) generates, collects, stores, treats, transports, or disposes of, or causes or allows to be generated, collected, stored, treated, transported, or disposed of, or otherwise handles any medical waste, and knowingly destroys, alters, conceals, or does not file a record, report, manifest, or other document required to be maintained or filed under rules adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(G) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under

this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(I) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable by Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.165. VIOLATIONS RELATING TO MEDICAL WASTE: SMALL GENERATOR. (a) A person commits an offense if the person is a small quantity generator and the person, acting intentionally or knowingly with respect to the person's conduct:

(1) generates, collects, stores, processes, exports, or disposes of, or causes or allows to be generated, collected, stored, processed, exported, or disposed of, any medical waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard; or

(2) generates, collects, stores, treats, transports, or disposes of, or causes or allows to be generated, collected, stored, treated, transported, or disposed of, or otherwise handles any medical waste, and knowingly destroys, alters, conceals, or does not file a record, report, manifest, or other document required to be maintained or filed under rules adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(A). If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.166. VIOLATIONS RELATING TO TRANSPORTATION OF MEDICAL WASTE. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

(1) transports, or causes or allows to be transported, for storage, processing, or disposal, any medical waste to a location that does not have all required permits;

(2) transports without a manifest, or causes or allows to be transported without a manifest, any medical waste required to be accompanied by a manifest under rules adopted by the appropriate regulatory agency; or

(3) operates a vehicle that is transporting medical waste, or that is authorized to transport medical waste, in violation of a rule adopted by the appropriate regulatory agency, including cleaning and safety regulations, that specifically relates to the transportation of medical waste.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense

under this section, the offense is punishable under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.167. FALSE STATEMENTS RELATING TO MEDICAL WASTE. (a) A person commits an offense if the person knowingly:

(1) makes a false material statement, or knowingly causes or knowingly allows to be made a false material statement, to a person who prepares a regulated medical waste label, manifest, application, permit, plan, registration, record, report, or other document required by an order or a rule of the appropriate regulatory agency; or

(2) omits material information, or causes or allows material information to be omitted, from a regulated medical waste label, manifest, application, permit, plan, registration, record, report, or other document required by an order or a rule of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.168. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND KNOWING ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly,

transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, medical waste in violation of Chapter 361, Health and Safety Code, and by that action knowingly places another person in imminent danger of death or serious bodily injury.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(H) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(F) or Section 7.187(2)(J) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(F). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(G).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.169. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of medical waste in violation of Chapter 361, Health and Safety Code, and by that action places another person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.170. INTENTIONAL OR KNOWING RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND ENDANGERMENT. (a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, releases or causes or allows the release of a medical waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is done in strict compliance with all required permits or an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.171. RECKLESS RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND ENDANGERMENT. (a) A person commits an offense if the person, acting recklessly with respect to a person's

conduct, releases or causes or allows the release of a medical waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.172. FAILURE OF SEWAGE SYSTEM INSTALLER TO REGISTER. (a) A person commits an offense if the person violates Section 366.071, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1. 1997.

Sec. 7.173. VIOLATION RELATING TO SEWAGE DISPOSAL. (a) A person commits an offense if the person violates a rule adopted by the commission under Chapter 366, Health and Safety Code, or

an order or resolution adopted by an authorized agent under Subchapter C, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1999.

Sec. 7.1735. VIOLATION RELATING TO MAINTENANCE OF SEWAGE DISPOSAL SYSTEM. (a) A person commits an offense if the person knowingly violates an order or resolution adopted by an authorized agent under Section 366.0515, Health and Safety Code.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 1129 (H.B. 2510), Sec. 3, eff. September 1, 2005.

Sec. 7.174. VIOLATION OF SEWAGE DISPOSAL SYSTEM PERMIT PROVISION. (a) A person commits an offense if the person begins to construct, alter, repair, or extend an on-site sewage disposal system owned by another person before the owner of the system obtains a permit to construct, alter, repair, or extend the on-site sewage disposal system as required by Subchapter D, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.175. EMERGENCY REPAIR NOT AN OFFENSE. An emergency repair to an on-site sewage disposal system without a permit in accordance with the rules adopted under Section 366.012(a)(1)(C), Health and Safety Code, is not an offense under Section 7.172, 7.173, or 7.174 if a written statement describing the need for the repair is provided to the commission or its authorized agent not later than 72 hours after the repair is begun.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.176. VIOLATIONS RELATING TO HANDLING OF USED OIL. (a) A person commits an offense if the person:

(1) intentionally discharges used oil into:

(A) a sewer or septic tank; or

(B) a drainage system, surface water or groundwater, a watercourse, or marine water unless the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040;

(2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills, unless the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals;

(3) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil within the state:

(A) in violation of standards or rules for the management of used oil; or

(B) without first complying with the registration requirements of Chapter 371, Health and Safety Code, and rules adopted under that chapter;

(4) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(5) violates an order of the commission to cease and desist an activity prohibited by this section or a rule applicable to a prohibited activity; or

(6) intentionally makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of program compliance.

(b) It is an exception to the application of this section that a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(c) It is an exception to the application of Subsection (a)(2) that the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

(d) Except as provided by this subsection, an offense under this section is punishable under Section 7.187(1)(B) or Section 7.187(2)(F), or both. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C) or Section 7.187(2)(H) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 38 (S.B. 1299), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 366 (S.B. 1297), Sec. 2, eff. September 1, 2005.

Sec. 7.177. VIOLATIONS OF CLEAN AIR ACT. (a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, violates:

(1) Section 382.0518(a), Health and Safety Code;

(2) Section 382.054, Health and Safety Code;

(3) Section 382.056(a), Health and Safety Code;

(4) Section 382.058(a), Health and Safety Code; or

(5) an order, permit, or exemption issued or a rule adopted under Chapter 382, Health and Safety Code.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.178. FAILURE TO PAY FEES UNDER CLEAN AIR ACT. (a) A person commits an offense if the person intentionally or knowingly does not pay a fee required by Chapter 382, Health and Safety Code, or by a rule adopted or an order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(H) or Section 7.187(2)(B) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(H).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.179. FALSE REPRESENTATIONS UNDER CLEAN AIR ACT. (a) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or does not file or maintain a notice, application, record, report, plan, or

other document required to be filed or maintained by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.180. FAILURE TO NOTIFY UNDER CLEAN AIR ACT. (a) A person commits an offense if the person intentionally or knowingly does not notify or report to the commission as required by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.181. IMPROPER USE OF MONITORING DEVICE. (a) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use a required monitoring device; tampers with, modifies, or disables a monitoring device; or falsifies, fabricates, or omits data from a monitoring device, unless the act is done in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.182. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT. (a) A person commits an offense if the person recklessly, with respect to the person's conduct, emits an air contaminant that places another person in imminent danger of death or serious bodily injury, unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.183. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND KNOWING ENDANGERMENT. (a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, emits an air contaminant with the knowledge that the person is placing another person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.1831. VIOLATION OF LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS. (a) A person commits an offense if the person violates a rule adopted by the commission concerning locally enforced motor vehicle idling limitations.

(b) Notwithstanding any other law, an offense under this section is a Class C misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 294 (H.B. 1906), Sec. 1, eff. September 1, 2011.

Sec. 7.184. VIOLATIONS RELATING TO LOW-LEVEL RADIOACTIVE WASTE. (a) A person commits an offense if the person:

(1) intentionally or knowingly violates a provision of Chapter 401, Health and Safety Code, other than the offense described by Subdivision (2); or

(2) intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of low-level radioactive waste without a license issued under Chapter 401, Health and Safety Code.

(b) Except as provided by this subsection, an offense under Subsection (a)(1) is a Class B misdemeanor. If it is shown on the trial of the person that the person has previously been convicted of an offense under Subsection (a)(1), the offense is a Class A misdemeanor.

(c) Except as provided by this subsection, an offense under Subsection (a)(2) is a Class A misdemeanor. If it is shown on the trial of the person that the person has previously been convicted of an offense under Subsection (a)(2), the offense is punishable under Section 7.187(1)(D) or Section 7.187(2)(D) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 38, eff. Sept. 1, 1999.

Sec. 7.185. KNOWING OR INTENTIONAL UNAUTHORIZED DISPOSAL OF LEAD-ACID BATTERIES. (a) A person commits an offense if the person knowingly or intentionally disposes of a lead-acid

battery other than as provided by Section 361.451, Health and Safety Code.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.1851. VIOLATIONS RELATING TO COMMUNITY RIGHT-TO-KNOW LAWS. (a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by Chapter 505 or 506, Health and Safety Code, commits an offense punishable by a fine of not more than $25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 35, eff. September 1, 2015.

Sec. 7.186. SEPARATE OFFENSES. Each day a person engages in conduct proscribed by this subchapter constitutes a separate offense.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.187. PENALTIES. (a) Except as provided by Subsection (b), a person convicted of an offense under this subchapter is punishable by:

(1) a fine, as imposed under the section creating the offense, of:

(A) not more than $1,000;

(B) not less than $1,000 or more than $50,000;

(C) not less than $1,000 or more than $100,000;

(D) not less than $1,000 or more than $250,000;

(E) not less than $2,000 or more than $500,000;

(F) not less than $5,000 or more than $1,000,000;

(G) not less than $10,000 or more than $1,500,000; or

(H) not more than twice the amount of the required fee;

(2) confinement for a period, as imposed by the section creating the offense, not to exceed:

(A) 30 days;

(B) 90 days;

(C) 180 days;

(D) one year;

(E) two years;

(F) five years;

(G) 10 years;

(H) 15 years;

(I) 20 years; or

(J) 30 years; or

(3) both fine and confinement, as imposed by the section creating the offense.

(b) Notwithstanding Section 7.177(a)(5), conviction for an offense under Section 382.018, Health and Safety Code, is punishable as:

(1) a Class C misdemeanor if the violation is a first violation and does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes;

(2) a Class B misdemeanor if the violation is a second or subsequent violation and:

(A) the violation does not involve the burning of:

(i) substances described by Subdivision (1); or

(ii) insulation on electrical wire or cable, treated lumber, plastics, non-wood construction or

demolition materials, furniture, carpet, or items containing natural or synthetic rubber; or

(B) the violation involves the burning of substances described by Paragraph (A)(ii) and none of the prior violations involved the burning of substances described by Subdivision (1) or Paragraph (A)(ii); or

(3) a Class A misdemeanor if the violation:

(A) involves the burning of substances described by Subdivision (1); or

(B) is a second or subsequent violation and involves the burning of substances described by Subdivision (2)(A)(ii) and one or more of the prior violations involved the burning of substances described by Subdivision (1) or (2)(A)(ii).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1264 (H.B. 857), Sec. 1, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 145 (H.B. 1619), Sec. 2, eff. September 1, 2017.

Sec. 7.188. REPEAT OFFENSES. If it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this subchapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.189. VENUE. Venue for prosecution of an alleged violation under this subchapter is in:

(1) the county in which the violation is alleged to have occurred;

(2) the county where the defendant resides;

(3) if the alleged violation involves the transportation of a discharge, waste, or pollutant, any county

to which or through which the discharge, waste, or pollutant was transported; or

(4) Travis County.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.190. DISPOSITION OF FINES. A fine recovered through a prosecution brought under this subchapter shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, the court may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.191. NOTICE OF CONVICTION. In addition to a sentence that may be imposed under this subchapter, a person other than an individual that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court considers appropriate.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.192. JUDGMENT OF CONVICTION. On conviction under this subchapter, the clerk of the court in which the conviction is returned shall send a copy of the judgment to the commission.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.193. PEACE OFFICERS. For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are peace officers. Those agents and employees are empowered to enforce this subchapter the same as any other peace officer and for that purpose have the powers and

duties of peace officers assigned by Chapter 2, Code of Criminal Procedure.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.194. ALLEGATIONS. In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.195. SUMMONS AND ARREST. (a) After a complaint is filed or an indictment or information presented against a private corporation under this subchapter, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a capias except that:

(1) it shall summon the corporation to appear before the court named at the place stated in the summons;

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made on the secretary of state, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 30 days after the secretary of state is served with summons.

(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.196. SERVICE OF SUMMONS. (a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or cannot with reasonable diligence be found at the registered office, the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice president of the corporation.

(b) If the peace officer certifies on the return that the peace officer diligently but unsuccessfully attempted to effect service under Subsection (a) or if the corporation is a foreign corporation that has no certificate of authority, the peace officer shall serve the summons on the secretary of state. On receipt of the summons copy, the secretary of state shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) The secretary of state shall keep a permanent record of the date and time of receipt and the disposition of each summons served under Subsection (b) together with the return receipt.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.197. ARRAIGNMENT AND PLEADINGS. In any criminal action instituted against a private corporation under this subchapter:

(1) appearance is for the purpose of arraignment; and

(2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.198. APPEARANCE. (a) A defendant private corporation appears through counsel or its representative.

(b) If a private corporation does not appear in response to summons or appears but does not plead, the corporation is considered to be present in person for all purposes, and the court shall enter a plea of not guilty on the corporation's behalf and may proceed with trial, judgment, and sentencing.

(c) After appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, the corporation is considered to be present in person for all purposes, and the court may proceed with trial, judgment, or sentencing.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.199. FINE TREATED AS JUDGMENT IN CIVIL ACTION. If a person other than an individual is found guilty of a violation of this subchapter and a fine is imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the person, and the fine shall be of the same force and effect and be enforced against the person in the same manner as if the judgment were recovered in a civil action.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.200. EFFECT ON CERTAIN OTHER LAWS. Conduct punishable as an offense under this subchapter that is also punishable under another law may be prosecuted under either law.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.201. DEFENSE EXCLUDED. It is not a defense to prosecution under this subchapter that the person did not know of or was not aware of a rule, order, or statute.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.202. PROOF OF KNOWLEDGE. In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury under Section 7.168, 7.169, 7.170, or 7.171, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, however, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.203. CRIMINAL ENFORCEMENT REVIEW. (a) This section is applicable to criminal prosecution of alleged environmental violations of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction committed by a defendant holding a permit issued by the commission or a defendant employed by a person holding such a permit and that is related to the activity for which the permit was issued. This section does not apply to an alleged environmental violation that clearly involves imminent danger of death or bodily injury under an endangerment offense specified in Section 7.252. Nothing in this section limits the power of a peace officer to arrest a person for an alleged offense.

(b) Before a peace officer, as that term is defined in Section 7.193 or Chapter 2, Code of Criminal Procedure, may refer any alleged criminal environmental violation by a person holding a permit issued by the commission or an employee of that person of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction to a prosecuting attorney for criminal prosecution, the peace officer shall notify the commission in writing of the alleged criminal

environmental violation and include with the notification a report describing the facts and circumstances of the alleged criminal environmental violation. This section does not prohibit a peace officer from issuing a citation or making an arrest.

(c) As soon as practicable and in no event later than the 45th day after receiving a notice and report under Subsection (b), the commission shall evaluate the report and determine whether an alleged environmental violation exists and whether administrative or civil remedies would adequately and appropriately address the alleged environmental violation. In making its evaluation and determination, the commission shall consider the factors prescribed in Section 7.053. If the commission does not make a determination within the 45-day period required by this subsection:

(1) the appropriate prosecuting attorney may bring an action for criminal prosecution; and

(2) notwithstanding Subsection (e), the commission or the state is not entitled to receive any part of an amount recovered through a prosecution brought by that prosecuting attorney.

(d) If the commission determines that an alleged environmental violation exists and that administrative or civil remedies are inadequate or inappropriate to address the violation, the commission shall notify the peace officer in writing of the reasons why administrative or civil remedies are inadequate or inappropriate and recommending criminal prosecution, and the prosecuting attorney may proceed with the criminal prosecution of the alleged violation. In all other cases, the commission shall issue written notification to the peace officer that the alleged environmental violation is to be resolved through administrative or civil means by the appropriate authorities and the reasons why administrative or civil remedies are adequate or appropriate. A prosecuting attorney may not prosecute an alleged violation if the

commission determines that administrative or civil remedies are adequate and appropriate.

(e) Any fine, penalty, or settlement recovered through a prosecution subject to this section and brought in the name and by authority of the State of Texas, whether recovered through any form of pretrial resolution, plea agreement, or sentencing after trial, shall be apportioned 70 percent to the state to cover the costs of instituting the procedures and requirements of Subsections (a)-(d) and 30 percent to any local government significantly involved in prosecuting the case. In a case where the procedures described in this section do not apply, the provisions of Section 7.190 apply.

Added by Acts 2003, 78th Leg., ch. 937, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER F. DEFENSES

Sec. 7.251. ACT OF GOD. If a person can establish that an event that would otherwise be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.252. DEFENSES TO ENDANGERMENT OFFENSES. It is an affirmative defense to prosecution under Section 7.152, 7.153, 7.154, 7.163, 7.168, 7.169, 7.170, 7.171, 7.182, or 7.183 that:

(1) the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of the person's occupation, business, or profession or a medical treatment or medical or scientific experimentation conducted by professionally approved methods and the person endangered had been made aware of the risks involved before giving consent; or

(2) the person charged was an employee who was carrying out the person's normal activities and was acting under orders from the person's employer, unless the person charged engaged in knowing and wilful violations.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.253. DEFENSES AVAILABLE TO PERSON RESPONSIBLE FOR SOLID WASTE VIOLATIONS. (a) For purposes of an enforcement action initiated under this chapter, a person responsible for solid waste under Section 361.271, Health and Safety Code, is liable for a violation of a statutory or regulatory prohibition against releasing or creating an imminent threat of releasing solid waste unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by an act or omission of a third person and that the defendant:

(1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(b) The defense under Subsection (a) does not apply if the third person:

(1) is an employee or agent of the defendant; or

(2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship. The term "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(c) A defendant who enters into a contractual relationship as provided by Subsection (b)(2) is not liable under a statute or rule within the commission's jurisdiction if:

(1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or

(2) the defendant acquired the real property on which the facility requiring the remedial action is located after the disposal or placement of the hazardous substance on, in, or at the facility, and the defendant establishes by a preponderance of the evidence that:

(A) the defendant exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(B) the defendant took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions; or

(C) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(D) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or

(E) the defendant acquired the facility by inheritance or bequest.

(d) To demonstrate the condition under Subsection (c)(2)(C), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

(1) any specialized knowledge or experience of the defendant;

(2) the relationship of the purchase price to the value of the property if the property were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obvious presence or likely presence of contamination of the property; and

(5) the defendant's ability to detect the contamination by appropriate inspection.

(e) This section does not decrease the liability of a previous owner or operator of a facility who is liable under a statute or rule within the commission's jurisdiction. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(f) Subsections (c), (d), and (e) do not affect the liability, under a statute or rule within the commission's jurisdiction, of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.254. DEFENSE TO USED OIL OFFENSES. It is an affirmative defense to prosecution under Section 7.176 that the person unknowingly disposed of used oil into the environment because the used oil had not been properly segregated or separated by the generator from other solid wastes.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.255. DEFENSE EXCLUDED. Unless otherwise provided by this chapter, the fact that a person holds a permit issued by the commission does not relieve that person from liability for

the violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.256. COMPLIANCE WITH FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS. If a person can establish that an act or event that otherwise would be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued by the commission under such a statute was caused solely by compliance with the general duty clause of the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 654), the act or event is not a violation of that statute, rule, order, or permit.

Added by Acts 2009, 81st Leg., R.S., Ch. 513 (S.B. 1080), Sec. 1, eff. September 1, 2009.

Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS. (a) A person, as defined by Section 382.003, Health and Safety Code, who is subject to an administrative, civil, or criminal action brought under this chapter for nuisance or trespass arising from greenhouse gas emissions has an affirmative defense to that action if the person's actions that resulted in the alleged nuisance or trespass were authorized by a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the commission or the federal government or an agency of the federal government and:

(1) the person was in substantial compliance with that rule, permit, order, license, certificate, registration, approval, or other authorization while the alleged nuisance or trespass was occurring; or

(2) the commission or the federal government or an agency of the federal government exercised enforcement discretion in connection with the actions that resulted in the alleged nuisance or trespass.

(b) This section does not apply to nuisance actions solely based on a noxious odor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 909 (S.B. 875), Sec. 1, eff. June 17, 2011.

SUBCHAPTER G. REVOCATION AND SUSPENSION OF PERMITS, LICENSES, CERTIFICATES, AND REGISTRATIONS

Sec. 7.301. DEFINITION. In this subchapter:

(1) "License," "certificate," "registration," and "exemption" have the meanings assigned by commission rule.

(2) "Permit holder" or "holder of a permit" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20 percent of the permit holder.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.302. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT. (a) This section applies to a permit or exemption issued by the commission under:

(1) Section 18.005 of this code;

(2) Chapter 26, 27, 28, or 31 of this code;

(3) Subchapter C or R, Chapter 361, Health and Safety Code;

(4) Subchapter D, Chapter 366, Health and Safety Code;

(5) Chapter 382, Health and Safety Code; or

(6) a rule adopted under any of those provisions.

(b) After notice and hearing, the commission may revoke, suspend, or revoke and reissue a permit or exemption on any of the following grounds:

(1) violating any term or condition of the permit, and revocation, suspension, or revocation and reissuance is necessary in order to maintain the quality of water or the

quality of air in the state, or to otherwise protect human health and the environment consistent with the objectives of the statutes or rules within the commission's jurisdiction;

(2) having a record of environmental violations in the preceding five years at the permitted or exempted site;

(3) causing a discharge, release, or emission contravening a pollution control standard set by the commission or contravening the intent of a statute or rule described in Subsection (a);

(4) including a material mistake in a federal operating permit issued under Chapter 382, Health and Safety Code, or making an inaccurate statement in establishing an emissions standard or other term or condition of a federal operating permit;

(5) misrepresenting or failing to disclose fully all relevant facts in obtaining the permit or misrepresenting to the commission any relevant fact at any time;

(6) a permit holder being indebted to the state for fees, payment of penalties, or taxes imposed by the statutes or rules within the commission's jurisdiction;

(7) a permit holder failing to ensure that the management of the permitted facility conforms or will conform to the statutes and rules within the commission's jurisdiction;

(8) the permit is subject to cancellation or suspension under Section 26.084;

(9) abandoning the permit or operations under the permit; or

(10) the commission finds that a change in conditions requires elimination of the discharge authorized by the permit.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 376, Sec. 3.04, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 4, eff. June 17, 2015.

Sec. 7.303. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, CERTIFICATE, OR REGISTRATION. (a) This section applies to a license, certificate, or registration issued:

(1) by the commission under:

(A) Section 26.0301;

(B) Chapter 37;

(C) Section 361.0861, 361.092, or 361.112, Health and Safety Code;

(D) Chapter 366, 371, or 401, Health and Safety Code; or

(E) Chapter 1903, Occupations Code;

(2) by a county under Subchapter E, Chapter 361, Health and Safety Code; or

(3) under a rule adopted under any of those provisions.

(b) After notice and hearing, the commission may suspend or revoke a license, certificate, or registration the commission or a county has issued, place on probation a person whose license, certificate, or registration has been suspended, reprimand the holder of a license, certificate, or registration, or refuse to renew or reissue a license, certificate, or registration on any of the following grounds:

(1) having a record of environmental violations in the preceding five years;

(2) committing fraud or deceit in obtaining the license, certificate, or registration;

(3) demonstrating gross negligence, incompetency, or misconduct while acting as holder of a license, certificate, or registration;

(4) making an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the commission by the holder of the license, certificate, or registration;

(5) failing to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(6) being indebted to the state for a fee, payment of a penalty, or a tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(7) with respect to a license or registration issued under Section 26.0301 or Chapter 37, violating a discharge permit of a sewage treatment plant, unless:

(A) the holder of the license or registration is unable to properly operate the sewage treatment or collection facility due to the refusal of the permit holder to authorize necessary expenditures to operate the sewage treatment or collection facility properly; or

(B) failure of the sewage treatment or collection facility to comply with its discharge permit results from faulty design of the facility;

(8) with respect to a license or registration issued under Chapter 37 of this code or Chapter 366, Health and Safety Code, violating either chapter or a rule adopted under either chapter; or

(9) with respect to a license issued under Subchapter E, Chapter 361, Health and Safety Code, violating that chapter or another applicable law or a commission rule governing the processing, storage, or disposal of solid waste.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 376, Sec. 3.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 880, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 18.001, eff. Sept. 1, 2003.

Sec. 7.304. SUSPENSION OF REGISTRATION OR REIMBURSEMENT PAYMENT ISSUED UNDER WASTE TIRE RECYCLING PROGRAM. Notwithstanding Sections 7.303, 7.305, and 7.306, the commission may suspend a registration of or reimbursement payment to a waste tire processor, waste tire transporter, waste tire generator, waste tire recycling facility, or waste tire energy recovery facility, without notice or hearing, on the initiation of an enforcement proceeding under this chapter and while the proceeding is pending for a violation of Subchapter P, Chapter

361, Health and Safety Code, or a rule adopted or order issued under that subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept.1, 1997.

Sec. 7.305. PROCEDURES. The commission by rule shall establish procedures for public notice and any public hearing under this subchapter. The procedures shall provide for notice to a county that issued a license, certificate, or registration that is the subject of the hearing.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.306. HEARINGS. A hearing under this subchapter shall be conducted in accordance with the hearing rules adopted by the commission and the applicable provisions of Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.307. CONSENT. If the holder of a permit, license, certificate, or registration requests or consents to the revocation or suspension of the permit, license, certificate, or registration, the executive director may revoke or suspend the permit, license, exemption, certificate, or registration without a hearing.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.308. OTHER RELIEF. A proceeding brought by the commission under this subchapter does not affect the commission's authority to bring suit for injunctive relief or penalty or both under this chapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.309. PROBATION REQUIREMENTS. If a license, certificate, or registration suspension is probated, the

commission may require the holder of the license, certificate, or registration:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit activities to the areas prescribed by the commission; or

(3) to continue or renew professional education until the registrant attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.310. REVOCATION OR SUSPENSION BY COUNTY. With respect to a license, certificate, or registration issued by a county under a statute or rule within the commission's jurisdiction, the issuing county may suspend or revoke the license, certificate, or registration on the grounds provided under Section 7.303.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER H. SUIT BY OTHERS

Sec. 7.351. CIVIL SUITS. (a) Subject to Section 7.3511, if it appears that a violation or threat of violation of Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code, a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction, or Chapter 1903, Occupations Code, or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as

authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

(b) Subject to Section 7.3511, if it appears that a violation or threat of violation of Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government, an authorized agent as defined in that chapter may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 193, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.845, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 857 (H.B. 2533), Sec. 1, eff. September 1, 2017.

Sec. 7.3511. PROCEDURE FOR CIVIL PENALTY; REQUIRED NOTICE. (a) In this section:

(1) "Authorized agent" has the meaning assigned by Section 366.002, Health and Safety Code.

(2) "Person affected" has the meaning assigned by Section 401.003, Health and Safety Code.

(b) This section applies only to a claim for a civil penalty in a civil suit under this subchapter for a violation of a statute, rule, order, or permit described by Section 7.351.

(c) Before instituting any claim described by Subsection (b), a local government, a person affected, or an authorized agent shall provide to the attorney general and the executive director of the commission written notice of each alleged violation, the facts in support of the claim, and the specific relief sought.

(d) A local government, a person affected, or an authorized agent may institute a claim described by Subsection

(b) on or after the 90th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 90th day after the date the notice is received the commission has commenced a proceeding under Subchapter C or the attorney general has commenced a civil suit under Subchapter D concerning at least one of the alleged violations set forth in the notice.

(e) If a local government, a person affected, or an authorized agent discovers a violation that is within 120 days of the expiration of the limitations period described in Section 7.360, the local government, person affected, or authorized agent may institute a claim described by Subsection (b) on or after the 45th day after the date the attorney general and the executive director of the commission receive the notice required by Subsection (c) unless before the 45th day after the date the notice is received the commission has commenced a proceeding under Subchapter C or the attorney general has commenced a civil suit under Subchapter D concerning at least one of the alleged violations set forth in the notice. In the circumstances described by this subsection, in addition to providing the notice required by Subsection (c), the local government, person affected, or authorized agent must:

(1) provide a copy of the notice by certified mail or hand delivery to the chief of the division of the attorney general's office responsible for handling environmental enforcement claims; and

(2) include with the copy of the notice under Subdivision (1) a statement providing that the copy of the notice is being provided pursuant to this subsection.

Added by Acts 2017, 85th Leg., R.S., Ch. 857 (H.B. 2533), Sec. 2, eff. September 1, 2017.

Sec. 7.352. RESOLUTION REQUIRED. In the case of a violation of Chapter 26 of this code or Chapter 382, Health and Safety Code, a local government may not exercise the enforcement

power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.353. COMMISSION NECESSARY PARTY. In a suit brought by a local government under this subchapter, the commission is a necessary and indispensable party.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.354. COSTS AND FEES. A penalty collected in a suit under this subchapter for a violation of Chapter 28 of this code or Chapter 401, Health and Safety Code, shall be paid to the state. If the suit is brought by a local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, the court shall include in any final judgment in favor of the local government or affected person an award to cover reasonable costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.355. COMPLAINTS. In the case of a violation of Chapter 401, Health and Safety Code, a local government or person affected may file with the commission a written complaint and may request an investigation of an alleged violation by a person who holds a permit subject to the commission's jurisdiction.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.356. COMMISSION REPLY. The commission shall reply to the local government or person affected who filed a complaint under Section 7.355 in writing not later than the 60th day after the complaint is received and shall provide a copy of any

investigation report relevant to the complaint together with a determination of whether the alleged violation was committed.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.358. OTHER REQUIREMENTS. In the case of a violation of Chapter 1903, Occupations Code, the regulatory authority of any local government may require compliance with any reasonable inspection requirements or ordinances or regulations designed to protect the public water supply and pay any reasonable fees imposed by the local government relating to work performed within its jurisdiction.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.846, eff. Sept. 1, 2003.

Sec. 7.359. FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT OF CIVIL PENALTY. In determining the amount of a civil penalty to be assessed in a suit brought by a local government under this subchapter, the trier of fact shall consider the factors described by Section 7.053.

Added by Acts 2015, 84th Leg., R.S., Ch. 543 (H.B. 1794), Sec. 2, eff. September 1, 2015.

Sec. 7.360. LIMITATIONS. A suit for a civil penalty that is brought by a local government under this subchapter must be brought not later than the fifth anniversary of the earlier of the date the person who committed the violation:

(1) notifies the commission in writing of the violation; or

(2) receives a notice of enforcement from the commission with respect to the alleged violation.

Added by Acts 2015, 84th Leg., R.S., Ch. 543 (H.B. 1794), Sec. 2, eff. September 1, 2015.

APPENDIX B.4

Attorney General's Opinion

(Formerly Appendix B.2)

APPENDIX B.4 [B.2].

ATTORNEY GENERAL'S OPINION

On August 23, 1993, the commission adopted 30 Texas Administrative Code (TAC) Chapter 122, Federal Operating Permits. On September 17, 1993, the commission submitted its request for approval of its federal operating permits program. The commission submitted the first Attorney General's statement to the EPA on November 12, 1993 (the 1993 statement). On June 7, 1995, (June 7, 1995 notice) EPA published a proposal to give the commission's program interim approval, 60 *Federal Register* 30037. On June 25, 1996, 61 *Federal Register* 32693, the EPA promulgated its final interim approval of the commission's federal operating permit program (June 25, 1996 notice).[1] The June 25, 1996 notice stated that requirements for approval in §70.4(b) included §112(l) requirements for approval of a program for delegation of § 112 for emission standards for hazardous air pollutants promulgated by the EPA that apply to sources subject to 40 CFR Part 70. The commission's program was approved for the implementation and enforcement of the emission standards for hazardous air pollutants for sources subject to 40 C.F.R. Part 70. The commission is now seeking approval of its program for implementation and enforcement of the emission standards for hazardous air pollutants for area sources.

Pursuant to my authority as Attorney General and in accordance with Section 112(l) of the Federal Clean Air Act (FCAA), as amended, (42 U.S.C. §7401, et seq.), and 40 CFR. §63.91(b)(1), it is my

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[1]On October 15, 1997, the commission adopted revisions to Chapter 122. On June 2, 1998, the TNRCC submitted a revised Title 30 TAC Chapter 122 and requested revised interim approval for the State of Texas to administer the Title 40 Code of Federal Regulations Part 70 (40 CFR Part 70) Federal Operating Permit Program. On August 6, 1998, the TNRCC submitted a supplement to the 1993 statement (the 1998 statement issued by Attorney General Dan Morales, dated August 3, 1998) in support of the October 15, 1997 revisions to Chapter 122.

On May 6, 1996, the TNRCC submitted a supplemental Attorney General's statement (the 1996 statement issued by Attorney General Dan Morales, dated May 6, 1996) and a letter of commitment by the agency's Executive Director and General Counsel. This statement addressed the changes to §5.115 of the Texas Water Code by Senate Bill 1546 during the 1995 legislative session. The opinions in that statement are not changed by the opinions in this current statement.

opinion that the laws of the State of Texas provide adequate authority to implement all aspects of the program submitted by the Texas Natural Resource Conservation Commission (TNRCC) to the U.S. Environmental Protection Agency for approval to administer and enforce the emission standards for hazardous air pollutants listed for regulation under §112(b) for area sources under title I of the FCAA. The laws and the program regulate, at a minimum, the same sources as the FCAA, and do so with standards that are no less stringent than those specified by the FCAA. The specific authorities provided, which are contained in statutes, regulations, or other legal authorities lawfully adopted, and which shall be fully effective by the time the program is approved or are provided by judicial decisions issued at the time this Statement is signed.

I. Enforcement of Emission Standards.

Section 63.91(b)(1)(i) requires that state law provide civil and criminal enforcement authority consistent with 40 CFR Part 70, §70.11, Requirements for Enforcement Authority. The commission's authority to implement the requirements of §70.11 was discussed in the 1993 statement and the 1998 statement. The commission has the authority to implement the requirements of §70.11. The statutory authority for enforcement under the Texas Clean Air Act (TCAA) was revised by Texas Senate Bill 1876 (1997), consolidating many enforcement provisions into Tex.Water Code Ann. Chapter 7. A chart showing the disposition of old TCAA enforcement provisions is included in the Revised Texas Federal Operating Permits Program Submittal, Appendix for Submittal Elements Section 70.4(b)(2), "Statutory and Regulatory Authority."

II. Compliance Status.

Section 63.91(b)(1)(ii) requires that state law provide the authority to request information from regulated sources concerning their compliance status. 382.016, Monitoring Requirements; Examination of Records, authorizes the commission to have reasonable requirements for measuring and monitoring emissions of air contaminants and to require owners or operators of sources to make and maintain records on the measuring and monitoring of emissions. Section 382.021, Sampling Methods and Procedures, allows the commission to prescribe sampling methods and procedures to be used to determine violations of and compliance with, the commissions rules and orders. Section 382.0514, Sampling, Monitoring and

Certification, allows the commission to require permit holders to sample and monitor, require compliance certifications and to provide periodic reports of the results of the sampling or monitoring and the certifications.

Sections in 30 TAC Chapter 122 that relate to requesting information from regulated sources concerning their compliance status are: §122.132, Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits; §122.134, Complete Application; §122.136 Application Deficiencies; §122.142, Permit Content Requirements; §122.143, General Terms and Conditions; §122.144, Recordkeeping Terms and Conditions; §122.145 Reporting Terms and Conditions; §122.146, Compliance Certification Terms and Conditions and §122.165, Certification by Responsible Official.

Sections in 30 TAC Chapter 101, General Rules that relate to requesting information from regulated sources concerning their compliance status are: §101.8, Sampling and §101.9, Sampling Ports.

III. Inspection and Entry Authority.

Section 63.91(b)(1)(iii) requires the state to have authority to inspect sources and any records required to determine a source's compliance status. 382.015, Power to Enter Property allows a member, employee or agent of the commission to enter public or private property (other than property designed for and used exclusively as a private residence housing not more than three families) at a reasonable time to inspect and investigate conditions relating to emissions of air contaminants or the concentration of air contaminants in the atmosphere. 382.016, Monitoring Requirements; Examination of Records also provides that a member, employee or agent of the commission may examine during regular business hours any records or memoranda relating to the operation of any air pollution or emission control equipment or facility or relating to emission of air contaminants. Section 382.022 authorizes the TNRCC executive director to conduct investigations considered advisable in order to administer the provisions of the TCAA and any of the commission's rule, orders and determinations, including investigations of violations and general air pollution problems or conditions.

Sections in 30 TAC Chapter 122 that relate to the commission's authority to inspect sources and any records required to determine a source's compliance status are: §122.143, General Terms and Conditions §122.144, Recordkeeping Terms and Conditions.

IV. Delegation of Enforcement to Local Agency.

Section 63.91(b)(1)(iv) requires the state to retain enforcement authority unless the local agency has authorities that meet the requirements of §70.11.

Section 382.111, Inspections; Power to Enter Property, limits local governments to the same powers and restrictions as the commission has under §382.015 to inspect the air and to enter public or private property in its territorial jurisdiction. The local government can do inspections to determine if the emissions from a source meet the emission limits determined by the commission or to determine compliance with an order, rule, or variance issued by the commission.

Section 382.113, Authority of Municipalities, provides that a municipality has the powers that are provided by law to municipalities to abate a nuisance and to enact and enforce ordinances for the control and abatement of air pollution, or any other ordinance that is consistent with the TCAA or the commission's rules or orders. Ordinances must be consistent with the TCAA and commission rules and orders and may not make a condition or act approved or authorized by the TCAA or the commissions rules or orders unlawful.

PROPOSED APPENDICES C.1 – C.6

The Texas State Plan for the Control of Designated Facilities and Pollutants

Proposed Revisions: January 11, 2023

APPENDIX C.1

2016 MSW Landfill Emission Guidelines (40 CFR 60 Subpart Cf)

2021 MSW Landfill Federal Plan (40 CFR 62 Subpart OOO)

Pollutant	Units (7 percent oxygen, dry basis)	HMIWI Emissions limits	Averaging time [1]	Method for demonstrating compliance [2]
Dioxins/furans ..	ng/dscm total dioxins/furans (gr/10^9 dscf) or ng/dscm TEQ (gr/10^9 dscf).	240 (100) or 5.1 (2.2) ..	3-run average (4-hour minimum sample time per run).	EPA Reference Method 23 of appendix A–7 of part 60.
Hydrogen chloride.	ppmv	810	3-run average (1-hour minimum sample time per run).	EPA Reference Method 26 or 26A of appendix A–8 of part 60.
Sulfur dioxide ...	ppmv	55	3-run average (1-hour minimum sample time per run).	EPA Reference Method 6 or 6C of appendix A–4 of part 60.
Nitrogen oxides	ppmv	130	3-run average (1-hour minimum sample time per run).	EPA Reference Method 7 or 7E of appendix A–4 of part 60.
Lead	mg/dscm (gr/10^3 dscf).	0.50 (0.22)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Cadmium	mg/dscm (gr/10^3 dscf).	0.11 (0.048)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Mercury	mg/dscm (gr/10^3 dscf).	0.0051 (0.0022)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.
[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

[74 FR 51407, Oct. 6, 2009]

Subpart Cf—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

SOURCE: 81 FR 59313, Aug. 29, 2016, unless otherwise noted.

§ 60.30f Scope and delegated authorities.

This subpart establishes Emission Guidelines and compliance times for the control of designated pollutants from certain designated municipal solid waste (MSW) landfills in accordance with section 111(d) of the Clean Air Act and subpart B of this part.

(a) If you are the Administrator of an air quality program in a state or United States protectorate with one or more existing MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014, you must submit a state plan to the U.S. Environmental Protection Agency (EPA) that implements the Emission Guidelines contained in this subpart. The requirements for state and federal plans are specified in subpart B of this part with the exception that §§ 60.23 and 60.27 will not apply. Notwithstanding the provisions of § 60.20a(a) in subpart Ba of this part, the requirements of §§ 60.23a and 60.27a will apply for state plans submitted after September 6, 2019, and federal plans, except that the requirements of § 60.23a(a)(1) will apply to a notice of availability of a final guideline document that was published under § 60.22(a). Likewise, the requirements of § 60.27a(e)(1) will refer to a final guideline document that was published under § 60.22(a).

(b) You must submit a state plan to the EPA by August 29, 2019.

(c) The following authorities will not be delegated to state, local, or tribal agencies:

(1) Approval of alternative methods to determine the NMOC concentration or a site-specific methane generation rate constant (k).

(2) [Reserved]

[81 FR 59313, Aug. 29, 2016, as amended at 84 FR 44555, Aug. 26, 2019]

§ 60.31f Designated facilities.

(a) The designated facility to which these Emission Guidelines apply is each existing MSW landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014.

(b) Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification

or reconstruction and would not subject an existing MSW landfill to the requirements of a standard of performance for new MSW landfills.

(c) For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of an MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the state's program under section 111(d) of the Clean Air Act, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of §70.5(a)(1)(i) or §71.5(a)(1)(i) of this chapter 90 days after the effective date of such section 111(d) program approval, even if the design capacity report is submitted earlier.

(d) When an MSW landfill subject to this subpart is closed as defined in this subpart, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement to install and operate a gas collection and control system under §60.33f; or

(2) The landfill meets the conditions for control system removal specified in §60.33f(f).

(e) When an MSW landfill subject to this subpart is in the closed landfill subcategory, the owner or operator is not subject to the following reports of this subpart, provided the owner or operator submitted these reports under the provisions of subpart WWW of this part; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part on or before July 17, 2014:

(1) Initial design capacity report specified in §60.38f(a).

(2) Initial or subsequent NMOC emission rate report specified in §60.38f(c), provided that the most recent NMOC emission rate report indicated the NMOC emissions were below 50 Mg/yr.

(3) Collection and control system design plan specified in §60.38f(d).

(4) Closure report specified in §60.38f(f).

(5) Equipment removal report specified in §60.38f(g).

(6) Initial annual report specified in §60.38f(h).

(7) Initial performance test report in §60.38f(i).

§60.32f Compliance times.

Planning, awarding of contracts, installing, and starting up MSW landfill air emission collection and control equipment that is capable of meeting the Emission Guidelines under §60.33f must be completed within 30 months after the date an NMOC emission rate report shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory); or within 30 months after the date of the most recent NMOC emission rate report that shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory), if Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater.

§60.33f Emission Guidelines for municipal solid waste landfill emissions.

(a) *Landfills.* For approval, a state plan must require each owner or operator of an MSW landfill having a design capacity greater than or equal to 2.5 million megagrams by mass and 2.5 million cubic meters by volume to collect and control MSW landfill emissions at each MSW landfill that meets the following conditions:

(1) The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

(2) The landfill commenced construction, reconstruction, or modification on or before July 17, 2014.

(3) The landfill has an NMOC emission rate greater than or equal to 34 megagrams per year or Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater.

(4) The landfill in the closed landfill subcategory and has an NMOC emission rate greater than or equal to 50 megagrams per year or Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater.

(b) *Collection system.* For approval, a state plan must include provisions for the installation of a gas collection and control system meeting the requirements in paragraphs (b)(1) through (3) and (c) of this section at each MSW landfill meeting the conditions in paragraph (a) of this section.

(1) *Collection system.* Install and start up a collection and control system that captures the gas generated within the landfill within 30 months after:

(i) The first annual report in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in § 60.38f(d)(4); or

(ii) The first annual NMOC emission rate report for a landfill in the closed landfill subcategory in which the NMOC emission rate equals or exceeds 50 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 50 megagrams per year, as specified in § 60.38f(d)(4); or

(iii) The most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2, if the Tier 4 surface emissions monitoring shows a surface methane emission concentration of 500 parts per million methane or greater as specified in § 60.38f(d)(4)(iii).

(2) *Active.* An active collection system must:

(i) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment.

(ii) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade.

(iii) Collect gas at a sufficient extraction rate.

(iv) Be designed to minimize off-site migration of subsurface gas.

(3) *Passive.* A passive collection system must:

(i) Comply with the provisions specified in paragraphs (b)(2)(i), (ii), and (iv) of this section.

(ii) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners must be installed as required under § 258.40 of this chapter.

(c) *Control system.* For approval, a state plan must include provisions for the control of the gas collected from within the landfill through the use of control devices meeting the following requirements, except as provided in § 60.24.

(1) A non-enclosed flare designed and operated in accordance with the parameters established in § 60.18 except as noted in § 60.37f(d); or

(2) A control system designed and operated to reduce NMOC by 98 weight percent; or when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen or less. The reduction efficiency or concentration in parts per million by volume must be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in § 60.35f(d). The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(i) If a boiler or process heater is used as the control device, the landfill gas stream must be introduced into the flame zone.

(ii) The control device must be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in §60.37f.

(iii) For the closed landfill subcategory, the initial or most recent performance test conducted to comply with subpart WWW of this part; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part on or before July 17, 2014 is sufficient for compliance with this subpart.

(3) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or beneficial use such as fuel for combustion, production of vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas must be controlled according to either paragraph (c)(1) or (2) of this section.

(4) All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of paragraph (b) or (c) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b) or (c) of this section.

(d) *Design capacity*. For approval, a state plan must require each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume to submit an initial design capacity report to the Administrator as provided in §60.38f(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions must be documented and submitted with the report. Submittal of the initial design capacity report fulfills the requirements of this subpart except as provided in paragraphs (d)(1) and (2) of this section.

(1) The owner or operator must submit an amended design capacity report as provided in §60.38f(b).

NOTE TO PARAGRAPH (d)(1): Note that if the design capacity increase is the result of a modification, as defined in this subpart, that was commenced after July 17, 2014, then the landfill becomes subject to subpart XXX of this part instead of this subpart. If the design capacity increase is the result of a change in operating practices, density, or some other change that is not a modification as defined in this subpart, then the landfill remains subject to this subpart.

(2) When an increase in the maximum design capacity of a landfill with an initial design capacity less than 2.5 million megagrams or 2.5 million cubic meters results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator must comply with paragraph (e) of this section.

(e) *Emissions*. For approval, a state plan must require each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters to either install a collection and control system as provided in paragraphs (b) and (c) of this section or calculate an initial NMOC emission rate for the landfill using the procedures specified in §60.35f(a). The NMOC emission rate must be recalculated annually, except as provided in §60.38f(c)(3).

(1) If the calculated NMOC emission rate is less than 34 megagrams per year, the owner or operator must:

(i) Submit an annual NMOC emission rate report according to §60.38f(c), except as provided in §60.38f(c)(3); and

(ii) Recalculate the NMOC emission rate annually using the procedures specified in §60.35f(a) until such time as the calculated NMOC emission rate is equal to or greater than 34 megagrams per year, or the landfill is closed.

(A) If the calculated NMOC emission rate, upon initial calculation or annual recalculation required in paragraph (e)(1)(ii) of this section, is equal to or greater than 34 megagrams per year, the owner or operator must either: Comply with paragraphs (b) and (c) of this section; calculate NMOC emissions using the next higher tier in §60.35f; or

conduct a surface emission monitoring demonstration using the procedures specified in § 60.35f(a)(6).

(B) If the landfill is permanently closed, a closure report must be submitted to the Administrator as provided in § 60.38f(f), except for exemption allowed under § 60.31f(e)(4).

(C) For the closed landfill subcategory, if the most recently calculated NMOC emission rate is equal to or greater than 50 megagrams per year, the owner or operator must either: Submit a gas collection and control system design plan as specified in § 60.38f(d), except for exemptions allowed under § 60.31f(e)(3), and install a collection and control system as provided in paragraphs (b) and (c) of this section; calculate NMOC emissions using the next higher tier in § 60.35f; or conduct a surface emission monitoring demonstration using the procedures specified in § 60.35f(a)(6).

(2) If the calculated NMOC emission rate is equal to or greater than 34 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator must either: submit a collection and control system design plan prepared by a professional engineer to the Administrator within 1 year as specified in § 60.38f(d), except for exemptions allowed under § 60.31f(e)(3); calculate NMOC emissions using a higher tier in § 60.35f; or conduct a surface emission monitoring demonstration using the procedures specified in § 60.35f(a)(6).

(3) For the closed landfill subcategory, if the calculated NMOC emission rate is equal to or greater than 50 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator must either: Submit a collection and control system design plan as specified in § 60.38f(d), except for exemptions allowed under § 60.31f(e)(3); calculate NMOC emissions using a higher tier in § 60.35f; or conduct a surface emission monitoring demonstration using the procedures specified in § 60.35f(a)(6).

(f) *Removal criteria.* The collection and control system may be capped, removed, or decommissioned if the following criteria are met:

(1) The landfill is a closed landfill (as defined in § 60.41f). A closure report must be submitted to the Administrator as provided in § 60.38f(f).

(2) The collection and control system has been in operation a minimum of 15 years or the landfill owner or operator demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flow.

(3) Following the procedures specified in § 60.35f(b), the calculated NMOC emission rate at the landfill is less than 34 megagrams per year on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

(4) For the closed landfill subcategory (as defined in § 60.41), following the procedures specified in § 60.35f(b), the calculated NMOC emission rate at the landfill is less than 50 megagrams per year on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

§ 60.34f Operational standards for collection and control systems.

For approval, a state plan must include provisions for the operational standards in this section (as well as the provisions in §§ 60.36f and 60.37f), or the operational standards in § 63.1958 of this chapter (as well as the provisions in §§ 63.1960 of this chapter and 63.1961 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1958 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section. Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c) must:

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

(1) Five (5) years or more if active; or

(2) Two (2) years or more if closed or at final grade.

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

(1) A fire or increased well temperature. The owner or operator must record instances when positive pressure occurs in efforts to avoid a fire. These records must be submitted with the annual reports as provided in § 60.38f(h)(1).

(2) Use of a geomembrane or synthetic cover. The owner or operator must develop acceptable pressure limits in the design plan.

(3) A decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes must be approved by the Administrator as specified in § 60.38f(d).

(c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit). The owner or operator may establish a higher operating temperature value at a particular well. A higher operating value demonstration must be submitted to the Administrator for approval and must include supporting data demonstrating that the elevated parameter neither causes fires nor significantly inhibits anaerobic decomposition by killing methanogens. The demonstration must satisfy both criteria in order to be approved (*i.e.*, neither causing fires nor killing methanogens is acceptable).

(d) Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in § 60.36(d). The owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations. Thus, the owner or operator must monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

(e) Operate the system such that all collected gases are vented to a control system designed and operated in compliance with § 60.33f(c). In the event the collection or control system is not operating, the gas mover system must be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere must be closed within 1 hour of the collection or control system not operating.

(f) Operate the control system at all times when the collected gas is routed to the system.

(g) If monitoring demonstrates that the operational requirements in paragraph (b), (c), or (d) of this section are not met, corrective action must be taken as specified in § 60.36f(a)(3) and (5) or (c). If corrective actions are taken as specified in § 60.36f, the monitored exceedance is not a violation of the operational requirements in this section.

[81 FR 59313, Aug. 29, 2016, as amended at 85 FR 17259, Mar. 26, 2020]

§ 60.35f Test methods and procedures.

For approval, a state plan must include provisions in this section to calculate the landfill NMOC emission rate or to conduct a surface emission monitoring demonstration.

(a)(1) *NMOC Emission Rate.* The landfill owner or operator must calculate the NMOC emission rate using either Equation 1 provided in paragraph (a)(1)(i) of this section or Equation 2 provided in paragraph (a)(1)(ii) of this section. Both Equation 1 and Equation 2 may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i) of this section, for part of the life of the landfill and the actual year-

to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii) of this section, for part of the life of the landfill. The values to be used in both Equation 1 and Equation 2 are 0.05 per year for k, 170 cubic meters per megagram for Lo, and 4,000 parts per million by volume as hexane for the C_{NMOC}. For landfills located in geographical areas with a 30-year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site, the k value to be used is 0.02 per year.

(i)(A) Equation 1 must be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{NMOC} = \sum_{i=1}^{n} 2\,k\,L_o M_i (e^{-kt_i})(C_{NMOC})(3.6\,x\,10^{-9}) \qquad \text{(Eq. 1)}$$

Where:

M_{NMOC} = Total NMOC emission rate from the landfill, megagrams per year.
k = Methane generation rate constant, $year^{-1}$.
L_o = Methane generation potential, cubic meters per megagram solid waste.
M_i = Mass of solid waste in the i^{th} section, megagrams.
t_i = Age of the i^{th} section, years.
C_{NMOC} = Concentration of NMOC, parts per million by volume as hexane.
3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for M_i if documentation of the nature and amount of such wastes is maintained.

(ii)(A) Equation 2 must be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_O R\,(e^{-kc} - e^{-kt})\,C_{NMOC}(3.6 \times 10^{-9}) \qquad \text{(Eq. 2)}$$

Where:

M_{NMOC} = Mass emission rate of NMOC, megagrams per year.
L_o = Methane generation potential, cubic meters per megagram solid waste.
R = Average annual acceptance rate, megagrams per year.
k = Methane generation rate constant, $year^{-1}$.
t = Age of landfill, years.
C_{NMOC} = Concentration of NMOC, parts per million by volume as hexane.
c = Time since closure, years; for an active landfill c = 0 and $e^{-kc} = 1$.
3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of R, if documentation of the nature and amount of such wastes is maintained.

(2) *Tier 1.* The owner or operator must compare the calculated NMOC mass emission rate to the standard of 34 megagrams per year.

(i) If the NMOC emission rate calculated in paragraph (a)(1) of this section is less than 34 megagrams per year, then the owner or operator must submit an NMOC emission rate report according to § 60.38f(c), and must recalculate the NMOC mass emission rate annually as required under § 60.33f(e).

(ii) If the NMOC emission rate calculated in paragraph (a)(1) of this section is equal to or greater than 34 megagrams per year, then the landfill owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 60.38f(d) and install and operate a gas collection and control system within 30 months according to § 60.33f(b) and (c);

(B) Determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the Tier 2 procedures provided in paragraph (a)(3) of this section; or

(C) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the Tier 3 procedures provided in paragraph (a)(4) of this section.

(3) *Tier 2.* The landfill owner or operator must determine the site-specific NMOC concentration using the following sampling procedure. The landfill owner or operator must install at least two sample probes per hectare, evenly distributed over the landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The probes should be evenly distributed across the sample area. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator must collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Method 25 or 25C of appendix A of this part. Taking composite samples from different probes into a single cylinder is allowed; however, equal sample volumes must be taken from each probe. For each composite, the sampling rate, collection times, beginning and ending cylinder vacuums, or alternative volume measurements must be recorded to verify that composite volumes are equal. Composite sample volumes should not be less than one liter unless evidence can be provided to substantiate the accuracy of smaller volumes. Terminate compositing before the cylinder approaches ambient pressure where measurement accuracy diminishes. If more than the required number of samples is taken, all samples must be used in the analysis. The landfill owner or operator must divide the NMOC concentration from Method 25 or 25C by six to convert from C_{NMOC} as carbon to C_{NMOC} as hexane. If the landfill has an active or passive gas removal system in place, Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two sampling probe per hectare requirement. For active collection systems, samples may be collected from the common header pipe. The sample location on the common header pipe must be before any gas moving, condensate removal, or treatment system equipment. For active collection systems, a minimum of three samples must be collected from the header pipe.

(i) Within 60 days after the date of determining the NMOC concentration and corresponding NMOC emission rate, the owner or operator must submit the results according to § 60.38f(j)(2).

(ii) The landfill owner or operator must recalculate the NMOC mass emission rate using Equation 1 or Equation 2 provided in paragraph (a)(1)(i) or (ii) of this section using the average site-specific NMOC concentration from the collected samples instead of the default value provided in paragraph (a)(1) of this section.

(iii) If the resulting NMOC mass emission rate is less than 34 megagrams per year, then the owner or operator must submit a periodic estimate of NMOC emissions in an NMOC emission rate report according to § 60.38f(c), and must recalculate the NMOC mass emission rate annually as required under § 60.33f(e). The site-specific NMOC concentration must be retested every 5 years using the methods specified in this section.

(iv) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration is equal to or greater than 34 megagrams per year, the owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 60.38f(d) and install and operate a gas collection and control system within 30 months according to § 60.33f(b) and (c);

(B) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the Tier 3 procedures specified in paragraph (a)(4) of this section; or

(C) Conduct a surface emission monitoring demonstration using the Tier 4 procedures specified in paragraph (a)(6) of this section.

(4) *Tier 3.* The site-specific methane generation rate constant must be determined using the procedures provided in Method 2E of appendix A of this part. The landfill owner or operator must estimate the NMOC mass emission rate using Equation 1 or Equation 2 in paragraph (a)(1)(i) or (ii) of this section and using a site-specific methane generation rate constant, and the

site-specific NMOC concentration as determined in paragraph (a)(3) of this section instead of the default values provided in paragraph (a)(1) of this section. The landfill owner or operator must compare the resulting NMOC mass emission rate to the standard of 34 megagrams per year.

(i) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration and Tier 3 site-specific methane generation rate is equal to or greater than 34 megagrams per year, the owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 60.38f(d) and install and operate a gas collection and control system within 30 months according to § 60.33f(b) and (c); or

(B) Conduct a surface emission monitoring demonstration using the Tier 4 procedures specified in paragraph (a)(6) of this section.

(ii) If the NMOC mass emission rate is less than 34 megagrams per year, then the owner or operator must recalculate the NMOC mass emission rate annually using Equation 1 or Equation 2 in paragraph (a)(1) of this section and using the site-specific Tier 2 NMOC concentration and Tier 3 methane generation rate constant and submit a periodic NMOC emission rate report as provided in § 60.38f(c). The calculation of the methane generation rate constant is performed only once, and the value obtained from this test must be used in all subsequent annual NMOC emission rate calculations.

(5) *Other methods.* The owner or operator may use other methods to determine the NMOC concentration or a site-specific methane generation rate constant as an alternative to the methods required in paragraphs (a)(3) and (4) of this section if the method has been approved by the Administrator.

(6) *Tier 4.* The landfill owner or operator must demonstrate that surface methane emissions are below 500 parts per million. Surface emission monitoring must be conducted on a quarterly basis using the following procedures. Tier 4 is allowed only if the landfill owner or operator can demonstrate that NMOC emissions are greater than or equal to 34 Mg/yr but less than 50 Mg/yr using Tier 1 or Tier 2. If both Tier 1 and Tier 2 indicate NMOC emissions are 50 Mg/yr or greater, then Tier 4 cannot be used. In addition, the landfill must meet the criteria in paragraph (a)(6)(viii) of this section.

(i) The owner or operator must measure surface concentrations of methane along the entire perimeter of the landfill and along a pattern that traverses the landfill at no more than 30-meter intervals using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in § 60.36f(d).

(ii) The background concentration must be determined by moving the probe inlet upwind and downwind at least 30 meters from the waste mass boundary of the landfill.

(iii) Surface emission monitoring must be performed in accordance with section 8.3.1 of Method 21 of appendix A of this part, except that the probe inlet must be placed no more than 5 centimeters above the landfill surface; the constant measurement of distance above the surface should be based on a mechanical device such as with a wheel on a pole.

(A) The owner or operator must use a wind barrier, similar to a funnel, when onsite average wind speed exceeds 4 miles per hour or 2 meters per second or gust exceeding 10 miles per hour. Average on-site wind speed must also be determined in an open area at 5-minute intervals using an on-site anemometer with a continuous recorder and data logger for the entire duration of the monitoring event. The wind barrier must surround the SEM monitor, and must be placed on the ground, to ensure wind turbulence is blocked. SEM cannot be conducted if average wind speed exceeds 25 miles per hour.

(B) Landfill surface areas where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover, and all cover penetrations must also be monitored using a device meeting the specifications provided in § 60.36f(d).

(iv) Each owner or operator seeking to comply with the Tier 4 provisions in paragraph (a)(6) of this section must maintain records of surface emission

monitoring as provided in § 60.39f(g) and submit a Tier 4 surface emissions report as provided in § 60.38f(d)(4)(iii).

(v) If there is any measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must submit a gas collection and control system design plan within 1 year of the first measured concentration of methane of 500 parts per million or greater from the surface of the landfill according to § 60.38f(d) and install and operate a gas collection and control system according to § 60.33f(b) and (c) within 30 months of the most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2.

(vi) If after four consecutive quarterly monitoring periods at a landfill, other than a closed landfill, there is no measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must continue quarterly surface emission monitoring using the methods specified in this section.

(vii) If after four consecutive quarterly monitoring periods at a closed landfill there is no measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must conduct annual surface emission monitoring using the methods specified in this section.

(viii) If a landfill has installed and operates a collection and control system that is not required by this subpart, then the collection and control system must meet the following criteria:

(A) The gas collection and control system must have operated for at least 6,570 out of 8,760 hours preceding the Tier 4 surface emissions monitoring demonstration.

(B) During the Tier 4 surface emissions monitoring demonstration, the gas collection and control system must operate as it normally would to collect and control as much landfill gas as possible.

(b) After the installation and startup of a collection and control system in compliance with this subpart, the owner or operator must calculate the NMOC emission rate for purposes of determining when the system can be capped, removed, or decommissioned as provided in § 60.33f(f), using Equation 3:

$$M_{NMOC} = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC} \qquad \text{(Eq. 3)}$$

Where:

M_{NMOC} = Mass emission rate of NMOC, megagrams per year.

Q_{LFG} = Flow rate of landfill gas, cubic meters per minute.

C_{NMOC} = NMOC concentration, parts per million by volume as hexane.

(1) The flow rate of landfill gas, Q_{LFG}, must be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control system using a gas flow measuring device calibrated according to the provisions of section 10 of Method 2E of appendix A of this part.

(2) The average NMOC concentration, C_{NMOC}, must be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in Method 25 or Method 25C of appendix A of this part. The sample location on the common header pipe must be before any condensate removal or other gas refining units. The landfill owner or operator must divide the NMOC concentration from Method 25 or Method 25C by six to convert from C_{NMOC} as carbon to C_{NMOC} as hexane.

(3) The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the Administrator.

(i) Within 60 days after the date of calculating the NMOC emission rate for purposes of determining when the system can be capped or removed, the owner or operator must submit the results according to § 60.38f(j)(2).

(ii) [Reserved]

(c) When calculating emissions for Prevention of Significant Deterioration purposes, the owner or operator of each MSW landfill subject to the provisions of this subpart must estimate the NMOC emission rate for comparison to the Prevention of Significant Deterioration major source and significance levels in § 51.166 or § 52.21 of this chapter using Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources (AP–42) or other approved measurement procedures.

(d) For the performance test required in § 60.33f(c)(1), the net heating value of the combusted landfill gas as determined in § 60.18(f)(3) is calculated from the concentration of methane in the landfill gas as measured by Method 3C. A minimum of three 30-minute Method 3C samples are determined. The measurement of other organic components, hydrogen, and carbon monoxide is not applicable. Method 3C may be used to determine the landfill gas molecular weight for calculating the flare gas exit velocity under § 60.18(f)(4).

(1) Within 60 days after the date of completing each performance test (as defined in § 60.8), the owner or operator must submit the results of the performance tests required by paragraph (b) or (d) of this section, including any associated fuel analyses, according to § 60.38f(j)(1).

(2) [Reserved]

(e) For the performance test required in § 60.33f(c)(2), Method 25 or 25C (Method 25C may be used at the inlet only) of appendix A of this part must be used to determine compliance with the 98 weight-percent efficiency or the 20 parts per million by volume outlet NMOC concentration level, unless another method to demonstrate compliance has been approved by the Administrator as provided by § 60.38f(d)(2). Method 3, 3A, or 3C must be used to determine oxygen for correcting the NMOC concentration as hexane to 3 percent. In cases where the outlet concentration is less than 50 ppm NMOC as carbon (8 ppm NMOC as hexane), Method 25A should be used in place of Method 25. Method 18 may be used in conjunction with Method 25A on a limited basis (compound specific, *e.g.*, methane) or Method 3C may be used to determine methane. The methane as carbon should be subtracted from the Method 25A total hydrocarbon value as carbon to give NMOC concentration as carbon. The landfill owner or operator must divide the NMOC concentration as carbon by 6 to convert the C_{NMOC} as carbon to C_{NMOC} as hexane. Equation 4 must be used to calculate efficiency:

$$\text{Control Efficiency} = (NMOC_{in} - NMOC_{out})/(NMOC_{in}) \qquad \text{(Eq. 4)}$$

Where:

$NMOC_{in}$ = Mass of NMOC entering control device.

$NMOC_{out}$ = Mass of NMOC exiting control device.

(1) Within 60 days after the date of completing each performance test (as defined in § 60.8), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, according to § 60.38f(j)(1).

(2) [Reserved]

§ 60.36f Compliance provisions.

For approval, a state plan must include the compliance provisions in this section (as well as the provisions in §§ 60.34f and 60.37f), or the compliance provisions in § 63.1960 of this chapter (as well as the provisions in §§ 63.1958 of this chapter and 63.1961 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1960 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

(a) Except as provided in § 60.38f(d)(2), the specified methods in paragraphs (a)(1) through (6) of this section must be used to determine whether the gas

collection system is in compliance with § 60.33f(b)(2).

(1) For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with § 60.33f(b)(2)(i), either Equation 5 or Equation 6 in paragraph (a)(1)(i) or (ii) of this section must be used. The methane generation rate constant (k) and methane generation potential (L_o) kinetic factors should be those published in the most recent AP–42 or other site-specific values demonstrated to be appropriate and approved by the Administrator. If k has been determined as specified in § 60.35f(a)(4), the value of k determined from the test must be used. A value of no more than 15 years must be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Q_m = 2L_oR\ (e^{-kc} - e^{-kt}) \qquad \text{(Eq. 5)}$$

Where:

Q_m = Maximum expected gas generation flow rate, cubic meters per year.
L_o = Methane generation potential, cubic meters per megagram solid waste.
R = Average annual acceptance rate, megagrams per year.
k = Methane generation rate constant, $year^{-1}$.
t = Age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure, t is the age of the landfill at installation, years.
c = Time since closure, years (for an active landfill c = 0 and $e^{-kc} = 1$).

(ii) For sites with known year-to-year solid waste acceptance rate:

$$Q_M = \sum_{i=1}^{n} 2kL_oM_i(e^{-kt_i}) \qquad \text{(Eq. 6)}$$

Where:

Q_M = Maximum expected gas generation flow rate, cubic meters per year.
k = Methane generation rate constant, $year^{-1}$.
L_o = Methane generation potential, cubic meters per megagram solid waste.
M_i = Mass of solid waste in the i^{th} section, megagrams.
t_i = Age of the i^{th} section, years.

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, Equation 5 or Equation 6 in paragraph (a)(1)(i) or (ii) of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using Equation 5 or Equation 6 or other methods must be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

(2) For the purposes of determining sufficient density of gas collectors for compliance with § 60.33f(b)(2)(ii), the owner or operator must design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Administrator, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

(3) For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with § 60.33f(b)(2)(iii), the owner or operator must measure gauge pressure in the gas collection header applied to

each individual well monthly. If a positive pressure exists, action must be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under §60.34f(b). Any attempted corrective measure must not cause exceedances of other operational or performance standards.

(i) If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement of positive pressure, the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but not later than 60 days after positive pressure was first measured. The owner or operator must keep records according to §60.39f(e)(3).

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure or elevated temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) or positive pressure. The owner or operator must submit the items listed in §60.38f(h)(7) as part of the next annual report. The owner or operator must keep records according to §60.39f(e)(4).

(iii) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to §60.38f(h)(7) and (k). The owner or operator must keep records according to §60.39f(e)(5).

(4) [Reserved]

(5) For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator must monitor each well monthly for temperature as provided in §60.34f(c). If a well exceeds the operating parameter for temperature, action must be initiated to correct the exceedance within 5 calendar days. Any attempted corrective measure must not cause exceedances of other operational or performance standards.

(i) If a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit) cannot be achieved within 15 calendar days of the first measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit), the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after a landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) was first measured. The owner or operator must keep records according to §60.39f(e)(3).

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit). The owner or operator must submit the items listed in §60.38f(h)(7) as part of the next annual report. The owner or operator must keep records according to §60.39f(e)(4).

(iii) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to §60.38f(h)(7) and (k). The owner or operator must keep records according to §60.39f(e)(5).

(6) An owner or operator seeking to demonstrate compliance with §60.33f(b)(2)(iv) through the use of a collection system not conforming to the specifications provided in §60.40f must provide information satisfactory to the Administrator as specified in §60.38f(d)(3) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with §60.34f(a), each owner or operator of a controlled landfill must place each well or design component as specified in the approved design plan as provided in

§ 60.38f(d). Each well must be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

(1) Five (5) years or more if active; or

(2) Two (2) years or more if closed or at final grade.

(c) The following procedures must be used for compliance with the surface methane operational standard as provided in § 60.34f(d):

(1) After installation and startup of the gas collection system, the owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of this section.

(2) The background concentration must be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

(3) Surface emission monitoring must be performed in accordance with section 8.3.1 of Method 21 of appendix A of this part, except that the probe inlet must be placed within 5 to 10 centimeters of the ground. Monitoring must be performed during typical meteorological conditions.

(4) Any reading of 500 parts per million or more above background at any location must be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section must be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of § 60.34f(d).

(i) The location of each monitored exceedance must be marked and the location and concentration recorded. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance must be made and the location must be re-monitored within 10 calendar days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action must be taken and the location must be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same location, the action specified in paragraph (c)(4)(v) of this section must be taken, and no further monitoring of that location is required until the action specified in paragraph (c)(4)(v) of this section has been taken.

(iv) Any location that initially showed an exceedance but has a methane concentration less than 500 parts per million methane above background at the 10-day re-monitoring specified in paragraph (c)(4)(ii) or (iii) of this section must be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 parts per million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in paragraph (c)(4)(iii) or (v) of this section must be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 parts per million above background three times within a quarterly period, a new well or other collection device must be installed within 120 calendar days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the Administrator for approval.

(5) The owner or operator must implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in paragraph (c) of this section or § 60.35f(a)(6)

must comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

(1) The portable analyzer must meet the instrument specifications provided in section 6 of Method 21 of appendix A of this part, except that ''methane'' replaces all references to ''VOC''.

(2) The calibration gas must be methane, diluted to a nominal concentration of 500 parts per million in air.

(3) To meet the performance evaluation requirements in section 8.1 of Method 21 of appendix A of this part, the instrument evaluation procedures of section 8.1 of Method 21 must be used.

(4) The calibration procedures provided in sections 8 and 10 of Method 21 of appendix A of this part must be followed immediately before commencing a surface monitoring survey.

(e) The provisions of this subpart apply at all times, including periods of startup, shutdown, or malfunction. During periods of startup, shutdown, and malfunction, you must comply with the work practice specified in § 60.34f(e) in lieu of the compliance provisions in § 60.36f.

[81 FR 59313, Aug. 29, 2016, as amended at 85 FR 17259, Mar. 26, 2020]

§ 60.37f Monitoring of operations.

For approval, a state plan must include the monitoring provisions in this section, (as well as the provisions in §§ 60.34f and 60.36f) except as provided in § 60.38f(d)(2), or the monitoring provisions in § 63.1961 of this chapter (as well as the provisions in §§ 63.1958 of this chapter and 63.1960 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.33f(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1961 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

(a) Each owner or operator seeking to comply with § 60.33f(b)(2) for an active gas collection system must install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead and:

(1) Measure the gauge pressure in the gas collection header on a monthly basis as provided in § 60.36f(a)(3); and

(2) Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as follows:

(i) The nitrogen level must be determined using Method 3C, unless an alternative test method is established as allowed by § 60.38f(d)(2).

(ii) Unless an alternative test method is established as allowed by § 60.38f(d)(2), the oxygen level must be determined by an oxygen meter using Method 3A, 3C, or ASTM D6522–11 (incorporated by reference, see § 60.17). Determine the oxygen level by an oxygen meter using Method 3A, 3C, or ASTM D6522–11 (if sample location is prior to combustion) except that:

(A) The span must be set between 10 and 12 percent oxygen;

(B) A data recorder is not required;

(C) Only two calibration gases are required, a zero and span;

(D) A calibration error check is not required; and

(E) The allowable sample bias, zero drift, and calibration drift are ±10 percent.

(iii) A portable gas composition analyzer may be used to monitor the oxygen levels provided:

(A) The analyzer is calibrated; and

(B) The analyzer meets all quality assurance and quality control requirements for Method 3A or ASTM D6522–11 (incorporated by reference, see § 60.17).

(3) Monitor temperature of the landfill gas on a monthly basis as provided in § 60.36f(a)(5). The temperature measuring device must be calibrated annually using the procedure in this part 60, appendix A–1, Method 2, Section 10.3.

(b) Each owner or operator seeking to comply with § 60.33f(c) using an enclosed combustor must calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 degrees Celsius, whichever is greater. A temperature monitoring device is

not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

(2) A device that records flow to the control device and bypass of the control device (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that must record the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with §60.33f(c) using a non-enclosed flare must install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame.

(2) A device that records flow to the flare and bypass of the flare (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with §60.33f(c) using a device other than a non-enclosed flare or an enclosed combustor or a treatment system must provide information satisfactory to the Administrator as provided in §60.38f(d)(2) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator must review the information and either approve it, or request that additional information be submitted. The Administrator may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in §60.40f or seeking to monitor alternative parameters to those required by §§60.34f through 60.37f must provide information satisfactory to the Administrator as provided in §60.38f(d)(2) and (3) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with the 500 parts per million surface methane operational standard in §60.34f(d) must monitor surface concentrations of methane according to the procedures provided in §60.36f(c) and the instrument specifications in §60.36f(d). Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 parts per million or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

(g) Each owner or operator seeking to demonstrate compliance with the control system requirements in §60.33f(c) using a landfill gas treatment system must maintain and operate all monitoring systems associated with the treatment system in accordance with the site-specific treatment system monitoring plan required in §60.39f(b)(5)(ii) and must calibrate, maintain, and operate according to the manufacturer's specifications a device that records flow to the treatment system and bypass of the treatment system (if applicable). The owner or operator must:

(1) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the treatment system at least every 15 minutes; and

(2) Secure the bypass line valve in the closed position with a car-seal or a

lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(h) The monitoring requirements of paragraphs (b), (c) (d) and (g) of this section apply at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

[81 FR 59313, Aug. 29, 2016, as amended at 85 FR 17260, Mar. 26, 2020]

§ 60.38f Reporting guidelines.

For approval, a state plan must include the reporting provisions listed in this section, as applicable, except as provided under §§ 60.24 and 60.38f(d)(2).

(a) *Design capacity report.* For existing MSW landfills subject to this subpart, the initial design capacity report must be submitted no later than 90 days after the effective date of EPA approval of the state's plan under section 111(d) of the Clean Air Act. The initial design capacity report must contain the following information:

(1) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the state, local, or tribal agency responsible for regulating the landfill.

(2) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit issued by the state, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering practices. The calculations must be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually. Any density conversions must be documented and submitted with the design capacity report. The state, local, or tribal agency or the Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(b) *Amended design capacity report.* An amended design capacity report must be submitted providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 60.39f(f).

(c) *NMOC emission rate report.* For existing MSW landfills covered by this subpart with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the NMOC emission rate report must be submitted following the procedure specified in paragraph (j)(2) of this section no later than 90 days after the effective date of EPA approval of the state's plan under section 111(d) of the Clean Air Act. The NMOC emission rate report must be submitted to the Administrator annually following the procedure specified in paragraph (j)(2) of this section, except as provided for in paragraph (c)(3) of this section. The Administrator may request such additional information as

may be necessary to verify the reported NMOC emission rate.

(1) The NMOC emission rate report must contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in § 60.35f(a) or (b), as applicable.

(2) The NMOC emission rate report must include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

(3) If the estimated NMOC emission rate as reported in the annual report to the Administrator is less than 34 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit, following the procedure specified in paragraph (j)(2) of this section, an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate must include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided to the Administrator. This estimate must be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate must be submitted to the Administrator. The revised estimate must cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(4) Each owner or operator subject to the requirements of this subpart is exempted from the requirements to submit an NMOC emission rate report, after installing a collection and control system that complies with § 60.33f(b) and (c), during such time as the collection and control system is in operation and in compliance with §§ 60.34f and 60.36f.

(d) *Collection and control system design plan.* The state plan must include a process for state review and approval of the site-specific design plan for each gas collection and control system. The collection and control system design plan must be prepared and approved by a professional engineer and must meet the following requirements:

(1) The collection and control system as described in the design plan must meet the design requirements in § 60.33f(b) and (c).

(2) The collection and control system design plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions of §§ 60.34f through 60.39f proposed by the owner or operator.

(3) The collection and control system design plan must either conform to specifications for active collection systems in § 60.40f or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to § 60.40f.

(4) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must submit a copy of the collection and control system design plan cover page that contains the engineer's seal to the Administrator within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year, except as follows:

(i) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in § 60.35f(a)(3) and the resulting rate is less than 34 megagrams per year, annual periodic reporting must be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated NMOC emission rate is equal to or greater than 34 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated NMOC emission rate based on NMOC sampling and analysis, must be submitted, following the procedures in paragraph (j)(2) of this section, within 180 days of the first calculated exceedance of 34 megagrams per year.

(ii) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant k, as provided in Tier 3 in § 60.35f(a)(4), and the resulting NMOC emission rate is less than 34 megagrams per year, annual

periodic reporting must be resumed. The resulting site-specific methane generation rate constant k must be used in the NMOC emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of §60.35f(a)(4) and the resulting site-specific methane generation rate constant k must be submitted, following the procedure specified in paragraph (j)(2) of this section, to the Administrator within 1 year of the first calculated NMOC emission rate equaling or exceeding 34 megagrams per year.

(iii) If the owner or operator elects to demonstrate that site-specific surface methane emissions are below 500 parts per million methane, based on the provisions of §60.35f(a)(6), then the owner or operator must submit annually a Tier 4 surface emissions report as specified in this paragraph (d)(4)(iii) following the procedure specified in paragraph (j)(2) of this section until a surface emissions readings of 500 parts per million methane or greater is found. If the Tier 4 surface emissions report shows no surface emissions readings of 500 parts per million methane or greater for four consecutive quarters at a closed landfill, then the landfill owner or operator may reduce Tier 4 monitoring from a quarterly to an annual frequency. The Administrator may request such additional information as may be necessary to verify the reported instantaneous surface emission readings. The Tier 4 surface emissions report must clearly identify the location, date and time (to the nearest second), average wind speeds including wind gusts, and reading (in parts per million) of any value 500 parts per million methane or greater, other than non-repeatable, momentary readings. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places. The Tier 4 surface emission report should also include the results of the most recent Tier 1 and Tier 2 results in order to verify that the landfill does not exceed 50 Mg/yr of NMOC.

(A) The initial Tier 4 surface emissions report must be submitted annually, starting within 30 days of completing the fourth quarter of Tier 4 surface emissions monitoring that demonstrates that site-specific surface methane emissions are below 500 parts per million methane, and following the procedure specified in paragraph (j)(2) of this section.

(B) The Tier 4 surface emissions rate report must be submitted within 1 year of the first measured surface exceedance of 500 parts per million methane, following the procedure specified in paragraph (j)(2) of this section.

(iv) If the landfill is in the closed landfill subcategory, the owner or operator must submit a collection and control system design plan to the Administrator within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 50 megagrams per year, except as follows:

(A) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in §60.35f(a)(3) and the resulting rate is less than 50 megagrams per year, annual periodic reporting must be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated NMOC emission rate is equal to or greater than 50 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated NMOC emission rate based on NMOC sampling and analysis, must be submitted, following the procedure specified in paragraph (j)(2) of this section, within 180 days of the first calculated exceedance of 50 megagrams per year.

(B) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant k, as provided in Tier 3 in §60.35f(a)(4), and the resulting NMOC emission rate is less than 50 megagrams per year, annual periodic reporting must be resumed. The resulting site-specific methane generation rate constant k must be used in the NMOC emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission

rate report based on the provisions of § 60.35f(a)(4) and the resulting site-specific methane generation rate constant k must be submitted, following the procedure specified in paragraph (j)(2) of this section, to the Administrator within 1 year of the first calculated NMOC emission rate equaling or exceeding 50 megagrams per year.

(C) The landfill owner or operator elects to demonstrate surface emissions are low, consistent with the provisions in paragraph (d)(4)(iii) of this section.

(D) The landfill has already submitted a gas collection and control system design plan consistent with the provisions of subpart WWW of this part; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part.

(5) The landfill owner or operator must notify the Administrator that the design plan is completed and submit a copy of the plan's signature page. The Administrator has 90 days to decide whether the design plan should be submitted for review. If the Administrator chooses to review the plan, the approval process continues as described in paragraph (c)(6) of this section. However, if the Administrator indicates that submission is not required or does not respond within 90 days, the landfill owner or operator can continue to implement the plan with the recognition that the owner or operator is proceeding at their own risk. In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

(6) Upon receipt of an initial or revised design plan, the Administrator must review the information submitted under paragraphs (d)(1) through (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems. If the Administrator does not approve or disapprove the design plan, or does not request that additional information be submitted within 90 days of receipt, then the owner or operator may continue with implementation of the design plan, recognizing they would be proceeding at their own risk.

(7) If the owner or operator chooses to demonstrate compliance with the emission control requirements of this subpart using a treatment system as defined in this subpart, then the owner or operator must prepare a site-specific treatment system monitoring plan as specified in § 60.39f(b)(5).

(e) *Revised design plan.* The owner or operator who has already been required to submit a design plan under paragraph (d) of this section, or under subpart WWW of this part; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part, must submit a revised design plan to the Administrator for approval as follows:

(1) At least 90 days before expanding operations to an area not covered by the previously approved design plan.

(2) Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Administrator according to paragraph (d) of this section.

(f) *Closure report.* Each owner or operator of a controlled landfill must submit a closure report to the Administrator within 30 days of ceasing waste acceptance. The Administrator may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 40 CFR 258.60. If a closure report has been submitted to the Administrator, no additional wastes may be placed into the landfill without filing a notification of modification as described under § 60.7(a)(4).

(g) *Equipment removal report.* Each owner or operator of a controlled landfill must submit an equipment removal report to the Administrator 30 days prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report must contain the following items:

(i) A copy of the closure report submitted in accordance with paragraph (f) of this section; and

(ii) A copy of the initial performance test report demonstrating that the 15-year minimum control period has expired, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX, or information that demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX; and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 34 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports; or

(iv) For the closed landfill subcategory, dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 50 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

(2) The Administrator may request such additional information as may be necessary to verify that all of the conditions for removal in §60.33f(f) have been met.

(h) *Annual report.* The owner or operator of a landfill seeking to comply with §60.33f(e)(2) using an active collection system designed in accordance with §60.33f(b) must submit to the Administrator, following the procedures specified in paragraph (j)(2) of this section, an annual report of the recorded information in paragraphs (h)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system. The initial annual report must include the initial performance test report required under §60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. The initial performance test report must be submitted, following the procedure specified in paragraph (j)(1) of this section, no later than the date that the initial annual report is submitted. For enclosed combustion devices and flares, reportable exceedances are defined under §60.39f(c)(1). If complying with the operational provisions of §§63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§60.34f, 60.36f, and 60.37f, the owner or operator must follow the semi-annual reporting requirements in §63.1981(h) of this chapter in lieu of this paragraph.

(1) Value and length of time for exceedance of applicable parameters monitored under §60.37f(a)(1), (b), (c), (d), and (g).

(2) Description and duration of all periods when the gas stream was diverted from the control device or treatment system through a bypass line or the indication of bypass flow as specified under §60.37f.

(3) Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

(4) All periods when the collection system was not operating.

(5) The location of each exceedance of the 500 parts per million methane concentration as provided in §60.34f(d) and

the concentration recorded at each location for which an exceedance was recorded in the previous month. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(6) The date of installation and the location of each well or collection system expansion added pursuant to § 60.36f(a)(3), (a)(5), (b), and (c)(4).

(7) For any corrective action analysis for which corrective actions are required in § 60.36f(a)(3) or (5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or elevated temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(i) *Initial performance test report.* Each owner or operator seeking to comply with § 60.33f(c) must include the following information with the initial performance test report required under § 60.8:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area;

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

(j) *Electronic reporting.* The owner or operator must submit reports electronically according to paragraphs (j)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test (as defined in § 60.8), the owner or operator must submit the results of each performance test according to the following procedures:

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*https://www3.epa.gov/ttn/chief/ert/ert_info.html*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternative file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA

via the EPA's CDX as described earlier in this paragraph (j)(1)(i).

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in §60.4.

(2) Each owner or operator required to submit reports following the procedure specified in this paragraph must submit reports to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) The owner or operator must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI Web site (*https://www3.epa.gov/ttn/chief/cedri/index.html*). If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, the owner or operator must submit the report to the Administrator at the appropriate address listed in §60.4. Once the form has been available in CEDRI for 90 calendar days, the owner or operator must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted.

(k) *Corrective action and the corresponding timeline.* The owner or operator must submit according to paragraphs (k)(1) and (2) of this section. If complying with the operational provisions of §§63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§60.34f, 60.36f, and 60.37f, the owner or operator must follow the corrective action and the corresponding timeline reporting requirements in §63.1981(j) of this chapter in lieu of paragraphs (k)(1) and (2) of this section.

(1) For corrective action that is required according to §60.36f(a)(3)(iii) or (a)(5)(iii) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit) or above. The Administrator must approve the plan for corrective action and the corresponding timeline.

(2) For corrective action that is required according to §60.36f(a)(3)(iii) or (a)(5)(iii) and is not completed within 60 days after the initial exceedance, you must submit a notification to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature exceedance.

(l) *Liquids addition.* The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that has employed leachate recirculation or added liquids based on a Research, Development, and Demonstration permit (issued through Resource Conservation and Recovery Act, subtitle D, part 258) within the last 10 years must submit to the Administrator, annually, following the procedure specified in paragraph (j)(2) of this section, the following information:

(1) Volume of leachate recirculated (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(2) Total volume of all other liquids added (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(3) Surface area (acres) over which the leachate is recirculated (or otherwise applied).

(4) Surface area (acres) over which any other liquids are applied.

(5) The total waste disposed (megagrams) in the areas with recirculated leachate and/or added liquids based on on-site records to the extent data are available, or engineering estimates and the reported basis of those estimates.

(6) The annual waste acceptance rates (megagrams per year) in the areas with recirculated leachate and/or added liquids, based on on-site records to the extent data are available, or engineering estimates.

(7) The initial report must contain items in paragraph (l)(1) through (6) of this section per year for the most recent 365 days as well as for each of the previous 10 years, to the extent historical data are available in on-site

records, and the report must be submitted no later than:

(i) September 27, 2017, for landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016; or

(ii) 365 days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016.

(8) Subsequent annual reports must contain items in paragraph (l)(1) through (6) of this section for the 365-day period following the 365-day period included in the previous annual report, and the report must be submitted no later than 365 days after the date the previous report was submitted.

(9) Landfills in the closed landfill subcategory are exempt from reporting requirements contained in paragraphs (l)(1) through (7) of this section.

(10) Landfills may cease annual reporting of items in paragraphs (l)(1) through (6) of this section once they have submitted the closure report in § 60.38f(f).

(m) *Tier 4 notification*. (1) The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must provide a notification of the date(s) upon which it intends to demonstrate site-specific surface methane emissions are below 500 parts per million methane, based on the Tier 4 provisions of § 60.35f(a)(6). The landfill must also include a description of the wind barrier to be used during the SEM in the notification. Notification must be postmarked not less than 30 days prior to such date.

(2) If there is a delay to the scheduled Tier 4 SEM date due to weather conditions, including not meeting the wind requirements in § 60.35f (a)(6)(iii)(A), the owner or operator of a landfill shall notify the Administrator by email or telephone no later than 48 hours before any known delay in the original test date, and arrange an updated date with the Administrator by mutual agreement.

(n) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must submit the 24-hour high temperature report according to § 63.1981(k) of this chapter.

[81 FR 59313, Aug. 29, 2016, as amended at 85 FR 17260, Mar. 26, 2020]

§ 60.39f Recordkeeping guidelines.

For approval, a state plan must include the recordkeeping provisions in this section.

(a) Except as provided in § 60.38f(d)(2), each owner or operator of an MSW landfill subject to the provisions of § 60.33f(e) must keep for at least 5 years up-to-date, readily accessible, on-site records of the design capacity report that triggered § 60.33f(e), the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Except as provided in § 60.38f(d)(2), each owner or operator of a controlled landfill must keep up-to-date, readily accessible records for the life of the control system equipment of the data listed in paragraphs (b)(1) through (5) of this section as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring must be maintained for a minimum of 5 years. Records of the control device vendor specifications must be maintained until removal.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.33f(b):

(i) The maximum expected gas generation flow rate as calculated in § 60.36f(a)(1). The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the Administrator.

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in § 60.40f(a)(1).

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.33f(c) through use of an enclosed combustion device other than a boiler or process heater with a design heat

input capacity equal to or greater than 44 megawatts:

(i) The average temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in § 60.33f(c)(2) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.33f(c)(2)(i) through use of a boiler or process heater of any size: A description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.33f(c)(1) through use of a non-enclosed flare, the flare type (*i.e.*, steam-assisted, air-assisted, or non-assisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in § 60.18; and continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame or the flare flame is absent.

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.33f(c)(3) through use of a landfill gas treatment system:

(i) *Bypass records.* Records of the flow of landfill gas to, and bypass of, the treatment system.

(ii) *Site-specific treatment monitoring plan,* to include:

(A) Monitoring records of parameters that are identified in the treatment system monitoring plan and that ensure the treatment system is operating properly for each intended end use of the treated landfill gas. At a minimum, records should include records of filtration, de-watering, and compression parameters that ensure the treatment system is operating properly for each intended end use of the treated landfill gas.

(B) Monitoring methods, frequencies, and operating ranges for each monitored operating parameter based on manufacturer's recommendations or engineering analysis for each intended end use of the treated landfill gas.

(C) Documentation of the monitoring methods and ranges, along with justification for their use.

(D) Identify who is responsible (by job title) for data collection.

(E) Processes and methods used to collect the necessary data.

(F) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems.

(c) Except as provided in § 60.38f(d)(2), each owner or operator of a controlled landfill subject to the provisions of this subpart must keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in § 60.37f as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) The following constitute exceedances that must be recorded and reported under § 60.38f:

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal unit per hour) or greater, all 3-hour periods of operation during which the average temperature was more than 28 degrees Celsius (82 degrees Fahrenheit) below the average combustion temperature during the most recent performance test at which compliance with § 60.33f(c) was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

(2) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible continuous records of the indication of flow to the control system and the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under § 60.37f.

(3) Each owner or operator subject to the provisions of this subpart who uses

a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with § 60.33f(c) must keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other state, local, tribal, or federal regulatory requirements.)

(4) Each owner or operator seeking to comply with the provisions of this subpart by use of a non-enclosed flare must keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under § 60.37f(c), and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

(5) Each owner or operator of a landfill seeking to comply with § 60.33f(e) using an active collection system designed in accordance with § 60.33f(b) must keep records of periods when the collection system or control device is not operating.

(d) Except as provided in § 60.38f(d)(2), each owner or operator subject to the provisions of this subpart must keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label on each collector that matches the labeling on the plot map.

(1) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under § 60.36f(b).

(2) Each owner or operator subject to the provisions of this subpart must keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in § 60.40f(a)(3)(i) as well as any nonproductive areas excluded from collection as provided in § 60.40f(a)(3)(ii).

(e) Except as provided in § 60.38f(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the items in paragraphs (e)(1) through (5) of this section. Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must keep the records in paragraph (e)(6) of this section and must keep records according to § 63.1983(e)(1) through (5) of this chapter in lieu of paragraphs (e)(1) through (5) of this section.

(1) All collection and control system exceedances of the operational standards in § 60.34f, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

(2) Each owner or operator subject to the provisions of this subpart must also keep records of each wellhead temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit) or above, each wellhead nitrogen level at or above 20 percent, and each wellhead oxygen level at or above 5 percent.

(3) For any root cause analysis for which corrective actions are required in § 60.36f(a)(3) or (5), keep a record of the root cause analysis conducted, including a description of the recommended corrective action(s) taken, and the date(s) the corrective action(s) were completed.

(4) For any root cause analysis for which corrective actions are required in § 60.36f(a)(3)(ii) or (a)(5)(ii), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(5) For any root cause analysis for which corrective actions are required in § 60.36f(a)(3)(iii) or (a)(5)(iii), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates, and a copy of any

comments or final approval on the corrective action analysis or schedule from the regulatory agency.

(6) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 60.34f, 60.36f, and 60.37f, must keep records of the date upon which the owner or operator started complying with the provisions in §§ 63.1958, 63.1960, and 63.1961.

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, as provided in the definition of ''design capacity'', must keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Offsite records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(g) Landfill owners or operators seeking to demonstrate that site-specific surface methane emissions are below 500 parts per million by conducting surface emission monitoring under the Tier 4 procedures specified in § 60.35f(a)(6) must keep for at least 5 years up-to-date, readily accessible records of all surface emissions monitoring and information related to monitoring instrument calibrations conducted according to sections 8 and 10 of Method 21 of appendix A of this part, including all of the following items:

(1) Calibration records:

(i) Date of calibration and initials of operator performing the calibration.

(ii) Calibration gas cylinder identification, certification date, and certified concentration.

(iii) Instrument scale(s) used.

(iv) A description of any corrective action taken if the meter readout could not be adjusted to correspond to the calibration gas value.

(v) If an owner or operator makes their own calibration gas, a description of the procedure used.

(2) Digital photographs of the instrument setup. The photographs must be time and date-stamped and taken at the first sampling location prior to sampling and at the last sampling location after sampling at the end of each sampling day, for the duration of the Tier 4 monitoring demonstration.

(3) Timestamp of each surface scan reading:

(i) Timestamp should be detailed to the nearest second, based on when the sample collection begins.

(ii) A log for the length of time each sample was taken using a stopwatch (*e.g.*, the time the probe was held over the area).

(4) Location of each surface scan reading. The owner or operator must determine the coordinates using an instrument with an accuracy of at least 4 meters. Coordinates must be in decimal degrees with at least five decimal places.

(5) Monitored methane concentration (parts per million) of each reading.

(6) Background methane concentration (parts per million) after each instrument calibration test.

(7) Adjusted methane concentration using most recent calibration (parts per million).

(8) For readings taken at each surface penetration, the unique identification location label matching the label specified in paragraph (d) of this section.

(9) Records of the operating hours of the gas collection system for each destruction device.

(h) Except as provided in § 60.38f(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of all collection and control system monitoring data for parameters measured in § 60.37f(a)(1), (2), and (3).

(i) Any records required to be maintained by this subpart that are submitted electronically via the EPA's CDX may be maintained in electronic format.

(j) For each owner or operator reporting leachate or other liquids addition under § 60.38f(l), keep records of any engineering calculations or company records used to estimate the quantities of leachate or liquids added, the surface areas for which the leachate or liquids were applied, and the estimates of annual waste acceptance or total waste

in place in the areas where leachate or liquids were applied.

[81 FR 59313, Aug. 29, 2016, as amended at 85 FR 17260, Mar. 26, 2020]

§ 60.40f Specifications for active collection systems.

For approval, a state plan must include the specifications for active collection systems in this section.

(a) Each owner or operator seeking to comply with § 60.33f(b) must site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Administrator.

(1) The collection devices within the interior must be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues must be addressed in the design: depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, resistance to the refuse decomposition heat, and ability to isolate individual components or sections for repair or troubleshooting without shutting down entire collection system.

(2) The sufficient density of gas collection devices determined in paragraph (a)(1) of this section must address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

(3) The placement of gas collection devices determined in paragraph (a)(1) of this section must control all gas producing areas, except as provided by paragraphs (a)(3)(i) and (ii) of this section.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under § 60.39f(d). The documentation must provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area, and must be provided to the Administrator upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material must be documented and provided to the Administrator upon request. A separate NMOC emissions estimate must be made for each section proposed for exclusion, and the sum of all such sections must be compared to the NMOC emissions estimate for the entire landfill.

(A) The NMOC emissions from each section proposed for exclusion must be computed using Equation 7:

$$Q_i = 2kL_oM_i(e^{-kt_i})(C_{NMOC})(3.6\ x\ 10^{-9}) \qquad \text{(Eq. 7)}$$

Where:

Q_i = NMOC emission rate from the i^{th} section, megagrams per year.

k = Methane generation rate constant, $year^{-1}$.

L_o = Methane generation potential, cubic meters per megagram solid waste.

M_i = Mass of the degradable solid waste in the i^{th} section, megagram.

t_i = Age of the solid waste in the i^{th} section, years.

C_{NMOC} = Concentration of NMOC, parts per million by volume.

3.6×10^{-9} = Conversion factor.

(B) If the owner or operator is proposing to exclude, or cease gas collection and control from, nonproductive physically separated (*e.g.,* separately lined) closed areas that already have gas collection systems, NMOC emissions from each physically separated closed area must be computed using either Equation 3 in § 60.35f or Equation 7 in paragraph (a)(3)(ii)(A) of this section.

(iii) The values for k and C_{NMOC} determined in field testing must be used if

field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for k, L_o, and C_{NMOC} provided in § 60.35f or the alternative values from § 60.35f must be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in paragraph (a)(3)(i) of this section.

(b) Each owner or operator seeking to comply with § 60.33f(b) must construct the gas collection devices using the following equipment or procedures:

(1) The landfill gas extraction components must be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: Convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system must extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors must be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations must be situated with regard to the need to prevent excessive air infiltration.

(2) Vertical wells must be placed so as not to endanger underlying liners and must address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors must be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices must be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(3) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly must include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices must be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with § 60.33f(c) must convey the landfill gas to a control system in compliance with § 60.33f(c) through the collection header pipe(s). The gas mover equipment must be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

(1) For existing collection systems, the flow data must be used to project the maximum flow rate. If no flow data exist, the procedures in paragraph (c)(2) of this section must be used.

(2) For new collection systems, the maximum flow rate must be in accordance with § 60.36f(a)(1).

§ 60.41f Definitions.

Terms used but not defined in this subpart have the meaning given them in the Clean Air Act and in subparts A and B of this part.

Active collection system means a gas collection system that uses gas mover equipment.

Active landfill means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a state air pollution control agency.

Closed area means a separately lined area of an MSW landfill in which solid waste is no longer being placed. If additional solid waste is placed in that area of the landfill, that landfill area is no longer closed. The area must be separately lined to ensure that the landfill gas does not migrate between open and closed areas.

Closed landfill means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under §60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

Closed landfill subcategory means a closed landfill that has submitted a closure report as specified in §60.38f(f) on or before September 27, 2017.

Closure means that point in time when a landfill becomes a closed landfill.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the NMOC emission rate. The landfill is considered controlled at the time a collection and control system design plan is prepared in compliance with §60.33f(e)(2).

Corrective action analysis means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected corrective action(s) is/are the best alternative(s), including, but not limited to, considerations of cost effectiveness, technical feasibility, safety, and secondary impacts.

Design capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

Disposal facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Emission rate cutoff means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the regulation is required.

Enclosed combustor means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

Flare means an open combustor without enclosure or shroud.

Gas mover equipment means the equipment (*i.e.*, fan, blower, compressor) used to transport landfill gas through the header system.

Gust means the highest instantaneous wind speed that occurs over a 3-second running average.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste. Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities. Household waste does not include construction, renovation, or demolition wastes, even if originating from a household.

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, parts 264 and 265 of this chapter. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper

industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Interior well means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this title.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

Leachate recirculation means the practice of taking the leachate collected from the landfill and reapplying it to the landfill by any of one of a variety of methods, including pre-wetting of the waste, direct discharge into the working face, spraying, infiltration ponds, vertical injection wells, horizontal gravity distribution systems, and pressure distribution systems.

Modification means an increase in the permitted volume design capacity of the landfill by either lateral or vertical expansion based on its permitted design capacity as of July 17, 2014. Modification does not occur until the owner or operator commences construction on the lateral or vertical expansion.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes (§ 257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

Municipal solid waste landfill emissions or *MSW landfill emissions* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

NMOC means nonmethane organic compounds, as measured according to the provisions of § 60.35f.

Nondegradable waste means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not limited to, concrete, municipal waste combustor ash, and metals.

Passive collection system means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

Root cause analysis means an assessment conducted through a process of investigation to determine the primary cause, and any other contributing causes, of positive pressure at a wellhead.

Sludge means the term sludge as defined in 40 CFR 258.2.

Solid waste means the term solid waste as defined in 40 CFR 258.2.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) of the Clean Air Act and subpart B of this part that implements and enforces this subpart.

Sufficient density means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this part.

Sufficient extraction rate means a rate sufficient to maintain a negative pressure at all wellheads in the collection

system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

Treated landfill gas means landfill gas processed in a treatment system as defined in this subpart.

Treatment system means a system that filters, de-waters, and compresses landfill gas for sale or beneficial use.

*Untreated landfil*l gas means any landfill gas that is not treated landfill gas.

Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators

SOURCE: 72 FR 32717, June 13, 2007, unless otherwise noted.

§ 60.40 Applicability and designation of affected facility.

(a) The affected facilities to which the provisions of this subpart apply are:

(1) Each fossil-fuel-fired steam generating unit of more than 73 megawatts (MW) heat input rate (250 million British thermal units per hour (MMBtu/hr)).

(2) Each fossil-fuel and wood-residue-fired steam generating unit capable of firing fossil fuel at a heat input rate of more than 73 MW (250 MMBtu/hr).

(b) Any change to an existing fossil-fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels as defined in this subpart, shall not bring that unit under the applicability of this subpart.

(c) Except as provided in paragraph (d) of this section, any facility under paragraph (a) of this section that commenced construction or modification after August 17, 1971, is subject to the requirements of this subpart.

(d) The requirements of §§ 60.44 (a)(4), (a)(5), (b) and (d), and 60.45(f)(4)(vi) are applicable to lignite-fired steam generating units that commenced construction or modification after December 22, 1976.

(e) Any facility subject to either subpart Da or KKKK of this part is not subject to this subpart.

[72 FR 32717, June 13, 2007, as amended at 77 FR 9447, Feb. 16, 2012]

§ 60.41 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, and in subpart A of this part.

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D388 (incorporated by reference, see § 60.17).

Coal refuse means waste-products of coal mining, cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material.

Fossil fuel means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat.

Fossil fuel and wood residue-fired steam generating unit means a furnace or boiler used in the process of burning fossil fuel and wood residue for the purpose of producing steam by heat transfer.

Fossil-fuel-fired steam generating unit means a furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer.

Natural gas means a fluid mixture of hydrocarbons (e.g., methane, ethane, or propane), composed of at least 70 percent methane by volume or that has a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot), that maintains a gaseous state under ISO conditions. In addition, *natural gas* contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Finally, natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas,

62.16720(a)(4), 62.16722(a)(2) and (3), 62.16724(k), and 62.16726(e)(2) and (5).

* * * * *

■ 4. Part 62 is amended by adding subpart OOO, consisting of §§ 62.16710 through 62.16730, to read as follows:

Subpart OOO—Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014

Sec

§ 62.16710 Scope and delegated authorities.

This subpart establishes emission control requirements and compliance schedules for the control of designated pollutants from certain designated municipal solid waste (MSW) landfills in accordance with section 111(d) of the Clean Air Act and subpart B of 40 CFR part 60.

(a) If you own or operate a designated facility as described in § 62.16711, then you must comply with this subpart.

(b) The following authorities will not be delegated to state, local, or tribal agencies:

(1) Approval of alternative methods to determine the site-specific nonmethane organic compounds (NMOC) concentration or a site-specific methane generation rate constant (k).

(2) Alternative emission standards.

(3) Major alternatives to test methods. Major alternatives to test methods or to monitoring are modifications made to a federally enforceable test method or to a Federal monitoring requirement. These changes may involve the use of unproven technology or modified procedures or an entirely new method.

(4) Waivers of recordkeeping.

§ 62.16711 Designated facilities.

(a) The designated facility to which this subpart applies is each municipal solid waste landfill in each state, protectorate, and portion of Indian country that meets the conditions of paragraphs (a)(1) and (2) of this section, except for landfills exempted by paragraphs (b) and (c) of this section.

(1) The municipal solid waste landfill commenced construction, reconstruction, or modification on or before July 17, 2014.

(2) The municipal solid waste landfill has accepted waste at any time since November 8, 1987, or the landfill has additional capacity for future waste deposition.

(b) A municipal solid waste landfill regulated by an EPA-approved and currently effective state or tribal plan implementing 40 CFR 60, subpart Cf, is not subject to the requirements of this subpart.

(c) A municipal solid waste landfill located in a state, locality, or portion of Indian country that submitted a negative declaration letter is not subject to the requirements of this subpart other than the requirements in the definition of design capacity in § 62.16730 to recalculate the site-specific density annually and in § 62.16724(b) to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million megagrams and 2.5 million cubic meters. However, if the existing municipal solid waste landfill already has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, then it is subject to the requirements of this Federal plan.

(d) Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline implemented by a state or Federal plan are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR 60, subpart XXX. Landfills that commence construction, modification, or reconstruction after July 17, 2014, are subject to 40 CFR part 60, subpart XXX.

(e) For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of an MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under 40 CFR part 70 or 71, unless the landfill is otherwise subject to either 40 CFR part 70 or 71. For purposes of submitting a timely application for an operating permit under 40 CFR part 70 or 71, the owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, and not otherwise subject to either 40 CFR part 70 or 71, becomes subject to the requirements of § 70.5(a)(1)(i) or 71.5(a)(1)(i) of this chapter 90 days after the effective date of such CAA section 111(d) program approval, even if the design capacity report is submitted earlier.

(f) When an MSW landfill subject to this subpart is closed as defined in this subpart, the owner or operator is no longer subject to the requirement to maintain an operating permit under 40 CFR part 70 or 71 for the landfill if the landfill is not otherwise subject to the requirements of either 40 CFR part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement to install and operate a gas collection and control system under § 62.16714; or

(2) The landfill meets the conditions for control system removal specified in § 62.16714(f).

(g) When an MSW landfill subject to this subpart is in the closed landfill subcategory, the owner or operator is not subject to the following reports of this subpart, provided the owner or operator submitted these reports under the provisions of 40 CFR part 60, subpart WWW; subpart GGG of this part; or a state plan implementing 40 CFR part 60, subpart Cc, on or before July 17, 2014:

(1) Initial design capacity report specified in § 62.16724(a).

(2) Initial or subsequent NMOC emission rate report specified in § 62.16724(c), provided that the most recent NMOC emission rate report indicated the NMOC emissions were below 50 megagrams per year.

(3) Collection and control system design plan specified in § 62.16724(d).

(4) Closure report specified in § 62.16724(f).

(5) Equipment removal report specified in § 62.16724(g).

(6) Initial annual report specified in § 62.16724(h).

(7) Initial performance test report in § 62.16724(i).

(h) When an MSW landfill subject to this subpart is a legacy controlled landfill, as defined in § 62.16730, the owner or operator is not subject to the following reports of this subpart, provided the owner or operator submitted these reports under 40 CFR part 60, subpart WWW; subpart GGG of this part; or a state plan implementing 40 CFR part 60, subpart Cc on or before June 21, 2021.

(1) Initial design capacity report specified in § 62.16724(a).

(2) Initial or subsequent NMOC emission rate report specified in § 62.16724(c).

(3) Collection and control system design plan specified in § 62.16724(d).

(5) Initial annual report specified in § 62.16724(h).

(4) Initial performance test report in § 62.16724(i).

§ 62.16712 Compliance schedule and increments of progress.

Planning, awarding of contracts, installing, and starting up MSW landfill air emission collection and control equipment that is capable of meeting the emission standards of § 62.16714 must be completed within 30 months after the date an NMOC emission rate report shows NMOC emissions equal or exceed 34 megagrams per year; or within 30 months after the date of the most recent NMOC emission rate report that shows NMOC emissions equal or exceed 34 megagrams per year, if Tier 4 surface emissions monitoring (SEM) shows a surface emission concentration of 500 parts per million methane or greater. Legacy controlled landfills who have not yet reached increment 5 (full compliance) must demonstrate compliance with any remaining increments of progress on this schedule. However, they must use the date of their first report submitted under 40 CFR part 60, subpart WWW, 40 CFR part 62, subpart GGG or a state plan implementing 40 CFR part 60, subpart Cc showing NMOC emissions at or above 50 megagrams. The owner or operator must follow the requirements in paragraphs (a) through (d) of this section.

(a) *Increments of progress.* The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a NMOC emission rate greater than or equal to 34 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1) through (5) of this section to install air pollution control devices to meet the emission standards specified in § 62.16714(b) and (c) of this subpart. Refer to § 62.16730 for a definition of each increment of progress.

(1) *Submit control plan.* Submit a final control plan (collection and control system design plan) according to the requirements of § 62.16724(d).

(2) *Award contract(s).* Award contract(s) to initiate on-site construction or initiate on-site installation of emission collection and/or control equipment.

(3) *Initiate on-site construction.* Initiate on-site construction or initiate on-site installation of emission collection and/or control equipment as described in the EPA-approved final control plan.

(4) *Complete on-site construction.* Complete on-site construction and installation of emission collection and/or control equipment.

(5) *Achieve final compliance.* Complete construction in accordance with the design specified in the EPA-approved final control plan and connect the landfill gas collection system and air pollution control equipment such that they are fully operating. The initial performance test must be conducted within 180 days after the date the facility is required to achieve final compliance. For a legacy controlled landfill, the initial or most recent performance test conducted to comply with 40 CFR part 60, subpart WWW, subpart GGG of this part, or a state plan implementing 40 CFR part 60, subpart Cc is sufficient for compliance with this part. The test report does not have to be resubmitted.

(b) *Compliance date.* For each designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a NMOC emission rate greater than or equal to 34 megagrams per year (50 megagrams per year for closed landfill subcategory), planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the standards in § 62.16714(b) and (c) must be accomplished within 30 months after the date the initial emission rate report (or the annual emission rate report) first shows that the NMOC emission rate equals or exceeds 34 megagrams per year (50 megagrams per year for closed landfill subcategory), except as provided in § 62.16712(c)(3).

(c) *Compliance schedules.* The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a NMOC emission rate greater than or equal to 34 megagrams per year (50 megagrams per year for closed landfill subcategory) must achieve the increments of progress specified in paragraphs (a)(1) through (5) of this section according to the schedule specified in paragraph (c)(1), (2), or (3) of this section.

(1) *Achieving Increments of Progress.* The owner or operator of a designated facility must achieve the increments of progress according to the schedule in table 1 of this subpart. Once this subpart becomes effective, any designated facility to which this subpart applies will remain subject to the schedule in table 1 if a subsequently approved state or tribal plan contains a less stringent schedule, (*i.e.,* a schedule that provides more time to comply with increments 1, 4 and/or 5 than does this Federal plan).

(2) *Tier 4.* The owner or operator of a designated facility that is using the Tier 4 procedures specified in § 62.16718(a)(6) must achieve the increments of progress according to the schedule in table 1 of this subpart.

(d) *Alternative dates.* For designated facilities that are subject to the schedule requirements of paragraph (c)(1) of this section, the owner or operator (or the state or tribal air pollution control authority) may submit to the appropriate EPA Regional Office for approval alternative dates for achieving increments 2 and 3.

§ 62.16714 Standards for municipal solid waste landfill emissions.

(a) *Landfills.* Each owner or operator of an MSW landfill having a design capacity greater than or equal to 2.5 million megagrams by mass and 2.5 million cubic meters by volume must collect and control MSW landfill emissions at each MSW landfill that meets the following conditions:

(1) *Waste acceptance date.* The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

(2) *Construction commencement date.* The landfill commenced construction, reconstruction, or modification on or before July 17, 2014.

(3) *NMOC emission rate.* The landfill has an NMOC emission rate greater than or equal to 34 megagrams per year or Tier 4 SEM shows a surface emission concentration of 500 parts per million methane or greater.

(4) *Closed subcategory.* The landfill in the closed landfill subcategory and has an NMOC emission rate greater than or equal to 50 megagrams per year.

(b) *Collection system.* Install a gas collection and control system meeting the requirements in paragraphs (b)(1) through (3) and (c) of this section at each MSW landfill meeting the conditions in paragraph (a) of this section.

(1) *Collection system.* Install and start up a collection and control system that captures the gas generated within the landfill within 30 months after:

(i) The first annual report in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in § 62.16724(d)(4), or

(ii) The first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year submitted under previously applicable

regulations 40 CFR part 60, subpart WWW, 40 CFR part 62, subpart GGG, or a state plan implementing 40 CFR part 60, subpart Cc for a legacy controlled landfill or landfill in the closed landfill subcategory, or

(iii) The most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2, if the Tier 4 SEM shows a surface methane emission concentration of 500 parts per million methane or greater as specified in § 62.16724 (d)(4)(iii).

(2) *Active.* An active collection system must:

(i) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment.

(ii) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade.

(iii) Collect gas at a sufficient extraction rate.

(iv) Be designed to minimize off-site migration of subsurface gas.

(3) *Passive.* A passive collection system must:

(i) Comply with the provisions specified in paragraphs (b)(2)(i), (ii), and (iv) of this section.

(ii) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners must be installed as required under 40 CFR 258.40.

(c) *Control system.* Control the gas collected from within the landfill through the use of control devices meeting the following requirements, except as provided in 40 CFR 60.24.

(1) A non-enclosed flare designed and operated in accordance with the parameters established in 40 CFR 60.18 except as noted in § 62.16722(d); or

(2) A control system designed and operated to reduce NMOC by 98 weight percent; or when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts-per-million by volume, dry basis as hexane at 3-percent oxygen or less. The reduction efficiency or concentration in parts-per-million by volume must be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in § 62.16718(d). The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(i) If a boiler or process heater is used as the control device, the landfill gas stream must be introduced into the flame zone.

(ii) The control device must be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in § 62.16722.

(iii) Legacy controlled landfills or landfills in the closed landfill subcategory that have already installed control systems and completed initial or subsequent performance tests may comply with this subpart using the initial or most recent performance test conducted to comply with 40 CFR part 60, subpart WWW; subpart GGG of this part; or a state plan implementing subpart Cc of part 60, is sufficient for compliance with this subpart.

(3) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or beneficial use such as fuel for combustion, production of vehicle fuel, production of high-Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas must be controlled according to either paragraph (c)(1) or (2) of this section.

(4) All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of paragraph (b) or (c) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b) or (c) of this section.

(d) *Design capacity.* Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume must submit an initial design capacity report to the Administrator as provided in § 62.16724(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions must be documented and submitted with the report. Submittal of the initial design capacity report fulfills the requirements of this subpart except as provided in paragraphs (d)(1) and (2) of this section.

(1) The owner or operator must submit an amended design capacity report as provided in § 62.16724(b).

(2) When an increase in the maximum design capacity of a landfill with an initial design capacity less than 2.5 million megagrams or 2.5 million cubic meters results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator must comply with paragraph (e) of this section.

(e) *Emissions.* The owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must either install a collection and control system as provided in paragraphs (b) and (c) of this section or calculate an initial NMOC emission rate for the landfill using the procedures specified in § 62.16718(a). The NMOC emission rate must be recalculated annually, except as provided in § 62.16724(c)(3).

(1) If the calculated NMOC emission rate is less than 34 megagrams per year, the owner or operator must:

(i) Submit an annual NMOC emission rate report according to § 62.16724(c), except as provided in § 62.16724(c)(3); and

(ii) Recalculate the NMOC emission rate annually using the procedures specified in § 62.16724(a) until such time as the calculated NMOC emission rate is equal to or greater than 34 megagrams per year, or the landfill is closed.

(A) If the calculated NMOC emission rate, upon initial calculation or annual recalculation required in paragraph (e)(1)(ii) of this section, is equal to or greater than 34 megagrams per year, the owner or operator must either: Comply with paragraphs (b) and (c) of this section; calculate NMOC emissions using the next higher tier in § 62.16718; or conduct a surface emission monitoring demonstration using the procedures specified in § 62.16718(a)(6).

(B) If the landfill is permanently closed, a closure report must be submitted to the Administrator as provided in § 62.16724(f), except for exemption allowed under § 62.16711(g)(4).

(2) If the calculated NMOC emission rate is equal to or greater than 34 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator must either: Submit a collection and control system design plan prepared by a professional engineer to the Administrator within 1 year as specified in § 62.16724(d), except for exemptions allowed under § 62.16711(g)(3); calculate NMOC emissions using a

higher tier in § 62.16718; or conduct a surface emission monitoring demonstration using the procedures specified in § 62.16718(a)(6).

(3) For the closed landfill subcategory, if the calculated NMOC emission rate submitted under previously applicable regulations 40 CFR part 60, subpart WWW; 40 CFR part 62, subpart GGG; or a state plan implementing 40 CFR part 60, subpart Cc is equal to or greater than 50 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator must either: submit a collection and control system design plan as specified in § 62.16724(d), except for exemptions allowed under § 62.16711(g)(3); or calculate NMOC emissions using a higher tier in § 62.16718.

(f) *Removal criteria.* The collection and control system may be capped, removed, or decommissioned if the following criteria are met:

(1) The landfill is a closed landfill (as defined in § 62.16730). A closure report must be submitted to the Administrator as provided in § 62.16724(f).

(2) The collection and control system has been in operation a minimum of 15 years or the landfill owner or operator demonstrates that the gas collection and control system will be unable to operate for 15 years due to declining gas flow.

(3) Following the procedures specified in § 62.16718(b), the calculated NMOC emission rate at the landfill is less than 34 megagrams per year on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

(4) For the closed landfill subcategory (as defined in § 62.16730), following the procedures specified in § 62.16718(b), the calculated NMOC emission rate at the landfill is less than 50 megagrams per year on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

§ 62.16716 Operational standards for collection and control systems.

Each owner or operator must comply with the provisions for the operational standards in this section (as well as the provisions in §§ 62.16720 and 62.16722), or the operational standards in § 63.1958 of this chapter (as well as the provisions in §§ 63.1960 and 63.1961 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 62.16714(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1958 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section. Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 62.16714(b) and (c) must:

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

(1) 5 years or more if active; or

(2) 2 years or more if closed or at final grade;

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

(1) A fire or increased well temperature. The owner or operator must record instances when positive pressure occurs in efforts to avoid a fire. These records must be submitted with the annual reports as provided in § 62.16724(h)(1);

(2) Use of a geomembrane or synthetic cover. The owner or operator must develop acceptable pressure limits in the design plan;

(3) A decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes must be approved by the Administrator as specified in § 62.16724(d);

(c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit). The owner or operator may establish a higher operating temperature value at a particular well. A higher operating value demonstration must be submitted to the Administrator for approval and must include supporting data demonstrating that the elevated parameter neither causes fires nor significantly inhibits anaerobic decomposition by killing methanogens. The demonstration must satisfy both criteria in order to be approved (*i.e.,* neither causing fires nor killing methanogens is acceptable).

(d) Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in § 62.16720(d). The owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations. Thus, the owner or operator must monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

(e) Operate the system such that all collected gases are vented to a control system designed and operated in compliance with § 62.16714(c). In the event the collection or control system is not operating, the gas mover system must be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere must be closed within 1 hour of the collection or control system not operating.

(f) Operate the control system at all times when the collected gas is routed to the system.

(g) If monitoring demonstrates that the operational requirements in paragraphs (b), (c), or (d) of this section are not met, corrective action must be taken as specified in § 62.16720(a)(3) and (5) or § 62.16720(c). If corrective actions are taken as specified in § 62.16720, the monitored exceedance is not a violation of the operational requirements in this section.

§ 62.16718 Test methods and procedures.

Calculate the landfill NMOC emission rate and conduct a surface emission monitoring demonstration according to the provisions in this section.

(a)(1) *NMOC Emission rate.* The landfill owner or operator must calculate the NMOC emission rate using either Equation 1 provided in paragraph (a)(1)(i) of this section or Equation 2 provided in paragraph (a)(1)(ii) of this section. Both Equation 1 and Equation 2 may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i) of this section, for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii) of this section, for part of the life of the landfill. The values to be used in both Equation 1 and Equation 2 are 0.05 per year for k, 170 cubic meters per megagram for Lo, and 4,000 parts per million by volume as hexane for the

C_{NMOC}. For landfills located in geographical areas with a 30-year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorological site, the k value to be used is 0.02 per year.

(i)(A) Equation 1 must be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{NMOC} = \sum_{i=1}^{n} 2\ k\ L_o M_i (e^{-kt_i})(C_{NMOC})(3.6\times10^{-9}) \quad \text{(Eq. 1)}$$

Where:

M_{NMOC} = Total NMOC emission rate from the landfill, megagrams per year.
k = Methane generation rate constant, $year^{-1}$.
L_o = Methane generation potential, cubic meters per megagram solid waste.
M_i = Mass of solid waste in the i^{th} section, megagrams.
t_i = Age of the i^{th} section, years.
C_{NMOC} = Concentration of NMOC, parts per million by volume as hexane.
3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for M_i if documentation of the nature and amount of such wastes is maintained.

(ii)(A) Equation 2 must be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_o R\ (e^{-kc} - e^{-kt})\ C_{NMOC}(3.6\times10^{-9}) \quad \text{(Eq. 2)}$$

Where:

M_{NMOC} = Mass emission rate of NMOC, megagrams per year.
L_o = Methane generation potential, cubic meters per megagram solid waste.
R = Average annual acceptance rate, megagrams per year.
k = Methane generation rate constant, $year^{-1}$.
t = Age of landfill, years.
C_{NMOC} = Concentration of NMOC, parts per million by volume as hexane.
c = Time since closure, years; for an active landfill c = 0 and $e^{-kc} = 1$.
3.6×10^{-9} = Conversion factor.

(B) The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of R, if documentation of the nature and amount of such wastes is maintained.

(2) *Tier 1.* The owner or operator must compare the calculated NMOC mass emission rate to the standard of 34 megagrams per year.

(i) If the NMOC emission rate calculated in paragraph (a)(1) of this section is less than 34 megagrams per year, then the owner or operator must submit an NMOC emission rate report according to § 62.16724(c) and must recalculate the NMOC mass emission rate annually as required under § 62.16714(e).

(ii) If the NMOC emission rate calculated in paragraph (a)(1) of this section is equal to or greater than 34 megagrams per year, then the landfill owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 62.16724(d) and install and operate a gas collection and control system within 30 months according to § 62.16714(b) and (c);

(B) Determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the Tier 2 procedures provided in paragraph (a)(3) of this section; or

(C) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the Tier 3 procedures provided in paragraph (a)(4) of this section.

(3) *Tier 2.* The landfill owner or operator must determine the site-specific NMOC concentration using the following sampling procedure. The landfill owner or operator must install at least two sample probes per hectare, evenly distributed over the landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The probes should be evenly distributed across the sample area. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator must collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using EPA Method 25 or 25C of appendix A–7 of 40 CFR part 60. Taking composite samples from different probes into a single cylinder is allowed; however, equal sample volumes must be taken from each probe. For each composite, the sampling rate, collection times, beginning and ending cylinder vacuums, or alternative volume measurements must be recorded to verify that composite volumes are equal. Composite sample volumes should not be less than one liter unless evidence can be provided to substantiate the accuracy of smaller volumes. Terminate compositing before the cylinder approaches ambient pressure where measurement accuracy diminishes. If more than the required number of samples is taken, all samples must be used in the analysis. The landfill owner or operator must divide the NMOC concentration from EPA Method 25 or 25C of appendix A–7 of 40 CFR part 60 by 6 to convert from C_{NMOC} as carbon to C_{NMOC} as hexane. If the landfill has an active or passive gas removal system in place, EPA Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two sampling probes per hectare requirement. For active collection systems, samples may be collected from the common header pipe. The sample location on the common header pipe must be before any gas moving, condensate removal, or treatment system equipment. For active collection systems, a minimum of three samples must be collected from the header pipe.

(i) Within 60 days after the date of determining the NMOC concentration and corresponding NMOC emission rate, the owner or operator must submit the results according to § 62.16724(j)(2).

(ii) The landfill owner or operator must recalculate the NMOC mass emission rate using Equation 1 or Equation 2 provided in paragraph (a)(1)(i) or (ii) of this section using the average site-specific NMOC concentration from the collected samples instead of the default value provided in paragraph (a)(1) of this section.

(iii) If the resulting NMOC mass emission rate is less than 34 megagrams per year, then the owner or operator must submit a periodic estimate of NMOC emissions in an NMOC emission rate report according to § 62.16724(c) and must recalculate the NMOC mass emission rate annually as required under § 62.16714(e). The site-specific NMOC concentration must be retested every 5 years using the methods specified in this section.

(iv) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration is equal to or greater than 34 megagrams per year, the owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 62.16724(d) and install and operate a gas collection and control system within 30 months according to § 62.16714(b) and (c);

(B) Determine a site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the Tier 3 procedures specified in paragraph (a)(4) of this section; or

(C) Conduct a surface emission monitoring demonstration using the Tier 4 procedures specified in paragraph (a)(6) of this section.

(4) *Tier 3.* The site-specific methane generation rate constant must be determined using the procedures provided in EPA Method 2E of appendix A–1 of 40 CFR part 60. The landfill owner or operator must estimate the NMOC mass emission rate using Equation 1 or Equation 2 in paragraph (a)(1)(i) or (ii) of this section and using a site-specific methane generation rate constant, and the site-specific NMOC concentration as determined in paragraph (a)(3) of this section instead of the default values provided in paragraph (a)(1) of this section. The landfill owner or operator must compare the resulting NMOC mass emission rate to the standard of 34 megagrams per year.

(i) If the NMOC mass emission rate as calculated using the Tier 2 site-specific NMOC concentration and Tier 3 site-specific methane generation rate is equal to or greater than 34 megagrams per year, the owner or operator must either:

(A) Submit a gas collection and control system design plan within 1 year as specified in § 62.16724(d) and install and operate a gas collection and control system within 30 months according to § 62.16714(b) and (c); or

(B) Conduct a surface emission monitoring demonstration using the Tier 4 procedures specified in paragraph (a)(6) of this section.

(ii) If the NMOC mass emission rate is less than 34 megagrams per year, then the owner or operator must recalculate the NMOC mass emission rate annually using Equation 1 or Equation 2 in paragraph (a)(1) of this section and using the site-specific Tier 2 NMOC concentration and Tier 3 methane generation rate constant and submit a periodic NMOC emission rate report as provided in § 62.16724(c). The calculation of the methane generation rate constant is performed only once, and the value obtained from this test must be used in all subsequent annual NMOC emission rate calculations.

(5) *Alternative methods.* The owner or operator may use other methods to determine the NMOC concentration or a site-specific methane generation rate constant as an alternative to the methods required in paragraphs (a)(3) and (4) of this section if the method has been approved by the Administrator.

(6) *Tier 4.* Demonstrate that surface methane emissions are below 500 parts per million. Surface emission monitoring must be conducted on a quarterly basis using the following procedures. Tier 4 is allowed only if the landfill owner or operator can demonstrate that NMOC emissions are greater than or equal to 34 megagrams per year but less than 50 megagrams per year using Tier 1 or Tier 2. If both Tier 1 and Tier 2 indicate NMOC emissions are megagrams per year or greater, then Tier 4 cannot be used. In addition, the landfill must meet the criteria in paragraph (a)(6)(viii) of this section.

(i) Measure surface concentrations of methane along the entire perimeter of the landfill and along a pattern that traverses the landfill at no more than 30-meter intervals using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in § 62.16720(d).

(ii) The background concentration must be determined by moving the probe inlet upwind and downwind at least 30 meters from the waste mass boundary of the landfill.

(iii) Surface emission monitoring must be performed in accordance with section 8.3.1 of EPA Method 21 of appendix A–7 of 40 CFR part 60, except that the probe inlet must be placed no more than 5 centimeters above the landfill surface; the constant measurement of distance above the surface should be based on a mechanical device such as with a wheel on a pole.

(A) The owner or operator must use a wind barrier, similar to a funnel, when onsite average wind speed exceeds 4 miles per hour or 2 meters per second or gust exceeding 10 miles per hour. Average on-site wind speed must also be determined in an open area at 5-minute intervals using an on-site anemometer with a continuous recorder and data logger for the entire duration of the monitoring event. The wind barrier must surround the SEM monitor, and must be placed on the ground, to ensure wind turbulence is blocked. The SEM cannot be conducted if average wind speed exceeds 25 miles per hour.

(B) Landfill surface areas where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover, and all cover penetrations must also be monitored using a device meeting the specifications provided in § 62.16720(d).

(iv) Each owner or operator seeking to comply with the Tier 4 provisions in paragraph (a)(6) of this section must maintain records of surface emission monitoring as provided in § 62.16726(g) and submit a Tier 4 surface emissions report as provided in § 62.16724(d)(4)(iii).

(v) If there is any measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must submit a gas collection and control system design plan within 1 year of the first measured concentration of methane of 500 parts per million or greater from the surface of the landfill according to § 62.16724(d) and install and operate a gas collection and control system according to § 62.16714(b) and (c) within 30 months of the most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2.

(vi) If after four consecutive quarterly monitoring periods at a landfill, other than a closed landfill, there is no measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must continue quarterly surface emission monitoring using the methods specified in this section.

(vii) If after four consecutive quarterly monitoring periods at a closed landfill there is no measured concentration of methane of 500 parts per million or greater from the surface of the landfill, the owner or operator must conduct annual surface emission monitoring using the methods specified in this section.

(viii) If a landfill has installed and operates a collection and control system that is not required by this subpart, then the collection and control system must meet the following criteria:

(A) The gas collection and control system must have operated for at least 6,570 out of 8,760 hours preceding the Tier 4 SEM demonstration.

(B) During the Tier 4 SEM demonstration, the gas collection and control system must operate as it normally would to collect and control as much landfill gas as possible.

(b) After the installation and startup of a collection and control system in compliance with this subpart, the owner or operator must calculate the NMOC emission rate for purposes of determining when the system can be capped, removed, or decommissioned as provided in § 62.16714(f), using Equation 3:

$$M_{NMOC} = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC} \quad \text{(Eq. 3)}$$

Where:

M_{NMOC} = Mass emission rate of NMOC, megagrams per year.

Q_{LFG} = Flow rate of landfill gas, cubic meters per minute.

C_{NMOC} = NMOC concentration, parts per million by volume as hexane.

(1) *Flow rate.* The flow rate of landfill gas, $Q_{LFG,}$ must be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control system using a gas flow measuring device calibrated according to the provisions of section 10 of EPA Method 2E of appendix A–1 of 40 CFR part 60.

(2) *NMOC concentration.* The average NMOC concentration, $C_{NMOC,}$ must be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in EPA Method 25 or EPA Method 25C of appendix A–7 of 40 CFR part 60. The sample location on the common header pipe must be before any condensate removal or other gas refining units. The landfill owner or operator must divide the NMOC concentration from EPA Method 25 or EPA Method 25C of appendix A–7 of 40 CFR part 60 by six to convert from C_{NMOC} as carbon to C_{NMOC} as hexane.

(3) *Gas flow rate method.* The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the Administrator.

(i) Within 60 days after the date of calculating the NMOC emission rate for purposes of determining when the system can be capped or removed, the owner or operator must submit the results according to § 62.16724(j)(2).

(ii) [Reserved]

(c) When calculating emissions for Prevention of Significant Deterioration purposes, the owner or operator of each MSW landfill subject to the provisions of this subpart must estimate the NMOC emission rate for comparison to the Prevention of Significant Deterioration major source and significance levels in §§ 51.166 or 52.21 of this chapter using Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources (AP–42) or other approved measurement procedures.

(d) For the performance test required in § 62.16714(c)(1), the net heating value of the combusted landfill gas as determined in 40 CFR 60.18(f)(3) of this chapter is calculated from the concentration of methane in the landfill gas as measured by EPA Method 3C. A minimum of three 30-minute EPA Method 3C samples are determined. The measurement of other organic components, hydrogen, and carbon monoxide is not applicable. EPA Method 3C may be used to determine the landfill gas molecular weight for calculating the flare gas exit velocity under 40 CFR 60.18(f)(4) of this chapter.

(1) *Performance test results.* Within 60 days after the date of completing each performance test (as defined in § 60.8 of this chapter), the owner or operator must submit the results of the performance tests required by paragraph (b) or (d) of this section, including any associated fuel analyses, according to § 62.16724(j)(1).

(2) [Reserved]

(e) For the performance test required in § 62.16714(c)(2), EPA Method 25 or 25C (EPA Method 25C may be used at the inlet only) of appendix A–7 of 40 CFR part 60 must be used to determine compliance with the 98 weight-percent efficiency or the 20 parts-per-million by volume outlet NMOC concentration level, unless another method to demonstrate compliance has been approved by the Administrator as provided by § 62.16724(d)(2). EPA Method 3, 3A, or 3C of appendix A–2 of 40 CFR part 60 must be used to determine oxygen for correcting the NMOC concentration as hexane to 3 percent. In cases where the outlet concentration is less than 50 parts-per-million NMOC as carbon (8 parts-per-million NMOC as hexane), EPA Method 25A should be used in place of EPA Method 25. EPA Method 18 of appendix A–6 of 40 CFR part 60 may be used in conjunction with EPA Method 25A on a limited basis (compound specific, *e.g.,* methane) or EPA Method 3C may be used to determine methane. The methane as carbon should be subtracted from the EPA Method 25A total hydrocarbon value as carbon to give NMOC concentration as carbon. The landfill owner or operator must divide the NMOC concentration as carbon by 6 to convert the C_{NMOC} as carbon to C_{NMOC} as hexane. Equation 4 must be used to calculate efficiency:

$$\text{Control Efficiency} = (NMOC_{in} - NMOC_{out}) / (NMOC_{in}) \quad \text{(Eq. 4)}$$

Where:

$NMOC_{in}$ = Mass of NMOC entering control device.

$NMOC_{out}$ = Mass of NMOC exiting control device.

(1) *Performance test submission.* Within 60 days after the date of completing each performance test (as defined in§ 60.8 of this chapter), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, according to § 62.16724(j)(1).

(2) [Reserved]

§ 62.16720 Compliance provisions.

Follow the compliance provisions in this section (as well as the provisions in §§ 62.16716 and 62.16722), or the compliance provisions in § 63.1960 of this chapter (as well as the provisions in §§ 63.1958 and 63.1961 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used to comply with the provisions of § 62.16714(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1960 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

(a) Except as provided in § 62.16724(d)(2), the specified methods in paragraphs (a)(1) through (6) of this section must be used to determine whether the gas collection system is in compliance with § 62.16714(b)(2).

(1) For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with § 62.16714(b)(2)(i), either Equation 5 or Equation 6 must be used. The methane generation rate constant (k) and methane generation potential (Lo) kinetic factors should be those published in the most recent AP–42 or other site-specific values demonstrated to be appropriate and approved by the Administrator. If k has been determined as specified in § 62.16718(a)(4), the value of k determined from the test must be used. A value of no more than 15 years must be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Q_m = 2L_oR(e^{-kc} - e^{-kt}) \quad \text{(Eq. 5)}$$

Where:

Q_m = Maximum expected gas generation flow rate, cubic meters per year.
L_o = Methane generation potential, cubic meters per megagram solid waste.
R = Average annual acceptance rate, megagrams per year.
k = Methane generation rate constant, year -1.
t = Age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure, t is the age of the landfill at installation, years.
c = Time since closure, years (for an active landfill c = 0 and $e^{-kc} = 1$).

(ii) For sites with known year-to-year solid waste acceptance rate:

$$Q_M = \sum_{i-1}^{n} 2kL_oM_i(e^{-kt_i}) \quad \text{(Eq. 6)}$$

Where:

Q_M = Maximum expected gas generation flow rate, cubic meters per year.
k = Methane generation rate constant, year -1.
L_o = Methane generation potential, cubic meters per megagram solid waste.
M_i = Mass of solid waste in the i^{th} section, megagrams.
t_i = Age of the i^{th} section, years.

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, Equation 5 or Equation 6 in paragraphs (a)(1)(i) and (ii) of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using Equation 5 or Equation 6 in paragraphs (a)(1)(i) or (ii) of this section or other methods must be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

(2) For the purposes of determining sufficient density of gas collectors for compliance with § 62.16714(b)(2)(ii), the owner or operator must design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Administrator, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

(3) For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with § 62.16714(b)(2)(iii), the owner or operator must measure gauge pressure in the gas collection header applied to each individual well monthly. If a positive pressure exists, action must be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under § 62.16716(b). Any attempted corrective measure must not cause exceedances of other operational or performance standards.

(i) If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement of positive pressure, the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but not later than 60 days after positive pressure was first measured. The owner or operator must keep records according to § 62.16726(e)(3).

(ii) If corrective actions cannot be fully implemented within 60 days following the positive pressure or elevated temperature measurement for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) or positive pressure. The owner or operator must submit the items listed in § 62.16724(h)(7) as part of the next annual report. The owner or operator must keep records according to § 62.16726(e)(4).

(iii) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to § 62.16724(h)(7) and (k). The owner or operator must keep records according to § 62.16726(e)(5).

(4) For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator must monitor each well monthly for temperature as provided in § 62.16716(c). If a well exceeds the operating parameter for temperature, action must be initiated to correct the exceedance within 5 calendar days. Any attempted corrective measure must not cause exceedances of other operational or performance standards.

(i) If a landfill gas temperature less than 55 degrees Celsius (131 degrees Fahrenheit) cannot be achieved within 15 calendar days of the first measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit), the owner or operator must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after a landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) was first measured. The owner or operator must keep records according to § 62.16726(e)(3).

(ii) If corrective actions cannot be fully implemented within 60 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit) for which the root cause analysis was required, the owner or operator must also conduct a corrective action analysis and develop an implementation schedule to complete the corrective action(s) as soon as practicable, but no more than 120 days following the measurement of landfill gas temperature greater than 55 degrees Celsius (131 degrees Fahrenheit). The owner or operator must submit the items listed in § 62.16724(h)(7) as part of the next annual report. The owner or operator must keep records according to § 62.16726(e)(4).

(iii) If corrective action is expected to take longer than 120 days to complete after the initial exceedance, the owner or operator must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator, according to § 62.16724(h)(7) and § 62.16724(k). The owner or operator must keep records according to § 62.16726(e)(5).

(5) An owner or operator seeking to demonstrate compliance with § 62.16714(b)(2)(iv) through the use of a collection system not conforming to the specifications provided in § 62.16728 must provide information satisfactory to the Administrator as specified in § 62.16724(d)(3) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with § 62.16716(a), each owner or operator of a controlled landfill must place each well or design component as specified in the approved design plan as provided in § 62.16724(d). Each well must be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

(1) 5 years or more if active; or

(2) 2 years or more if closed or at final grade.

(c) The following procedures must be used for compliance with the surface methane operational standard as provided in § 62.16716(d):

(1) After installation and startup of the gas collection system, the owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of this section.

(2) The background concentration must be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

(3) Surface emission monitoring must be performed in accordance with section 8.3.1 of EPA Method 21 of appendix A–7 of 40 CFR part 60, except that the probe inlet must be placed within 5 to 10 centimeters of the ground. Monitoring must be performed during typical meteorological conditions.

(4) Any reading of 500 parts per million or more above background at any location must be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section must be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of § 62.16716(d).

(i) The location of each monitored exceedance must be marked, and the location and concentration recorded. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance must be made and the location must be re-monitored within 10 calendar days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action must be taken, and the location must be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same location, the action specified in paragraph (c)(4)(v) of this section must be taken, and no further monitoring of that location is required until the action specified in paragraph (c)(4)(v) of this section has been taken.

(iv) Any location that initially showed an exceedance but has a methane concentration less than 500 parts-per-million methane above background at the 10-day re-monitoring specified in paragraph (c)(4)(ii) or (iii) of this section must be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 parts-per-million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in paragraph (c)(4)(iii) or (v) of this section must be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 parts-per-million above background three times within a quarterly period, a new well or other collection device must be installed within 120 calendar days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the Administrator for approval.

(5) The owner or operator must implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in paragraph (c) of this section or § 62.16718(a)(6) must comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

(1) The portable analyzer must meet the instrument specifications provided in section 6 of EPA Method 21 of appendix A–7 of 40 CFR part 60, except that ''methane'' replaces all references to ''VOC.''

(2) The calibration gas must be methane, diluted to a nominal concentration of 500 parts-per-million in air.

(3) To meet the performance evaluation requirements in section 8.1 of EPA Method 21 of appendix A–7 of 40 CFR part 60, the instrument evaluation procedures of section 8.1 of EPA Method 21 of appendix A–7 of 40 CFR part 60 must be used.

(4) The calibration procedures provided in sections 8 and 10 of EPA Method 21 of appendix A–7 of 40 CFR part 60 must be followed immediately before commencing a surface monitoring survey.

(e) The provisions of this subpart apply at all times, including periods of startup, shutdown, or malfunction. During periods of startup, shutdown, and malfunction, you must comply with the work practice specified in § 62.16716(e) in lieu of the compliance provisions in § 62.16720.

§ 62.16722 Monitoring of operations.

Follow the monitoring provisions in this section (as well as the provisions in §§ 62.16716 and 62.16720), except as provided in § 62.16724(d)(2), or the monitoring provisions in § 63.1961 of this chapter (as well as the provisions in §§ 63.1958 and 63.1960 of this chapter), or both as alternative means of compliance, for an MSW landfill with a gas collection and control system used

to comply with the provisions of § 62.16714(b) and (c). Once the owner or operator begins to comply with the provisions of § 63.1961 of this chapter, the owner or operator must continue to operate the collection and control device according to those provisions and cannot return to the provisions of this section.

(a) Each owner or operator seeking to comply with § 62.16714(b)(2) for an active gas collection system must install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead and:

(1) Measure the gauge pressure in the gas collection header on a monthly basis as provided in § 62.16720(a)(3); and

(2) Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as follows:

(i) The nitrogen level must be determined using EPA Method 3C of appendix A–2 of 40 CFR part 60, unless an alternative test method is established as allowed by § 62.16724(d)(2).

(ii) Unless an alternative test method is established as allowed by § 62.16724(d)(2), the oxygen level must be determined by an oxygen meter using EPA Method 3A of appendix A–7 of 40 CFR part 60, EPA Method 3C of appendix A–7 of 40 CFR part 60, or ASTM D6522–11. Determine the oxygen level by an oxygen meter using EPA Method 3A, 3C, or ASTM D6522–11 (if sample location is prior to combustion) except that:

(A) The span must be set between 10- and 12-percent oxygen;

(B) A data recorder is not required;

(C) Only two calibration gases are required, a zero and span;

(D) A calibration error check is not required;

(E) The allowable sample bias, zero drift, and calibration drift are ±10 percent.

(iii) A portable gas composition analyzer may be used to monitor the oxygen levels provided:

(A) The analyzer is calibrated; and

(B) The analyzer meets all quality assurance and quality control requirements for EPA Method 3A or ASTM D6522–11.

(3) Monitor temperature of the landfill gas on a monthly basis as provided in § 62.16720(a)(4). The temperature measuring device must be calibrated annually using the procedure in 40 CFR part 60, appendix A–1, EPA Method 2, section 10.3.

(b) Each owner or operator seeking to comply with § 62.16714(c) using an enclosed combustor must calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 degrees Celsius, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

(2) A device that records flow to the control device and bypass of the control device (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that must record the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with § 62.16714(c) using a non-enclosed flare must install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame.

(2) A device that records flow to the flare and bypass of the flare (if applicable). The owner or operator must:

(i) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the control device at least every 15 minutes; and

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with § 62.16714(c) using a device other than a non-enclosed flare or an enclosed combustor or a treatment system must provide information satisfactory to the Administrator as provided in § 62.16724(d)(2) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator must review the information and either approve it, or request that additional information be submitted. The Administrator may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in § 62.16728 or seeking to monitor alternative parameters to those required by § 62.16716 through § 62.16722 must provide information satisfactory to the Administrator as provided in § 62.16724(d)(2) and (3) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with the 500 parts-per-million surface methane operational standard in § 62.16716(d) must monitor surface concentrations of methane according to the procedures provided in § 62.16720(c) and the instrument specifications in § 62.16720(d). Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 parts-per-million or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

(g) Each owner or operator seeking to demonstrate compliance with the control system requirements in § 62.16714(c) using a landfill gas treatment system must maintain and operate all monitoring systems associated with the treatment system in accordance with the site-specific treatment system monitoring plan required in § 62.16726(b)(5)(ii) and must calibrate, maintain, and operate according to the manufacturer's specifications a device that records flow to the treatment system and bypass of the treatment system (if applicable). The owner or operator must:

(1) Install, calibrate, and maintain a gas flow rate measuring device that records the flow to the treatment system at least every 15 minutes; and

(2) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(h) The monitoring requirements of paragraphs (b), (c), (d), and (g) of this section apply at all times the designated facility is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(i) Incorporation by reference required material.

(1) The material required by this section was approved for incorporation by reference into this section by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect approved material at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC, (202) 566–1744, Docket ID No. EPA–HQ–OAR–2019–0338 and obtain it from the source(s) listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(2) ASTM International, 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–2959, (800) 262–1373, *www.astm.org.*

(i) ASTM D6522–11 Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, approved December 1, 2011.

(ii) [Reserved]

§ 62.16724 Reporting guidelines.

Follow the reporting provisions listed in this section, as applicable, except as provided under 40 CFR 60.24 and §§ 62.16711(g), (h), and 62.16724(d)(2).

(a) *Design capacity report.* Submit the initial design capacity report no later than September 20, 2021. The initial design capacity report must contain the following information:

(1) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the state, local, or tribal agency responsible for regulating the landfill.

(2) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit issued by the state, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering practices. The calculations must be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually. Any density conversions must be documented and submitted with the design capacity report. The state, local, or tribal agency or the Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(b) *Amended design capacity report.* An amended design capacity report must be submitted providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 62.16726(f).

(c) *NMOC emission rate report.* For existing MSW landfills covered by this subpart with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the NMOC emission rate report must be submitted following the procedure specified in paragraph (j)(2) of this section no later than 90 days after the effective date of this subpart. The NMOC emission rate report must be submitted to the Administrator annually following the procedure specified in paragraph (j)(2) of this section, except as provided for in paragraph (c)(3) of this section. The Administrator may request such additional information as may be necessary to verify the reported NMOC emission rate.

(1) The NMOC emission rate report must contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in § 62.16718(a) or (b), as applicable.

(2) The NMOC emission rate report must include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

(3) If the estimated NMOC emission rate as reported in the annual report to the Administrator is less than 34 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit, following the procedure specified in paragraph (j)(2) of this section, an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate must include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided to the Administrator. This estimate must be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate must be submitted to the Administrator. The revised estimate must cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(4) Each owner or operator subject to the requirements of this subpart is exempted from the requirements to submit an NMOC emission rate report, after installing a collection and control system that complies with § 62.16714(b) and (c), during such time as the collection and control system is in operation and in compliance with §§ 62.16716 and 62.16720.

(d) *Collection and control system design plan.* The collection and control system design plan must be prepared and approved by a professional engineer and must meet the following requirements:

(1) The collection and control system as described in the design plan must meet the design requirements in § 62.16714(b) and (c).

(2) The collection and control system design plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions

of §§ 62.16716 through 62.16726 proposed by the owner or operator.

(3) The collection and control system design plan must either conform to specifications for active collection systems in § 62.16728 or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to § 62.16728.

(4) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must submit a copy of the collection and control system design plan cover page that contains the engineer's seal to the Administrator within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year, except as follows:

(i) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in § 62.16718(a)(3) and the resulting rate is less than 34 megagrams per year, annual periodic reporting must be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated NMOC emission rate is equal to or greater than 34 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated NMOC emission rate based on NMOC sampling and analysis, must be submitted, following the procedures in paragraph (j)(2) of this section, within 180 days of the first calculated exceedance of 34 megagrams per year.

(ii) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant k, as provided in Tier 3 in § 62.16718(a)(4), and the resulting NMOC emission rate is less than 34 megagrams per year, annual periodic reporting must be resumed. The resulting site-specific methane generation rate constant k must be used in the NMOC emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of § 62.16718(a)(4) and the resulting site-specific methane generation rate constant k must be submitted, following the procedure specified in paragraph (j)(2) of this section, to the Administrator within 1 year of the first calculated NMOC emission rate equaling or exceeding 34 megagrams per year.

(iii) If the owner or operator elects to demonstrate that site-specific surface methane emissions are below 500 parts-per-million methane, based on the provisions of § 62.16718(a)(6), then the owner or operator must submit annually a Tier 4 surface emissions report as specified in this paragraph following the procedure specified in paragraph (j)(2) of this section until a surface emissions reading of 500 parts-per-million methane or greater is found. If the Tier 4 surface emissions report shows no surface emissions readings of 500 parts-per-million methane or greater for four consecutive quarters at a closed landfill, then the landfill owner or operator may reduce Tier 4 monitoring from a quarterly to an annual frequency. The Administrator may request such additional information as may be necessary to verify the reported instantaneous surface emission readings. The Tier 4 surface emissions report must clearly identify the location, date and time (to the nearest second), average wind speeds including wind gusts, and reading (in parts-per-million) of any value 500 parts-per-million methane or greater, other than non-repeatable, momentary readings. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places. The Tier 4 surface emission report should also include the results of the most recent Tier 1 and Tier 2 results in order to verify that the landfill does not exceed 50 megagrams per year of NMOC.

(A) The initial Tier 4 surface emissions report must be submitted annually, starting within 30 days of completing the fourth quarter of Tier 4 SEM that demonstrates that site-specific surface methane emissions are below 500 parts-per-million methane, and following the procedure specified in paragraph (j)(2) of this section

(B) The Tier 4 surface emissions rate report must be submitted within 1 year of the first measured surface exceedance of 500 parts-per-million methane, following the procedure specified in paragraph (j)(2) of this section.

(iv) If the landfill is in the closed landfill subcategory, the owner or operator is exempt from submitting a collection and control system design plan to the Administrator provided that conditions in § 62.16711(g)(3) are met. If not, the owner or operator shall follow the submission procedures and timing in § 62.16724(d)(ii) and (iii) using a level of 50 Mg/yr instead of 34 Mg/yr.

(5) The landfill owner or operator must notify the Administrator that the design plan is completed and submit a copy of the plan's signature page. The Administrator has 90 days to decide whether the design plan should be submitted for review. If the Administrator chooses to review the plan, the approval process continues as described in paragraph (c)(6) of this section. However, if the Administrator indicates that submission is not required or does not respond within 90 days, the landfill owner or operator can continue to implement the plan with the recognition that the owner or operator is proceeding at their own risk. In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

(6) Upon receipt of an initial or revised design plan, the Administrator must review the information submitted under paragraphs (d)(1) through (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems. If the Administrator does not approve or disapprove the design plan, or does not request that additional information be submitted within 90 days of receipt, then the owner or operator may continue with implementation of the design plan, recognizing they would be proceeding at their own risk.

(7) If the owner or operator chooses to demonstrate compliance with the emission control requirements of this subpart using a treatment system as defined in this subpart, then the owner or operator must prepare a site-specific treatment system monitoring plan as specified in § 62.16726(b)(5). Legacy controlled landfills must prepare the monitoring plan no later than May 23, 2022.

(e) *Revised design plan.* The owner or operator who has already been required to submit a design plan under paragraph (d) of this section, or under subpart GGG of this part; 40 CFR part 60, subpart WWW; or a state plan implementing subpart Cc of 40 CFR part 60, must submit a revised design plan to the Administrator for approval as follows:

(1) At least 90 days before expanding operations to an area not covered by the previously approved design plan.

(2) Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Administrator

according to paragraph (d) of this section.

(f) *Closure report.* Each owner or operator of a controlled landfill must submit a closure report to the Administrator within 30 days of ceasing waste acceptance. The Administrator may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 40 CFR 258.60. If a closure report has been submitted to the Administrator, no additional wastes may be placed into the landfill without filing a notification of modification as described under 40 CFR 60.7(a)(4).

(g) *Equipment removal report.* Each owner or operator of a controlled landfill must submit an equipment removal report to the Administrator 30 days prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report must contain the following items:

(i) A copy of the closure report submitted in accordance with paragraph (f) of this section; and

(ii) A copy of the initial performance test report demonstrating that the 15-year minimum control period has expired, unless the report of the results of the performance test has been submitted to the EPA via the EPA's Central Data Exchange (CDX), or information that demonstrates that the gas collection and control system will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX; and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 34 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports; or

(iv) For the closed landfill subcategory, dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 50 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

(2) The Administrator may request such additional information as may be necessary to verify that all of the conditions for removal in § 62.16714(f) have been met.

(h) *Annual report.* The owner or operator of a landfill seeking to comply with § 62.16714(e)(2) using an active collection system designed in accordance with § 62.16714(b) must submit to the Administrator, following the procedures specified in paragraph (j)(2) of this section, an annual report of the recorded information in paragraphs (h)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system except for legacy controlled landfills that have already submitted an initial report under 40 CFR part 60, subpart WWW; subpart GGG of this part; or a state plan implementing 40 CFR part 60, subpart Cc. Except for legacy controlled landfills, the initial annual report must include the initial performance test report required under 40 CFR 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. Legacy controlled landfills are exempted from submitting performance test reports in EPA's CDX provided that those reports were submitted under 40 CFR part 60, subpart WWW; subpart GGG of this part; or a state plan implementing 40 CFR part 60, subpart Cc. In the initial annual report, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. The initial performance test report must be submitted, following the procedure specified in paragraph (j)(1) of this section, no later than the date that the initial annual report is submitted. For enclosed combustion devices and flares, reportable exceedances are defined under § 62.16726(c)(1). Legacy controlled landfills are required to submit the annual report no later than one year after the most recent annual report submitted. If complying with the operational provisions of §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§ 62.16716, 62.16720, and 62.16722, the owner or operator must follow the semi-annual reporting requirements in § 63.1981(h) of this chapter in lieu of this paragraph.

(1) Value and length of time for exceedance of applicable parameters monitored under § 62.16722(a)(1), (b), (c), (d), and (g).

(2) Description and duration of all periods when the gas stream was diverted from the control device or treatment system through a bypass line or the indication of bypass flow as specified under § 62.16722.

(3) Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

(4) All periods when the collection system was not operating.

(5) The location of each exceedance of the 500 parts-per-million methane concentration as provided in § 62.16716(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(6) The date of installation and the location of each well or collection system expansion added pursuant to § 62.16720(a)(3), (4), (b), and (c)(4).

(7) For any corrective action analysis for which corrective actions are required in § 62.16720(a)(3) or (4) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure or elevated temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(i) *Initial performance test report.* Each owner or operator seeking to comply with § 62.16714(c) must include the following information with the initial performance test report required under 40 CFR 60.8 of this chapter:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas

extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area;

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

(j) *Electronic reporting.* The owner or operator must submit reports electronically according to paragraphs (j)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test (as defined in 40 CFR 60.8 of this chapter), the owner or operator must submit the results of each performance test according to the following procedures:

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www3.epa.gov/ttn/chief/ert/ert_info.html*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternative file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in 40 CFR 60.4 of this chapter.

(2) Each owner or operator required to submit reports following the procedure specified in this paragraph must submit reports to the EPA via the CEDRI (CEDRI can be accessed through the EPA's CDX). The owner or operator must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www3.epa.gov/ttn/chief/cedri/index.html*). If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, the owner or operator must submit the report to the Administrator at the appropriate address listed in 40 CFR 60.4 of this chapter. Once the form has been available in CEDRI for 90 calendar days, the owner or operator must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted.

(k) *Corrective action and the corresponding timeline.* The owner or operator must submit according to paragraphs (k)(1) and (2) of this section. If complying with the operational provisions of 40 CFR 63.1958, 63.1960, and 63.1961 of this chapter, as allowed at §§ 62.16716, 62.16720, and 62.16722, the owner or operator must follow the corrective action and the corresponding timeline reporting requirements in § 63.1981(j) of this chapter in lieu of paragraphs (k)(1) and (2) of this section.

(1) For corrective action that is required according to § 62.16720(a)(3)(iii) or 62.16720(a)(4)(iii) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit) or above. The Administrator must approve the plan for corrective action and the corresponding timeline.

(2) For corrective action that is required according to § 62.16720(a)(3)(iii) or § 62.16720(a)(4)(iii) and is not completed within 60 days after the initial exceedance, you must submit a notification to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature exceedance.

(l) *Liquids addition.* The owner or operator of a designated facility with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that has employed leachate recirculation or added liquids based on a Research, Development, and Demonstration permit (issued through Resource Conservation and Recovery Act (RCRA), subtitle D, part 258) within the last 10 years must submit to the Administrator, annually, following the procedure specified in paragraph (j)(2) of this section, the following information:

(1) Volume of leachate recirculated (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(2) Total volume of all other liquids added (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(3) Surface area (acres) over which the leachate is recirculated (or otherwise applied).

(4) Surface area (acres) over which any other liquids are applied.

(5) The total waste disposed (megagrams) in the areas with recirculated leachate and/or added liquids based on on-site records to the extent data are available, or engineering estimates and the reported basis of those estimates.

(6) The annual waste acceptance rates (megagrams per year) in the areas with recirculated leachate and/or added liquids, based on on-site records to the extent data are available, or engineering estimates.

(7) The initial report must contain items in paragraph (l)(1) through (6) of this section per year for the most recent 365 days as well as for each of the previous 10 years, to the extent historical data are available in on-site records, and the report must be submitted no later than June 21, 2022.

(8) Subsequent annual reports must contain items in paragraph (l)(1) through (6) of this section for the 365-day period following the 365-day period included in the previous annual report, and the report must be submitted no later than 365 days after the date the previous report was submitted.

(9) Landfills in the closed landfill subcategory are exempt from reporting

requirements contained in paragraphs (l)(1) through (7) of this section.

(10) Landfills may cease annual reporting of items in paragraphs (l)(1) through (6) of this section once they have submitted the closure report in § 62.16724(f).

(m) *Tier 4 notification.* (1) The owner or operator of a designated facility with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must provide a notification of the date(s) upon which it intends to demonstrate site-specific surface methane emissions are below 500 parts-per-million methane, based on the Tier 4 provisions of § 62.16718(a)(6). The landfill must also include a description of the wind barrier to be used during the SEM in the notification. Notification must be postmarked not less than 30 days prior to such date.

(2) If there is a delay to the scheduled Tier 4 SEM date due to weather conditions, including not meeting the wind requirements in § 62.16718(a)(6)(A), the owner or operator of a landfill shall notify the Administrator by email or telephone no later than 48 hours before any known delay in the original test date, and arrange an updated date with the Administrator by mutual agreement.

(n) *Notification of meeting Tier 4.* The owner or operator of a designated facility must submit a notification to the EPA Regional office within 10 business days of completing each increment of progress. Each notification must indicate which increment of progress specified in § 62.16712 has been achieved. The notification must be signed by the owner or operator of the landfill.

(1) For the first increment of progress (submit control plan), you must follow paragraph (p) of this section in addition to submitting the notification described in paragraph (n) of this section. A copy of the design plan must also be kept on site at the landfill.

(2) For the second increment of progress, a signed copy of the contract(s) awarded must be submitted in addition to the notification described in paragraph (n) of this section.

(o) *Notification of failing to meet an increment of progress.* The owner or operator of a designated facility who fails to meet any increment of progress specified in § 62.16712(a)(1) through (5) according to the applicable schedule in § 62.16712 must submit notification that the owner or operator failed to meet the increment to the EPA Regional office within 10 business days of the applicable date in § 62.16712.

(p) *Alternate dates for increments 2 and 3.* The owner or operator (or the state or tribal air pollution control authority) that is submitting alternative dates for increments 2 and 3 according to § 62.16712(d) must do so by the date specified for submitting the final control plan. The date for submitting the final control plan is specified in § 62.16712(c), as applicable. The owner or operator (or the state or tribal air pollution control authority) must submit a justification if any of the alternative dates are later than the increment dates in table 1 of this subpart. In addition to submitting the alternative dates to the appropriate EPA Regional office, the owner or operator must also submit the alternative dates to the state or tribe.

(q) *24-hour high temperature report.* Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 62.16716, 62.16720, and 62.16722, must submit the 24-hour high temperature report according to § 63.1981(k) of this chapter.

§ 62.16726 Recordkeeping guidelines.

Follow the recordkeeping provisions in this section.

(a) Except as provided in § 62.16724(d)(2), each owner or operator of an MSW landfill subject to the provisions of § 62.16714(e) must keep for at least 5 years up-to-date, readily accessible, on-site records of the design capacity report that triggered § 62.16714(e), the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Except as provided in § 62.16724(d)(2), each owner or operator of a controlled landfill must keep up-to-date, readily accessible records for the life of the control system equipment of the data listed in paragraphs (b)(1) through (5) of this section as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring must be maintained for a minimum of 5 years. Records of the control device vendor specifications must be maintained until removal.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 62.16714(b):

(i) The maximum expected gas generation flow rate as calculated in § 62.16720(a)(1). The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the Administrator.

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in § 62.16728(a)(1).

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 62.16714(c) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

(i) The average temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in § 62.16714(c)(2) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 62.16714(c)(2)(i) through use of a boiler or process heater of any size: A description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 62.16714(c)(1) through use of a non-enclosed flare, the flare type (*i.e.,* steam-assisted, air-assisted, or non-assisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in 40 CFR 60.18 of this chapter; and continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame or the flare flame is absent.

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 62.16714(c)(3) through use of a landfill gas treatment system:

(i) *Bypass records.* Records of the flow of landfill gas to, and bypass of, the treatment system.

(ii) *Site-specific treatment monitoring plan.* A site-specific treatment monitoring plan, to include:

(A) Monitoring records of parameters that are identified in the treatment system monitoring plan and that ensure the treatment system is operating properly for each intended end use of the treated landfill gas. At a minimum, records should include records of filtration, de-watering, and compression parameters that ensure the treatment system is operating properly for each

intended end use of the treated landfill gas.

(B) Monitoring methods, frequencies, and operating ranges for each monitored operating parameter based on manufacturer's recommendations or engineering analysis for each intended end use of the treated landfill gas.

(C) Documentation of the monitoring methods and ranges, along with justification for their use.

(D) Identify who is responsible (by job title) for data collection.

(E) Processes and methods used to collect the necessary data.

(F) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems.

(c) Except as provided in § 62.16724(d)(2), each owner or operator of a controlled landfill subject to the provisions of this subpart must keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in § 62.16722 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) The following constitute exceedances that must be recorded and reported under § 62.16724:

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal unit per hour) or greater, all 3-hour periods of operation during which the average temperature was more than 28 degrees Celsius (82 degrees Fahrenheit) below the average combustion temperature during the most recent performance test at which compliance with § 62.16714(c) was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

(2) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible continuous records of the indication of flow to the control system and the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under § 62.16722.

(3) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with § 62.16714(c) must keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other state, local, tribal, or Federal regulatory requirements.

(4) Each owner or operator seeking to comply with the provisions of this subpart by use of a non-enclosed flare must keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under § 62.16722(c), and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

(5) Each owner or operator of a landfill seeking to comply with § 62.16714(e) using an active collection system designed in accordance with § 62.16714(b) must keep records of periods when the collection system or control device is not operating.

(d) Except as provided in § 62.16724(d)(2), each owner or operator subject to the provisions of this subpart must keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label on each collector that matches the labeling on the plot map.

(1) Each owner or operator subject to the provisions of this subpart must keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under § 62.16720(b).

(2) Each owner or operator subject to the provisions of this subpart must keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in § 62.16728(a)(3)(i) as well as any nonproductive areas excluded from collection as provided in § 62.16728(a)(3)(ii).

(e) Except as provided in § 62.16724(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of the items in paragraphs (e)(1) through (5) of this section. Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 62.16716, 62.16720, and 62.16722, must keep the records in paragraph (e)(6) of this section and must keep records according to § 63.1983(e)(1) through (5) of this chapter in lieu of paragraphs (e)(1) through (5) of this section.

(1) All collection and control system exceedances of the operational standards in § 62.16716, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

(2) Each owner or operator subject to the provisions of this subpart must also keep records of each wellhead temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit) or above, each wellhead nitrogen level at or above 20 percent, and each wellhead oxygen level at or above 5 percent.

(3) For any root cause analysis for which corrective actions are required in § 62.16720(a)(3) or § 62.16720(a)(4), keep a record of the root cause analysis conducted, including a description of the recommended corrective action(s) taken, and the date(s) the corrective action(s) were completed.

(4) For any root cause analysis for which corrective actions are required in § 62.16720(a)(3)(ii) or § 62.16720(a)(4)(ii), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(5) For any root cause analysis for which corrective actions are required in § 62.16720(a)(3)(iii) or § 62.16720(a)(4)(iii), keep a record of the root cause analysis conducted, the corrective action analysis, the date for corrective action(s) already completed following the positive pressure reading or high temperature reading, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates, and a copy of any comments or final approval on the corrective action analysis or schedule from the regulatory agency.

(6) Each owner or operator that chooses to comply with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter, as allowed in §§ 62.16716, 62.16720, and 62.16722, must keep records of the date upon which the owner or operator started complying with the provisions in §§ 63.1958, 63.1960, and 63.1961 of this chapter.

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, as provided in the definition of ''design capacity,'' must keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and

the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(g) Landfill owners or operators seeking to demonstrate that site-specific surface methane emissions are below 500 parts-per-million by conducting SEM under the Tier 4 procedures specified in § 62.16718(a)(6) must keep for at least 5 years up-to-date, readily accessible records of all SEM and information related to monitoring instrument calibrations conducted according to sections 8 and 10 of EPA Method 21 of appendix A–7 of 40 CFR part 60 of this chapter, including all of the following items:

(1) Calibration records.

(i) Date of calibration and initials of operator performing the calibration.

(ii) Calibration gas cylinder identification, certification date, and certified concentration.

(iii) Instrument scale(s) used.

(iv) A description of any corrective action taken if the meter readout could not be adjusted to correspond to the calibration gas value.

(v) If an owner or operator makes their own calibration gas, a description of the procedure used.

(2) Digital photographs of the instrument setup. The photographs must be time and date-stamped and taken at the first sampling location prior to sampling and at the last sampling location after sampling at the end of each sampling day, for the duration of the Tier 4 monitoring demonstration.

(3) Timestamp of each surface scan reading.

(i) Timestamp should be detailed to the nearest second, based on when the sample collection begins.

(ii) A log for the length of time each sample was taken using a stopwatch (*e.g.,* the time the probe was held over the area).

(4) Location of each surface scan reading. The owner or operator must determine the coordinates using an instrument with an accuracy of at least 4 meters. Coordinates must be in decimal degrees with at least five decimal places.

(5) Monitored methane concentration (parts per million) of each reading.

(6) Background methane concentration (parts per million) after each instrument calibration test.

(7) Adjusted methane concentration using most recent calibration (parts-per-million).

(8) For readings taken at each surface penetration, the unique identification location label matching the label specified in paragraph (d) of this section.

(9) Records of the operating hours of the gas collection system for each destruction device.

(h) Except as provided in § 62.16724(d)(2), each owner or operator subject to the provisions of this subpart must keep for at least 5 years up-to-date, readily accessible records of all collection and control system monitoring data for parameters measured in § 62.16722(a)(1), (2), and (3).

(i) Any records required to be maintained by this subpart that are submitted electronically via the EPA's CDX may be maintained in electronic format.

(j) For each owner or operator reporting leachate or other liquids addition under § 62.16724(l), keep records of any engineering calculations or company records used to estimate the quantities of leachate or liquids added, the surface areas for which the leachate or liquids were applied, and the estimates of annual waste acceptance or total waste in place in the areas where leachate or liquids were applied.

§ 62.16728 Specifications for active collection systems.

Follow the specifications for active collection systems in this section.

(a) Each owner or operator seeking to comply with § 62.16714(b) must site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Administrator.

(1) The collection devices within the interior must be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues must be addressed in the design: Depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, resistance to the refuse decomposition heat, and ability to isolate individual components or sections for repair or troubleshooting without shutting down entire collection system.

(2) The sufficient density of gas collection devices determined in paragraph (a)(1) of this section must address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

(3) The placement of gas collection devices determined in paragraph (a)(1) of this section must control all gas producing areas, except as provided by paragraphs (a)(3)(i) and (ii) of this section.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under § 62.16726(d). The documentation must provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area, and must be provided to the Administrator upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material must be documented and provided to the Administrator upon request. A separate NMOC emissions estimate must be made for each section proposed for exclusion, and the sum of all such sections must be compared to the NMOC emissions estimate for the entire landfill.

(A) The NMOC emissions from each section proposed for exclusion must be computed using Equation 7:

$$Q_i = 2kL_oM_i(e^{-kt_i})(C_{NMOC})(3.6\times10^{-9}) \quad \text{(Eq. 7)}$$

Where:

Q_i = NMOC emission rate from the ith section, megagrams per year.
k = Methane generation rate constant, year $^{-1}$.
L_o = Methane generation potential, cubic meters per megagram solid waste.
M_i = Mass of the degradable solid waste in the ith section, megagram.
t_i = Age of the solid waste in the ith section, years.
C_{NMOC} = Concentration of NMOC, parts-per-million by volume.
3.6×10^{-9} = Conversion factor.

(B) If the owner or operator is proposing to exclude, or cease gas collection and control from, nonproductive physically separated (*e.g.,* separately lined) closed areas that already have gas collection systems, NMOC emissions from each physically separated closed area must be computed using either Equation 3 in § 62.16718 or Equation 7 in paragraph (a)(3)(ii)(A) of this section.

(iii) The values for k and C_{NMOC} determined in field testing must be used if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for k, Lo, and C_{NMOC} provided in § 62.16718 or the alternative values from § 62.16718 must be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in paragraph (a)(3)(i) of this section.

(b) Each owner or operator seeking to comply with § 62.16714(b) must construct the gas collection devices using the following equipment or procedures:

(1) The landfill gas extraction components must be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: Convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system must extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors must be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations must be situated with regard to the need to prevent excessive air infiltration.

(2) Vertical wells must be placed so as not to endanger underlying liners and must address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors must be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices must be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(3) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly must include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices must be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with § 62.16714(c) must convey the landfill gas to a control system in compliance with § 62.16714(c) through the collection header pipe(s). The gas mover equipment must be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

(1) For existing collection systems, the flow data must be used to project the maximum flow rate. If no flow data exist, the procedures in paragraph (c)(2) of this section must be used.

(2) For new collection systems, the maximum flow rate must be in accordance with § 62.16720(a)(1).

§ 62.16730 Definitions.

Terms used but not defined in this subpart have the meaning given them in the Clean Air Act and in subparts A and B of 40 CFR part 60 of this chapter.

Achieve final compliance means to connect and operate the collection and control system as specified in the final control plan. Within 180 days after the date the landfill is required to achieve final compliance, the initial performance test must be conducted.

Active collection system means a gas collection system that uses gas mover equipment.

Active landfill means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a state air pollution control agency.

Award contract means the MSW landfill owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the MSW landfill owner or operator. The MSW landfill owner or operator may award a number of contracts to install the collection and control system. To meet this increment of progress, the MSW landfill owner or operator must award a contract or contracts to initiate on-site construction or installation of the collection and control system.

Closed landfill means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4) of this chapter. Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

Closed area means a separately lined area of an MSW landfill in which solid waste is no longer being placed. If additional solid waste is placed in that area of the landfill, that landfill area is no longer closed. The area must be separately lined to ensure that the landfill gas does not migrate between open and closed areas.

Closed landfill subcategory means a closed landfill that has submitted a closure report as specified in § 62.16724(f) on or before September 27, 2017.

Closure means that point in time when a landfill becomes a closed landfill.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Complete on-site construction means that all necessary collection system components and air pollution control devices identified in the final control

plan are on site, in place, and ready for operation.

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the NMOC emission rate. The landfill is considered controlled at the time a collection and control system design plan is prepared in compliance with § 62.16714(e)(2). Controlled landfills also includes those landfills that meet the definition of *legacy controlled landfills,* as defined in this subpart.

Corrective action analysis means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected corrective action(s) is/are the best alternative(s), including, but not limited to, considerations of cost effectiveness, technical feasibility, safety, and secondary impacts.

Design capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

Disposal facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Emission rate cutoff means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the regulation is required.

Enclosed combustor means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

EPA approved state plan means a state plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B or Ba to implement and enforce 40 CFR part 60, subpart Cf. An approved state plan becomes effective on the date specified in the document published in the **Federal Register** announcing EPA's approval.

Flare means an open combustor without enclosure or shroud.

Final control plan (Collection and control system design plan) means a plan that describes the collection and control system that will capture the gas generated within an MSW landfill. The collection and control system design plan must be prepared by a professional engineer and must describe a collection and control system that meets the requirements of § 62.1614(b) and (c). The final control plan must contain engineering specifications and drawings of the collection and control system. The final control plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions of §§ 62.16716 through 62.16726 proposed by the owner or operator. The final control plan must either conform with the specifications for active collection systems in § 62.16728 or include a demonstration that shows that based on the size of the landfill and the amount of waste expected to be accepted, the system is sized properly to collect the gas, control emissions of NMOC to the required level and meet the operational standards for a landfill.

Gas mover equipment means the equipment (*i.e.,* fan, blower, compressor) used to transport landfill gas through the header system.

Gust means the highest instantaneous wind speed that occurs over a 3-second running average.

Indian Country means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Initiate on-site construction means to begin any of the following: Installation of the collection and control system to be used to comply with the emission limits as outlined in the final control plan; physical preparation necessary for the installation of the collection and control system to be used to comply with the final emission limits as outlined in the final control plan; or, alteration of an existing collection and control system to be used to comply with the final emission limits as outlined in the final control plan.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste. Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities. Household waste does not include construction, renovation, or demolition wastes, even if originating from a household.

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the RCRA, parts 264 and 265 of this chapter. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Interior well means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this title.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

Leachate recirculation means the practice of taking the leachate collected from the landfill and reapplying it to the landfill by any of one of a variety of methods, including pre-wetting of the waste, direct discharge into the working face, spraying, infiltration ponds, vertical injection wells, horizontal gravity distribution systems, and pressure distribution systems.

Legacy controlled landfill means any MSW landfill subject to this subpart that submitted a collection and control system design plan prior to May 21, 2021 in compliance with § 60.752(b)(2)(i) of this chapter, the Federal plan at subpart GGG of this part, or a state/tribal plan implementing 40 CFR part 60, subpart Cc of this chapter, depending on which regulation was applicable to the landfill. This definition applies to those landfills that completed construction and began operations of the GCCS and those that are within the 30-month timeline for installation and start-up of a GCCS according to § 60.752(b)(2)(ii) of this chapter, the Federal plan at subpart GGG of this part, or a state/tribal plan implementing 40 CFR part 60, subpart Cc.

Modification means an increase in the permitted volume design capacity of the landfill by either lateral or vertical expansion based on its permitted design capacity as of July 17, 2014. Modification does not occur until the owner or operator commences construction on the lateral or vertical expansion.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA, Subtitle D wastes (§ 257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

Municipal solid waste landfill emissions or *MSW landfill emissions* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

NMOC means nonmethane organic compounds, as measured according to the provisions of § 62.16718.

Negative declaration letter means a letter to EPA declaring that there are no existing MSW landfills in the state or that there are no existing MSW landfills in the state that must install collection and control systems according to the requirements of 40 CFR part 60, subpart Cf.

Nondegradable waste means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not limited to, concrete, municipal waste combustor ash, and metals.

Passive collection system means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

Root cause analysis means an assessment conducted through a process of investigation to determine the primary cause, and any other contributing causes, of positive pressure at a wellhead.

Sludge means the term sludge as defined in 40 CFR 258.2.

Solid waste means the term solid waste as defined in 40 CFR 258.2.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) of the Clean Air Act and subpart B of part 60 of this chapter that implements and enforces subpart Cf of 40 CFR part 60 of this chapter.

Sufficient density means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors necessary to maintain emission and migration control as determined by measures of performance set forth in this part.

Sufficient extraction rate means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

Treated landfill gas means landfill gas processed in a treatment system as defined in this subpart.

Treatment system means a system that filters, de-waters, and compresses landfill gas for sale or beneficial use.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart Cf.

Untreated landfill gas means any landfill gas that is not treated landfill gas.

TABLE 1 TO SUBPART OOO OF PART 62—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS

Increment	Date if using tiers 1, 2, or 3	Date if using tier 4	Date if a legacy controlled landfill
Increment 1—Submit cover page of final control plan.	1 year after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1].	1 year after the first measured concentration of methane of 500 parts per million or greater from the surface of the landfill.	1 year after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]
Increment 2—Award Contracts.	20 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1].	20 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	20 months after the most recent NMOC emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]
Increment 3—Begin on-site construction.	24 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1].	24 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	24 months after the most recent NMOC emission rate report showing NMOC emissions ≥50 megagrams per year submitted under a previous regulation.[2]
Increment 4—Complete on-site construction.	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1].	30 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	30 months after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams submitted under a previous regulation.

TABLE 1 TO SUBPART OOO OF PART 62—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS—Continued

Increment	Date if using tiers 1, 2, or 3	Date if using tier 4	Date if a legacy controlled landfill
Increment 5—Final compliance.	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥34 megagrams per year.[1].	30 months after the most recent NMOC emission rate report showing NMOC emissions ≥34 megagrams per year.	30 months after the first NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥50 megagrams submitted under a previous regulation.[2]

[1] 50 megagrams per year NMOC for the closed landfill subcategory.
[2] Previous regulation refers to 40 CFR part 60, subpart WWW; 40 CFR part 62, subpart GGG; or a state plan implementing 40 CFR part 60, subpart Cc. Increments of progress that have already been completed under previous regulations do not have to be completed again under this subpart.

[FR Doc. 2021–10109 Filed 5–20–21; 8:45 am]
BILLING CODE 6560–50–P

APPENDIX C.2

Preamble and Proposed Rule Language

30 TAC Chapter 113, Subchapter D

Divisions 1 & 6

[ATTACH FINAL PREAMBLE/RULE AFTER PROCESSING]

APPENDIX C.3

Inventory of Existing Texas MSW Landfill Sites and NMOC Emissions

Appendix C.3: Inventory of Existing Texas MSW Landfill Sites and NMOC Emissions.

I. Source Inventory

Table C.3.1 below lists active, existing MSW landfills in Texas as of September 2021 which are potentially subject to the proposed Chapter 113 rules and §111(d) state plan. This table includes permitted Type I, Type I Arid-Exempt (AE), and Type I AE and Type IV AE MSW landfills. This list may not be determinative of whether any particular landfill would be subject to the control requirements of the proposed Chapter 113 rules. The proposed Chapter 113 rules include complete, self-contained applicability provisions which will determine applicability for any particular landfill.

This table excludes landfills that permit records indicate to be subject to 40 CFR Part 60 Subpart XXX, as those landfills would not be covered by the new Chapter 113 rules and §111(d) state plan. This table also excludes Type IV and solely Type IV AE landfills, which do not accept household or putrescible wastes and therefore would not be subject to the emission guidelines of Subpart Cf.

Table C.3.1: Active Existing MSW Landfills in Texas

County	Permit No.	Name	Type
ANDREWS	171	CITY OF ANDREWS LANDFILL	1AE & 4AE
ANGELINA	2105A	ANGELINA COUNTY LANDFILL	1
BAILEY	2291A	CITY OF MULESHOE LANDFILL	1AE & 4AE
BEXAR	1410C	TESSMAN ROAD LANDFILL	1
BEXAR	2093B	COVEL GARDENS LANDFILL	1
BRAZORIA	1539C	SEABREEZE ENVIRONMENTAL LANDFILL	1
BREWSTER	1276	PANTHER JUNCTION LANDFILL	1AE
BREWSTER	2197	CITY OF ALPINE LANDFILL	1AE & 4AE
BROWN	1562A	REGIONAL LANDFILL OF BROWNWOOD	1
CAMERON	1273A	CITY OF BROWNSVILLE LANDFILL	1
CARSON	1164	CITY OF PANHANDLE MUNICIPAL SOLID WASTE LANDFILL	1AE
CASTRO	445A	CITY OF DIMMITT MUNICIPAL SOLID WASTE LANDFILL	1AE
CHAMBERS	1502A	CHAMBERS COUNTY LANDFILL	1
CHAMBERS	1535B	BAYTOWN LANDFILL FACILITY	1
CHEROKEE	1614A	ROYAL OAKS LANDFILL	1
CHILDRESS	2263	CITY OF CHILDRESS MUNICIPAL SOLID WASTE LANDFILL	1AE & 4AE
COLLIN	2294	121 REGIONAL DISPOSAL LANDFILL	1
COLLINGSWORTH	955	CITY OF WELLINGTON LANDFILL	1AE
COLORADO	203A	ALTAIR DISPOSAL SERVICES LLC LANDFILL	1
COMAL & GUADALUPE	66B	MESQUITE CREEK LANDFILL	1
CORYELL	1866	FORT HOOD LANDFILL	1
CRANE	2345	CITY OF CRANE LANDFILL	1AE & 4AE
CULBERSON	693A	CITY OF VAN HORN LANDFILL	1AE
DALLAM	1038A	CITY OF DALHART LANDFILL	1AE & 4AE

County	Permit No.	Name	Type
DALLAS	1394B	HUNTER FERRELL LANDFILL	1
DALLAS	1895A	CHARLES M HINTON JR REGIONAL LANDFILL	1
DALLAS	62	MCCOMMAS BLUFF LANDFILL	1
DALLAS	996C	CITY OF GRAND PRAIRIE LANDFILL	1
DAWSON	517A	CITY OF LAMESA LANDFILL	1
DENTON	1025B	DFW RECYCLING AND DISPOSAL FACILITY	1
DENTON	1590B	CITY OF DENTON LANDFILL	1
DIMMIT	2225	CITY OF CARRIZO SPRINGS LANDFILL	1AE
ECTOR	2158	ODESSA LANDFILL	1
EL PASO	729B	MCCOMBS LANDFILL	1
EL PASO	2284	GREATER EL PASO LANDFILL	1
ELLIS	1209B	CSC DISPOSAL AND LANDFILL	1
ELLIS	1745B	ECD LANDFILL	1
FLOYD	2207	CITY OF FLOYDADA LANDFILL	1AE & 4AE
FORT BEND	1505A	BLUE RIDGE LANDFILL	1
FORT BEND	2270	FORT BEND REGIONAL LANDFILL	1
GAINES	39	CITY OF SEMINOLE LANDFILL	1AE & 4AE
GALVESTON	1721A	COASTAL PLAINS RECYCLING AND LANDFILL FACILITY	1
GARZA	2227	CITY OF POST LANDFILL	1AE & 4AE
GILLESPIE	1995	CITY OF FREDERICKSBURG LANDFILL	1
GLASSCOCK	2154	GLASSCOCK COUNTY LANDFILL	1AE
GRAY	2238	CITY OF PAMPA LANDFILL	1
GRAY	570	CITY OF MCLEAN LANDFILL	1AE
GRAYSON	523B	HILLSIDE LANDFILL AND RECYLING CENTER	1
GRAYSON	2290	TASWA SOLID WASTE DISPOSAL AND RECYCLING FACILITY	1
GREGG	1327B	PINE HILL FARMS LANDFILL TX LP	1
GRIMES	2292	TWIN OAKS LANDFILL	1
HALE	2157	CITY OF PLAINVIEW LANDFILL	1
HALL	2266	CITY OF MEMPHIS LANDFILL	1AE
HANSFORD	2352	CITY OF SPEARMAN MUNICIPAL SOLID WASTE LANDFILL	1AE
HARDIN	2214B	HARDIN COUNTY LANDFILL	1
HARRIS	261B	MCCARTY ROAD LANDFILL	1
HARRIS	1193	WHISPERING PINES LANDFILL	1
HARRIS	1307D	WM ATASCOCITA RECYCLING DISPOSAL FACILITY	1
HASKELL	1604B	CITY OF HASKELL LANDFILL	1AE & 4AE
HIDALGO	956C	CITY OF EDINBURG LANDFILL	1
HIDALGO	2348	LA GLORIA RANCH LANDFILL	1
HILL	241D	ITASCA LANDFILL	1
HOCKLEY	2369	CITY OF LEVELLAND	1AE & 4AE
HOWARD	288A	CITY OF BIG SPRING LANDFILL	1
HOWARD	2395	BIG SPRING LANDFILL	1
HUDSPETH	495	HUDSPETH COUNTY LANDFILL	1AE & 4AE
HUDSPETH	957A	SIERRA BLANCA LANDFILL	1AE & 4AE
HUNT	1195B	REPUBLIC MALOY LANDFILL	1
JEFFERSON	1486B	CITY OF BEAUMONT LANDFILL	1

County	Permit No.	Name	Type
JEFFERSON	1815A	CITY OF PORT ARTHUR LANDFILL	1
JEFFERSON	2027	GOLDEN TRIANGLE LANDFILL	1
JIM WELLS	262C	CITY OF ALICE LANDFILL	1
JOHNSON	534	CITY OF CLEBURNE LANDFILL	1
JONES	1469A	ABILENE LANDFILL TX LP	1
JONES	2325	ABILENE ENVIRONMENTAL LANDFILL INC	1
KERR	1506B	CITY OF KERRVILLE LANDFILL	1
KINNEY	2354	FORT CLARK SPRINGS ASSOCIATION INC LANDFILL	1AE
KLEBERG	235C	CITY OF KINGSVILLE LANDFILL	1
LAMAR	2358	BLOSSOM PRAIRIE LANDFILL	1
LAMB	583A	CITY OF OLTON LANDFILL	1AE & 4AE
LAMB	2274	LITTLEFIELD MUNICIPAL LANDFILL	1AE & 4AE
LIMESTONE	1558A	MEXIA LANDFILL	1
LIPSCOMB	1943	CITY OF BOOKER LANDFILL	1AE
LUBBOCK	69	CITY OF LUBBOCK LANDFILL	1
LUBBOCK	2252	WEST TEXAS REGIONAL DISPOSAL LANDFILL	1
LYNN	2328A	CITY OF TAHOKA	1AE & 4AE
MARTIN	2189	CITY OF STANTON LANDFILL	1AE
MASON	2399	MASON EAST MSW LANDFILL	1
MASON	195	CITY OF MASON LANDFILL	1AE
MAVERICK	2316	MAVERICK COUNTY EL INDIO MSW LANDFILL	1
MCCULLOCH	1732	CITY OF BRADY LANDFILL	1AE & 4AE
MCLENNAN	1646A	LACY-LAKEVIEW RECYCLING AND DISPOSAL FACILITY	1
MCLENNAN	948A	CITY OF WACO LANDFILL	1
MCMULLEN	571A	MCMULLEN COUNTY LANDFILL	1AE
MIDLAND	1605B	CITY OF MIDLAND LANDFILL	1
MITCHELL	420B	CITY OF COLORADO CITY LANDFILL	1AE & 4AE
MONTGOMERY	1752B	SECURITY RECYCLING AND DISPOSAL FACILITY	1
MOORE	2279	CITY OF DUMAS LANDFILL	1
MOTLEY	549A	CITY OF MATADOR LANDFILL	1AE
NACOGDOCHES	720	CITY OF NACOGDOCHES LANDFILL	1
NAVARRO	2190	CITY OF CORSICANA LANDFILL	1
NEWTON	2242A	NEWTON COUNTY REGIONAL SOLID WASTE COMPLEX	1
NUECES	2267	EL CENTRO LANDFILL	1
NUECES	2269	CITY OF CORPUS CHRISTI LANDFILL	1
OCHILTREE	876A	PERRYTON MUNICIPAL SOLID WASTE LANDFILL	1AE & 4AE
PARKER	47A	CITY OF WEATHERFORD LANDFILL	1
PECOS	976	CITY OF FORT STOCKTON LANDFILL	1AE & 4AE
POLK	1384A	POLK COUNTY LANDFILL	1
POTTER	73A	CITY OF AMARILLO LANDFILL	1
PRESIDIO	1737A	CITY OF PRESIDIO LANDFILL	1AE
REAGAN	86B	CITY OF BIG LAKE LANDFILL	1AE
REEVES	2120A	CITY OF PECOS LANDFILL	1AE & 4AE
RUSK	1249B	IESI EAST TEXAS REGIONAL LANDFILL	1
SCHLEICHER	2264	CITY OF ELDORADO LANDFILL	1AE

County	Permit No.	Name	Type
SCURRY	1463B	CITY OF SNYDER LANDFILL	1
SMITH	1972A	GREENWOOD FARMS LANDFILL	1
SWISHER	1009A	CITY OF TULIA MUNICIPAL SOLID WASTE LANDFILL	1AE & 4AE
TARRANT	218C	CITY OF FORT WORTH SE LANDFILL	1
TERRY	2170	CITY OF BROWNFIELD LANDFILL	1
TERRY	2293	CITY OF MEADOW LANDFILL	1AE & 4AE
TITUS	797B	PLEASANT OAKS LANDFILL	1
TOM GREEN	79	CITY OF SAN ANGELO LANDFILL	1
UVALDE	1725	CITY OF UVALDE LANDFILL	1
VICTORIA	1522A	CITY OF VICTORIA LANDFILL	1
WARD	772	CITY OF MONAHANS LANDFILL	1AE & 4AE
WEBB	2286	PONDEROSA REGIONAL LANDFILL	1
WHEELER	2281A	CITY OF SHAMROCK MUNICIPAL LANDFILL	1AE
WICHITA	1428A	CITY OF WICHITA FALLS LANDFILL	1
WICHITA	1571A	BUFFALO CREEK LANDFILL	1
YOAKUM	2217	YOAKUM COUNTY LANDFILL	1AE & 4AE
ZAPATA	783A	ZAPATA COUNTY LANDFILL	1AE & 4AE
ZAVALA	1308A	CITY OF CRYSTAL CITY LANDFILL	1AE
ZAVALA	2303	ZAVALA COUNTY MSWF LANDFILL	1AE

Table C.3.2 below lists known Texas MSW landfills that are authorized but not receiving waste as of June 2020.

Table C.3.2: Closed MSW Landfills in Texas

TCEQ RN	MSW Permit#	Landfill Site Name	Physical Type	Legal Status Date	Physical Site Status	County	Near City
RN100627504	1056	SMOTHERMAN AND SHARP LANDFILL	1	10/26/1978	CLOSED	POTTER	AMARILLO
RN102001146	1609	CITY OF MEMPHIS LANDFILL	1AE	01/20/1984	POST CLOSURE	HALL	MEMPHIS
RN102212743	405A	CITY OF CANYON LANDFILL	1	09/12/1986	POST CLOSURE	RANDALL	CANYON
RN101844942	989	CITY OF CHILDRESS LANDFILL	1	10/12/1976	CLOSED	CHILDRESS	CHILDRESS
RN101691202	252	CITY OF PLAINVIEW LANDFILL	1	03/31/1975	CLOSED	HALE	PLAINVIEW
RN102334489	380	CITY OF BROWNFIELD LANDFILL	1	10/13/1976	CLOSED	TERRY	BROWNFIELD
RN101478873	539	LUBBOCK COUNTY IDALOU LANDFILL	1	01/25/1996	CLOSED	LUBBOCK	IDALOU
RN102335841	1087	CITY OF GRAHAM LANDFILL	1	05/03/1977	CLOSED	YOUNG	GRAHAM
RN104748876	1242	CITY OF GRAHAM LANDFILL	1	10/06/1994	CLOSED	YOUNG	GRAHAM
RN102335866	1343A	CITY OF BURKBURNETT LANDFILL	1	07/26/1995	POST CLOSURE	WICHITA	BURKBURNETT
RN102214772	192	CITY OF NOCONA LANDFILL	1	12/23/1974	CLOSED	MONTAGUE	NOCONA
RN102071974	365	CITY OF ABILENE LANDFILL	1	01/17/1979	CLOSED	TAYLOR	ABILENE
RN102820669	416	CITY OF COLEMAN LANDFILL	1	03/26/1975	CLOSED	COLEMAN	COLEMAN
RN100633346	825	BUFFALO GAP TUSCOLA CITY LANDFILL	1	04/22/1976	CLOSED	TAYLOR	BUFFALO GAP
RN102118585	950	CITY OF VERNON LANDFILL	1	01/14/1977	CLOSED	WILBARGER	VERNON
RN101991925	1019A	WESTSIDE RECYCLING AND DISPOSAL FACILITY	1	05/29/1998	POST CLOSURE	TARRANT	ALEDO
RN100632736	1024	CABANISS BROTHERS SOUTHARD LANDFILL	1	12/22/1976	CLOSED	ELLIS	AVALON
RN101479335	1050	LANCASTER DON R LANDFILL	1	12/08/1993	CLOSED	PARKER	WEATHERFORD
RN100221225	1062A	CASTLE LANDFILL	1	08/26/1987	POST CLOSURE	DALLAS	GARLAND
RN101478063	1232	TARRANT COUNTY SANITATION LANDFILL	1	11/27/1978	CLOSED	TARRANT	FORT WORTH
RN103049607	1236A	HUTCHINS LANDFILL	1	06/03/1996	POST CLOSURE	DALLAS	HUTCHINS
RN102216322	1261	CITY OF DUNCANVILLE LANDFILL	1	09/02/1994	CLOSED	ELLIS	MIDLOTHIAN
RN101477925	1450	MORROW AND SONS LANDFILL	1	03/12/1981	CLOSED	PARKER	RENO
RN102091998	1467	CITY OF CORSICANA LANDFILL	1	09/08/1994	CLOSED	NAVARRO	CORSICANA
RN101477834	1499	REESE CLYDE & REESE JOE E LANDFILL	1	12/01/1981	CLOSED	TARRANT	GARDEN ACRES
RN100214246	208A	MILL CREEK LANDFILL	1	09/22/1995	POST CLOSURE	TARRANT	FORT WORTH
RN102211927	219	CITY OF FORT WORTH NE LANDFILL	1	02/07/1975	POST CLOSURE	TARRANT	FORT WORTH

TCEQ RN	MSW Permit#	Landfill Site Name	Physical Type	Legal Status Date	Physical Site Status	County	Near City
RN102001922	221	CITY OF FRISCO LANDFILL	1	02/06/1975	CLOSED	COLLIN	FRISCO
RN102216603	238	CITY OF ENNIS LANDFILL	1	03/30/1976	CLOSED	ELLIS	ENNIS
RN102000924	264	CITY OF IRVING LANDFILL	1	04/12/1976	CLOSED	DALLAS	IRVING
RN102143138	302	CITY OF GAINESVILLE LANDFILL	1	03/06/1997	POST CLOSURE	COOKE	GAINESVILLE
RN102289238	313	CITY OF KLEBERG LANDFILL	1	03/28/1975	CLOSED	DALLAS	KLEBERG
RN102091998	425	CITY OF CORSICANA LANDFILL	1	11/08/1977	CLOSED	NAVARRO	CORSICANA
RN100733773	44A	NORTH TEXAS MUNICIPAL WATER DISTRICT LANDFILL	1	11/01/1985	POST CLOSURE	COLLIN	WYLIE
RN102668936	45	CITY OF RICHARDSON LANDFILL	1	09/02/1983	CLOSED	COLLIN	RICHARDSON
RN102335775	46	CITY OF RICHARDSON LANFILL	1	11/25/1981	CLOSED	COLLIN	RICHARDSON
RN102668100	464A	LAIDLAW FORT WORTH LANDFILL	1	09/23/1988	POST CLOSURE	TARRANT	FORT WORTH
RN102217452	473	CITY OF GREENVILLE LANDFILL	1	06/29/1994	CLOSED	HUNT	GREENVILLE
RN100217942	556	TRINITY OAKS LANDFILL	1	04/15/1977	POST CLOSURE	DALLAS	DALLAS
RN102289980	568A	NORTH TEXAS MUNICPAL WATER DISTRICT LANDFILL	1	08/25/1993	POST CLOSURE	COLLIN	MCKINNEY
RN102217577	61	CITY OF DALLAS LANDFILL	1	08/29/1975	CLOSED	DALLAS	DALLAS
RN102142890	63	CITY OF DALLAS LANDFILL	1	01/28/1975	CLOSED	DALLAS	DALLAS
RN100629724	644	SAVAGE RUSSELL H LANDFILL	1	05/02/1975	CLOSED	DENTON	DENTON
RN102211935	648	GREATER TEXOMA UTILITY AUTHORITY LANDFILL	1	09/26/1977	POST CLOSURE	GRAYSON	DENISON
RN101665743	88	SOUTH LOOP 12 LANDFILL	1	04/01/1975	CLOSED	DALLAS	DALLAS
RN102119716	124	CITY OF MARSHALL	1	10/21/1992	CLOSED	HARRISON	MARSHALL
RN102143005	133	CITY OF PALESTINE LANDFILL	1	07/18/1985	CLOSED	ANDERSON	PALESTINE
RN102142825	144	CITY OF PARIS LANDFILL	1	04/19/1976	POST CLOSURE	LAMAR	PARIS
RN102327921	179	CITY OF KILGORE LANDFILL	1	03/17/1997	CLOSED	GREGG	KILGORE
RN102926151	209	CITY OF SULPHUR SPRINGS LANDFILL	1	01/09/1975	CLOSED	HOPKINS	SULPHUR SPRINGS
RN102119310	263	CITY OF ATHENS LANDFILL	1	04/01/1975	CLOSED	HENDERSON	ATHENS
RN101477305	497	SAM W HUGHES SR LANDFILL	1	04/01/1975	CLOSED	BOWIE	TEXARKANA
RN102003621	650	CITY OF DEKALB LANDFILL	1	08/31/1995	POST CLOSURE	BOWIE	DE KALB
RN101491819	711	WOOD COUNTY PRECINCT 4 LANDFILL	1	07/07/1976	CLOSED	WOOD	WINNSBORO
RN102668902	841	ANDERSON COUNTY LANDFILL	1	11/15/1988	CLOSED	ANDERSON	PALESTINE
RN100210848	1482	CLINT LANDFILL	1	02/03/1983	POST CLOSURE	EL PASO	CLINT
RN101477107	1521	JOHNSON RANCH LANDFILL	1	12/27/1982	POST CLOSURE	ECTOR	ODESSA
RN102166832	1270	BARNHART LANDFILL	1AE	08/06/1979	POST CLOSURE	IRION	BARNHART

TCEQ RN	MSW Permit#	Landfill Site Name	Physical Type	Legal Status Date	Physical Site Status	County	Near City
RN100530146	1325A	STERLING COUNTY LANDFILL	4AE	03/10/1983	CLOSED	STERLING	STERLING CITY
RN102143658	614	CITY OF ROBERT LEE LANDFILL	4AE	08/17/1976	POST CLOSURE	COKE	ROBERT LEE
RN103053278	1003	CITY OF COPPERAS COVE LANDFILL	1	04/01/1997	POST CLOSURE	CORYELL	COPPERAS COVE
RN106117625	1039	CITY OF WACO LANDFILL	1	07/22/1977	POST CLOSURE	MCLENNAN	WACO
RN101477909	1283	US ARMY FORT HOOD LANDFILL	1	12/07/2000	CLOSED	CORYELL	FORT HOOD
RN102835733	1419	CITY OF WACO LANDFILL	1	09/03/1981	POST CLOSURE	MCLENNAN	WACO
RN100830090	1444C	ROCK PRAIRIE ROAD LANDFILL	1	11/25/2002	POST CLOSURE	BRAZOS	COLLEGE STATION
RN102002011	181	CITY OF MARLIN LANDFILL	1	02/23/1995	CLOSED	FALLS	MARLIN
RN102290079	513	CITY OF KILLEEN LANDFILL	1	02/20/1997	CLOSED	BELL	KILLEEN
RN102777968	1390	SB WINGFIELD LANDFILL	1	05/02/1980	CLOSED	TRAVIS	AUSTIN
RN100542752	1447A	SUNSET FARMS LANDFILL	1	11/05/2009	POST CLOSURE	TRAVIS	AUSTIN
RN101477636	247A	LEE COUNTY LANDFILL	1	08/03/1990	CLOSED	LEE	GIDDINGS
RN102329901	360A	CITY OF AUSTIN LANDFILL	1	12/21/1983	CLOSED	TRAVIS	AUSTIN
RN101921443	452	CITY OF ELGIN LANDFILL	1	08/29/2001	CLOSED	BASTROP	ELGIN
RN100629211	684	TRAVIS COUNTY LANDFILL	1	10/10/1977	POST CLOSURE	TRAVIS	AUSTIN
RN101719706	685	TRAVIS COUNTY PRECINCT 2 LANDFILL	1	03/25/1975	CLOSED	TRAVIS	AUSTIN
RN100629930	1043	MATAGORDA COUNTY PRECINCT 4 LANDFILL	1	06/15/1907	CLOSED	MATAGORDA	BAY CITY
RN102668639	1048	FORT BEND COUNTY LANDFILL	1	08/04/1977	POST CLOSURE	FORT BEND	ROSENBERG
RN102120755	1140A	CITY OF TOMBALL LANDFILL	1	12/20/1984	POST CLOSURE	HARRIS	TOMBALL
RN101664233	1238	CITY OF BELLAIRE LANDFILL	1	01/31/1995	CLOSED	HARRIS	HOUSTON
RN100891969	1279	BLUEBONNET LANDFILL	1	03/18/1991	POST CLOSURE	HARRIS	HOUSTON
RN102327467	1435	CITY OF PALACIOS LANDFILL	1	01/25/1994	CLOSED	MATAGORDA	PALACIOS
RN102327699	1554A	FORT BEND COUNTY LANDFILL	1	05/31/1990	POST CLOSURE	FORT BEND	ROSENBERG
RN102119773	196	CITY OF HUNTSVILLE LANDFILL	1	11/16/1976	CLOSED	WALKER	HUNTSVILLE
RN102289881	355	CITY OF ALVIN LANDFILL	1	03/08/1995	CLOSED	BRAZORIA	ALVIN
RN102289998	624	CITY OF ROSENBERG LANDFILL	1	03/24/1975	CLOSED	FORT BEND	ROSENBERG
RN100225994	81A	WESTERN WASTE OF TEXAS LLC	1	11/08/1985	POST CLOSURE	MONTGOMERY	CONROE
RN102143583	855	CITY OF WHARTON LANDFILL	1	03/15/1979	POST CLOSURE	WHARTON	WHARTON
RN101478139	1020	MEDINA COUNTY DEVINE LANDFILL	1	08/08/1997	CLOSED	MEDINA	DEVINE
RN101669455	123	KARNES COUNTY LANDFILL	1	01/10/1992	CLOSED	KARNES	KENEDY
RN101478238	1237	NELSON GARDENS LANDFILL	1	11/15/1982	POST CLOSURE	BEXAR	SAN ANTONIO
RN101999266	185	CITY OF HONDO LANDFILL	1	03/17/1997	CLOSED	MEDINA	HONDO

TCEQ RN	MSW Permit#	Landfill Site Name	Physical Type	Legal Status Date	Physical Site Status	County	Near City
RN102001187	312	CITY OF KARNES CITY LANDFILL	1	03/18/1975	CLOSED	KARNES	KARNES CITY
RN102211844	40	CITY OF FREDERICKSBURG LANDFILL	1	02/23/1995	CLOSED	GILLESPIE	FREDERICKSBURG
RN101479301	418	COLISEUM ADVISORY BOARD LANDFILL	1	03/26/1975	CLOSED	BEXAR	SAN ANTONIO
RN102001534	474	GUTIERREZ DISPOSAL LANDFILL	1	04/01/1975	CLOSED	GUADALUPE	SCHERTZ
RN106473887	577	CITY OF NEW BRAUNFELS LANDFILL	1	08/19/1997	POST CLOSURE	COMAL	
RN102213691	593	CITY OF PEARSALL LANDFILL	1	06/03/1994	CLOSED	FRIO	PEARSALL
RN102071537	633	PEARSALL ROAD LANDFILL	1	06/27/1980	POST CLOSURE	BEXAR	SAN ANTONIO
RN102120284	824	CITY OF SAN ANTONIO LANDFILL	1	04/21/1976	CLOSED	WILSON	FLORESVILLE
RN101667715	951	CITY OF SAN ANTONIO RIGSBY AVENUE LANDFILL	1	11/03/1976	POST CLOSURE	BEXAR	SAN ANTONIO
RN102000692	120	CITY OF VICTORIA LANDFILL	1	07/15/1985	CLOSED	VICTORIA	VICTORIA
RN102214160	184	CITY OF TAFT LANDFILL	1	09/18/1991	CLOSED	SAN PATRICIO	TAFT
RN102072519	242A	SINTON LANDFILL	1	05/20/1977	POST CLOSURE	SAN PATRICIO	SINTON
RN100224724	423B	CITY OF CORPUS CHRISTI LANDFILL	1	05/23/2008	POST CLOSURE	NUECES	CORPUS CHRISTI
RN102503646	597	CITY OF PORT ARANSAS LANDFILL	1	03/20/1975	CLOSED	NUECES	PORT ARANSAS
RN100542364	151A	C & T LANDFILL	1	05/16/2000	POST CLOSURE	HIDALGO	LINN
RN102120763	1593A	HIDALGO COUNTY LANDFILL	1	01/21/1992	POST CLOSURE	HIDALGO	EDINBURG
RN102328382	1661	CITY OF WESLACO LANDFILL	1	12/06/1983	CLOSED	HIDALGO	WESLACO
RN102118973	170	CITY OF ALAMO LANDFILL	1	04/08/1994	CLOSED	HIDALGO	ALAMO
RN102778230	1948A	RIO GRANDE VALLEY LANDFILL	1	01/10/2002	POST CLOSURE	HIDALGO	DONNA
RN102335767	2131	CITY OF HARLINGEN LANDFILL	1	07/30/1993	POST CLOSURE	CAMERON	HARLINGEN
RN102211612	224	CITY OF MCALLEN LANDFILL	1	01/25/1996	POST CLOSURE	HIDALGO	MC ALLEN
RN102143245	243	CITY OF EDINBURG LANDFILL	1	03/20/1975	CLOSED	HIDALGO	EDINBURG
RN102118841	258	CITY OF WESLACO LANDFILL	1	06/10/1976	POST CLOSURE	HIDALGO	MISSION
RN102004058	490	CITY OF HIDALGO LANDFILL	1	03/13/1980	CLOSED	HIDALGO	HIDALGO
RN101478956	598	CITY OF PORT ISABEL LANDFILL	1	10/31/1996	CLOSED	CAMERON	PORT ISABEL
RN102668779	663	STARR COUNTY LANDFILL	1	03/24/1975	POST CLOSURE	STARR	RIO GRANDE CITY
RN102335585	761	CITY OF SAN BENITO LANDFILL	1	04/02/1975	CLOSED	CAMERON	SAN BENITO
RN102334513	1528	ZAPATA COUNTY LANDFILL	4AE	03/21/1983	POST CLOSURE	ZAPATA	ZAPATA
RN101999597	430	CITY OF CRYSTAL CITY LANDFILL	1	03/03/1995	CLOSED	ZAVALA	CRYSTAL CITY
RN102212628	721	CITY OF EAGLE PASS LANDFILL	1	04/01/1991	CLOSED	MAVERICK	EAGLE PASS

II. Emissions Inventory

Table C.3.3 below shows non-methane organic compound (NMOC) emissions from landfills in Texas. This data was obtained from the 2019 emission inventory prepared by the U.S. Environmental Protection Agency for the 40 CFR Part 62, Subpart OOO federal plan.

Table C.3.3: Annual NMOC Emissions from MSW Landfills in Texas

LANDFILL ID (EPA)	LANDFILL_NAME	COUNTY	CITY	GENERATED NMOC (Mg/YR) - AP-42	COLLECTED NMOC (Mg/YR)	REMAINING EMITTED NMOC (Mg/YR)
528101	ANGELINA COUNTY WASTE MANAGEMENT CENTER	ANGELINA	LUFKIN	30.32	24.76	5.56
1466	BELL COUNTY/SPARKS LF	BELL	HOLLAND	2.36		2.36
525023	TEMPLE RECYCLING AND DISPOSAL FACILITY	BELL	TEMPLE	90.33	66.81	23.52
523388	TESSMAN ROAD LANDFILL	BEXAR	SAN ANTONIO	295.77	227.59	68.18
525040	COVEL GARDENS RECYCLING AND DISPOSAL FACILITY	BEXAR	SAN ANTONIO	330.34	267.48	62.87
555737	NELSON GARDENS LANDFILL	BEXAR	SAN ANTONIO	57.89	48.22	9.67
524829	SEABREEZE ENVIRONMENTAL LANDFILL	BRAZORIA	ANGLETON	224.21	179.97	44.24
524245	ROCK PRAIRIE ROAD LANDFILL	BRAZOS	COLLEGE STATION	40.36	33.62	6.74
1914	CITY OF BROWNWOOD LANDFILL	BROWN	BROWNWOOD	19.32		19.32
527559	BROWNSVILLE MUNICIPAL LANDFILL	CAMERON	BROWNSVILLE	69.31	49.61	19.69
525051	BAYTOWN LANDFILL	CHAMBERS	BAYTOWN	87.66	72.42	15.25
523330	ROYAL OAKS LANDFILL	CHEROKEE	JACKSONVILLE	26.03		26.03
1458	CITY OF RICHARDSON LF	COLLIN	RICHARDSON	3.16		3.16
528632	MCKINNEY LANDFILL	COLLIN	MCKINNEY	34.15		34.15

LANDFILL ID (EPA)	LANDFILL_NAME	COUNTY	CITY	GENERATED NMOC (Mg/YR) - AP-42	COLLECTED NMOC (Mg/YR)	REMAINING EMITTED NMOC (Mg/YR)
528633	121 REGIONAL DISPOSAL FACILITY	COLLIN	MELISSA	160.47	133.66	26.81
528643	MAXWELL CREEK LANDFILL	COLLIN	WYLIE	27.83		27.83
1518	TRICIL ENVIRONMENTAL RESPONSE/ALTAR SLF	COLORADO	ALTAIR	10.39		10.39
536197	ALTAIR DISPOSAL SERVICES, LLC	COLORADO	ALTAIR	13.94		13.94
525028	MESQUITE CREEK LANDFILL	COMAL	NEW BRAUNFELS	94.94	77.75	17.19
524262	FORT HOOD	CORYELL	FORT HOOD	9.69		9.69
1510	LAIDLAW/WILMER LF	DALLAS	WILMER	4.55		4.55
523585	CITY OF GRAND PRAIRIE LANDFILL	DALLAS	GRAND PRAIRIE	42.53	33.53	9.00
526582	CHARLES M HINTON JR REGIONAL LANDFILL	DALLAS	ROWLETT	72.12	56.79	15.33
526584	CITY OF GARLAND CASTLE DRIVE LANDFILL	DALLAS	GARLAND	29.79		29.79
526900	HUTCHINS LANDFILL	DALLAS	HUTCHINS	9.27		9.27
526903	TRINITY OAKS LANDFILL	DALLAS	DALLAS	31.21		31.21
530040	CITY OF IRVING/ HUNTER FERRELL LANDFILL	DALLAS	IRVING	38.75	30.85	7.89
532397	MCCOMMAS BLUFF LANDFILL	DALLAS	DALLAS	386.77	322.15	64.62
524267	CITY OF DENTON LANDFILL	DENTON	DENTON	35.50	29.57	5.93
525137	DFW RECYCLING AND DISPOSAL FACILITY	DENTON	LEWISVILLE	460.26	383.36	76.90
523326	CHARTER WASTE LANDFILL	ECTOR	ODESSA	42.93	34.57	8.36
528078	CLINT LANDFILL	EL PASO	EL PASO	59.95	48.18	11.77
528081	MCCOMBS LANDFILL	EL PASO	EL PASO	19.17		19.17
523360	CSC DISPOSAL AND LANDFILL	ELLIS	AVALON	39.64	33.02	6.62

LANDFILL ID (EPA)	LANDFILL_NAME	COUNTY	CITY	GENERATED NMOC (Mg/YR) - AP-42	COLLECTED NMOC (Mg/YR)	REMAINING EMITTED NMOC (Mg/YR)
523384	ECD LANDFILL	ELLIS	ENNIS	48.82	40.04	8.78
1948	FORT BEND COUNTY LANDFILL	FORT BEND	ROSENBERG	13.39		13.39
522790	FORT BEND REGIONAL LANDFILL	FORT BEND	NEEDVILLE	105.05	78.09	26.96
523368	BLUE RIDGE LANDFILL	FORT BEND	FRESNO	158.80	132.27	26.53
525059	COASTAL PLAINS RECYCLING AND DISPOSAL FACILITY	GALVESTON	ALVIN	153.94	128.22	25.72
524188	CITY OF PAMPA LANDFILL	GRAY	PAMPA	7.36		7.36
523901	TEXOMA AREA SOLID WASTE AUTHORITY LANDFI	GRAYSON	WHITESBORO	18.65		18.65
525142	HILLSIDE LANDFILL	GRAYSON	SHERMAN	49.35	34.84	14.50
523332	PINEHILL LANDFILL	GREGG	KILGORE	96.06	79.65	16.41
524505	IESI HARDIN COUNTY LANDFILL	HARDIN	KOUNTZE	11.69		11.69
523334	WHISPERING PINES LANDFILL	HARRIS	HOUSTON	87.28	67.58	19.69
523357	MCCARTY ROAD LANDFILL TX	HARRIS	HOUSTON	712.70	578.87	133.83
525053	ATASCOCITA RECYCLING AND DISPOSAL FACILITY	HARRIS	HUMBLE	300.45	247.17	53.28
525583	BLUEBONNET LANDFILL	HARRIS	HOUSTON	12.57		12.57
523392	RIO GRANDE VALLEY LANDFILL	HIDALGO	DONNA	51.14	42.60	8.54
524287	CITY OF EDINBURG LANDFILL	HIDALGO	EDINBURG	50.95	42.43	8.51
526891	C & T REGIONAL LANDFILL	HIDALGO	LINN	17.56		17.56
523373	ITASCA LANDFILL	HILL	ITASCA	98.52	79.29	19.23
523359	MALOY SOLID WASTE LANDFILL	HUNT	CAMPBELL	34.24	28.48	5.76
525144	WASTE MANAGEMENT PECAN PRAIRIE	HUNT	CELESTE	7.85		7.85

LANDFILL ID (EPA)	LANDFILL_NAME	COUNTY	CITY	GENERATED NMOC (Mg/YR) - AP-42	COLLECTED NMOC (Mg/YR)	REMAINING EMITTED NMOC (Mg/YR)
523201	CITY OF BEAUMONT LANDFILL	JEFFERSON	BEAUMONT	69.10	55.92	13.18
523317	CITY OF PORT ARTHUR LANDFILL	JEFFERSON	BEAUMONT	41.46	30.43	11.03
523395	GOLDEN TRIANGLE LANDFILL	JEFFERSON	BEAUMONT	88.83	73.81	15.03
526374	IESI TURKEY CREEK LANDFILL	JOHNSON	ALVARADO	84.32	60.72	23.60
523371	ABILENE REGIONAL LANDFILL	JONES	ABILENE	62.82	51.35	11.47
523391	KERRVILLE LANDFILL	KERR	KERRVILLE	7.75		7.75
525143	PARIS LANDFILL	LAMAR	POWDERLY	28.72	23.92	4.80
557717	BLOSSOM PRAIRIE LANDFILL	LAMAR	BLOSSOM	22.41		22.41
525065	SECURITY RECYCLING AND DISPOSAL FACILITY	LIBERTY	CLEVELAND	106.63	87.08	19.55
523385	MEXIA LANDFILL	LIMESTONE	MEXIA	10.39		10.39
1474	QUAIL CANYON	LUBBOCK	LUBBOCK	0.81		0.81
528430	WEST TEXAS REGION DISPOSAL FACILITY	LUBBOCK	ABERNATHY	37.31		37.31
528433	CALICHE CANYON LANDFILL	LUBBOCK	LUBBOCK	25.74		25.74
523319	CITY OF WACO LANDFILL	MCLENNAN	WACO	66.53	54.03	12.50
525021	LACY LAKEVIEW RDF	MCLENNAN	WACO	31.61	26.33	5.28
523652	CITY OF MIDLAND MSW LANDFILL	MIDLAND	MIDLAND	31.23		31.23
1815	COLORADO CITY LANDFILL	MITCHELL	COLORADO CITY	12.46		12.46
525085	CONROE 6 LANDFILL	MONTGOMERY	CONROE	16.11		16.11
523293	CITY OF NACOGDOCHES LANDFILL	NACOGDOCHES	NACOGDOCHES	19.31		19.31
523460	CITY OF CORSICANA LANDFILL	NAVARRO	CORSICANA	29.80	24.28	5.52

LANDFILL ID (EPA)	LANDFILL_NAME	COUNTY	CITY	GENERATED NMOC (Mg/YR) - AP-42	COLLECTED NMOC (Mg/YR)	REMAINING EMITTED NMOC (Mg/YR)
524834	NEWTON COUNTY LANDFILL	NEWTON	DEWEYVILLE	56.09	43.95	12.15
1826	CITY OF SWEETWATER LF	NOLAN	SWEETWATER	10.57		10.57
523257	J. C. ELLIOTT LANDFILL AND TRANSFER STATION	NUECES	CORPUS CHRISTI	53.76	44.78	8.98
523261	CEFE VALENZUELA LANDFILL	NUECES	BISHOP	82.74	68.91	13.82
523390	EL CENTRO LANDFILL	NUECES	ROBSTOWN	44.59	33.12	11.47
1824	CITY OF PERRYTON LANDFILL	OCHILTREE	PERRYTON	7.63		7.63
10760	ORANGE COUNTY LF	ORANGE	ORANGE	6.21		6.21
525447	WESTSIDE RECYCLING AND DISPOSAL FACILITY	PARKER	ALEDO	78.97	65.77	13.19
526349	IESI WEATHERFORD LANDFILL	PARKER	WEATHERFORD	53.88	44.88	9.00
524506	POLK COUNTY LANDFILL	POLK	LEGGETT	22.77		22.77
528745	CITY OF AMARILLO LANDFILL	POTTER	AMARILLO	66.77	50.87	15.90
523374	SOUTHWEST LANDFILL	RANDALL	CANYON	40.29	33.56	6.73
524509	IESI EAST TEXAS REGIONAL LANDFILL	RUSK	HENDERSON	23.61		23.61
526902	SINTON LANDFILL	SAN PATRICIO	SINTON	8.87		8.87
524162	CITY OF SNYDER LANDFILL	SCURRY	SNYDER	6.37		6.37
523333	GREENWOOD FARMS LANDFILL	SMITH	TYLER	99.32	78.96	20.36
523362	ARLINGTON LANDFILL	TARRANT	EULESS	152.77	127.25	25.52
523372	CITY OF FORT WORTH SOUTHEAST LANDFILL	TARRANT	KENNEDALE	119.03	92.45	26.58
525585	EASTSIDE/TEXAS	TARRANT	FORT WORTH	10.12		10.12
526892	FORT WORTH REGIONAL LANDFILL	TARRANT	FORT WORTH	22.69		22.69
526901	MILL CREEK LANDILL	TARRANT	FORT WORTH	16.47		16.47
1513	BFI LF	TAYLOR	ABILENE	4.73		4.73

LANDFILL ID (EPA)	LANDFILL_NAME	COUNTY	CITY	GENERATED NMOC (Mg/YR) - AP-42	COLLECTED NMOC (Mg/YR)	REMAINING EMITTED NMOC (Mg/YR)
523331	PLEASANT OAKS LANDFILL	TITUS	MT PLEASANT	21.71		21.71
524160	SAN ANGELO LANDFILL	TOM GREEN	SAN ANGELO	28.46		28.46
523187	FM 812 LANDFILL	TRAVIS	AUSTIN	21.25		21.25
523394	SUNSET FARMS LANDFILL	TRAVIS	AUSTIN	231.96	193.20	38.75
525032	WASTE MANAGEMENT OF TEXAS AUSTIN COMMUNITY RECYCLING & DISPOSAL FACILITY	TRAVIS	AUSTIN	156.21	127.26	28.94
527784	TEXAS DISPOSAL SYSTEMS LANDFILL	TRAVIS	BUDA	149.48	118.35	31.13
523370	CITY OF VICTORIA LANDFILL	VICTORIA	BLOOMINGTON	59.04	45.06	13.98
1481	BELL PROCESSING INC. LF	WICHITA	WICHITA FALLS	8.04		8.04
524000	CITY OF WICHITA FALLS LANDFILL	WICHITA	WICHITA FALLS	37.95	31.61	6.34
524515	IESI BUFFALO CREEK LANDFILL	WICHITA	IOWA PARK	39.72	30.36	9.36
525035	WILLIAMSON COUNTY LANDFILL HUTTO	WILLIAMSON	HUTTO	87.08	63.51	23.57

APPENDIX C.4

Derivation Table for Proposed Chapter 113 Rules

Table C.4.1: Derivation Table for Correlating Proposed Chapter 113, Subchapter D, Division 6 Rules to Corresponding Federal Rules

TCEQ Ch.113 Division 6 Citation	40 CFR 60/62 Citation
113.2400(a)	60.31f(a)
113.2400(b)	60.31f(b)
113.2400(c) & (d)	No equivalent CFR section. State-only provisions for clarifying applicability.
113.2402(a)	60.2, 60.41f
113.2402(b)	State-only provision; preserves EPA Administrator authority for §60.35f(a)(5).
113.2402(c)	62.16730 (definition of legacy controlled landfill, modified slightly for state purposes)
113.2404(a)(1)	60.31f
113.2404(a)(2)	60.32f
113.2404(a)(3)	60.33f
113.2404(a)(4)	60.34f
113.2404(a)(5)	60.35f
113.2404(a)(6)	60.36f
113.2404(a)(7)	60.37f
113.2404(a)(8)	60.38f
113.2404(a)(9)	60.39f
113.2404(a)(10)	60.40f
113.2404(b)	No equivalent CFR section. State-only provision.[1]
113.2404(c)	62.16714(c)(2)(iii)
113.2404(d)	62.16714(b)(1)
113.2406(a)	No equivalent CFR section. State-only provision.[2]
113.2406(b)	Requirements correspond to 60.24(f) and 60.24a(e).
113.2406(c)	No equivalent CFR section. State-only provision.
113.2408	60.31f(c) and (d)
113.2410(a)(1)	60.38f(a), 62.16724
113.2410(a)(2)	60.38f(c), 62.16724
113.2410(a)(3)	60.38f(d) and (e), 62.16724
113.2410(a)(4)	State reporting provision (supports 60.25 inventory & progress report requirements)
113.2410(a)(5)	60.38f

[1] This state-only provision allows the use of the control requirements of 30 TAC Chapter 115, §115.152 in lieu of certain requirements of 40 CFR §60.33f. This provision is carried over, with minor revisions, from Texas' 1998 State Plan for MSW Landfills. Refer to Appendix E for a detailed explanation of this provision.

[2] This state-only provision exempts MSW landfills which have not accepted waste since October 9, 1993, and which have no additional design capacity available for future waste deposition. This provision is carried over from Texas' 1998 State Plan. Refer to Appendix E for a detailed explanation of this provision.

TCEQ Ch.113 Division 6 Citation	40 CFR 60/62 Citation
113.2410(b)	62.16711(h) (text modified slightly to refer to corresponding reporting provisions of Subpart Cf)
113.2410(c)	62.16724(h)
113.2410(d)	62.16724(d)(7)
113.2412(a)	State-only provision which establishes when affected facilities must comply with the requirements of Division 6.
113.2412(b)	40 CFR 62 Subpart OOO, Table 1

APPENDIX C.5

Evaluation of Modified Applicability and Collection and Control System Requirements

Appendix C.5: Evaluation of Modified Applicability and Collection and Control System Requirements.

I. Background

The proposed revisions to the Texas §111(d) state plan for MSW landfills, and the corresponding proposed revisions to Chapter 113, include two features which differ from the corresponding requirements in 40 CFR 60 Subpart Cf and 40 CFR 62 Subpart OOO. These two features are not new, as they are part of Texas' approved 1998 state plan for MSW landfills and a part of the existing Chapter 113, Subchapter D, Division 1 rules which implement that state plan. TCEQ is proposing to carry over these previously approved features into the proposed revised state plan to implement the 2016 emission guidelines (EG) for MSW landfills. Although these elements of the state plan were previously approved for purposes of implementing the 1996 EG, a discussion of these features is warranted to demonstrate that retaining these features is still appropriate for purposes of the 2016 EG.

The two differences relate to: 1) an alternate date range for determining which MSW landfills are subject to the proposed revisions to the state plan and proposed Chapter 113, Subchapter D, Division 6 rules; and 2) an option which allows owners or operators of MSW landfills to comply with the collection system and control device requirements of 30 TAC §115.152 in lieu of certain corresponding requirements in 40 CFR 60 Subpart Cf. These differences are addressed in detail below in Sections II and III.

II. Alternate date range for determining applicability of proposed requirements.

Proposed 30 TAC §113.2406(a) would exempt certain MSW landfills from the requirements of proposed Chapter 113, Subchapter D, Division 6. This proposed exemption is carried over from TCEQ's existing Division 1 landfill rules (30 TAC §113.2060(2)(A)) and the previously approved state plan, but has been rephrased as an explicit exemption rather than as a part of the definition of existing MSW landfill. The proposed rule exempts MSW landfills that have not accepted waste since October 9, 1993, and do not have additional design capacity available for future waste deposition. This proposed exemption modifies the applicability of the rules relative to the default federal requirements of 40 CFR 60 Subparts Cc and Cf, because it excludes MSW landfills that stopped accepting waste between November 8, 1987 (the date specified in Subparts Cc and Cf) and October 9, 1993.

This proposed exemption is in accordance with the criteria of 40 CFR §60.24(f), which allow a state rule to be less stringent for a particular designated class of facilities provided the state can show that factors exist which make application of a less stringent standard significantly more reasonable. When TCEQ adopted the Chapter 113, Subchapter D, Division 1 rules for existing MSW landfills in 1998, the commission's analysis found that only one landfill (City of Killeen) which closed within the relevant time period had an estimated emission rate of non-methane organic compounds (NMOC) above the control threshold of 50 Mg/yr, and that the Killeen landfill's emissions were projected to fall below the 50 Mg/yr control threshold by 2004. The commission also estimated that, using an alternate calculation method, the

emissions from the landfill would be even lower, and would be "borderline" relative to the 50 Mg/yr threshold. The commission further determined that the cost of installing an operating a gas collection and control system for the landfill would be unreasonable based on the short period of time the facility was projected to be above the 50 Mg/yr threshold. (See 23 TexReg 10876, October 23, 1999, in Attachment 1 to Appendix C.5.) In EPA's approval of the TCEQ's original state plan submittal, the EPA acknowledged that no designated landfills which closed between November 8, 1987, and October 9, 1993, would have estimated NMOC emissions above the 50 megagram (Mg) control threshold, and that controlling these closed landfills would not result in a significant reduction in NMOC emissions relative to the cost to install gas collection systems. (See 64 FR 32428, in Attachment 1 to Appendix C.5.) As many years have passed since the original Texas state plan was approved in 1999, none of the landfills which stopped accepting waste during the relevant 1987-1993 time period would have current NMOC emissions above the 50 Mg/year threshold. The commission is including a copy of the prior state plan analysis in Attachment 1 in support of maintaining this existing exemption.

III. Option to comply with 30 TAC §115.152 in lieu of certain Subpart Cf requirements.

Under proposed 30 TAC §113.2404(b), landfill gas collection and control systems approved by the commission and installed in compliance with 30 TAC §115.152 are deemed to satisfy certain technical requirements of the emission guidelines (specifically, 40 CFR §60.33f(b) and (c)). Proposed subsection (b) is intended to reduce potentially duplicative and redundant requirements for landfill gas collection and control systems which are subject to both Chapter 115 requirements and the emission guidelines. The gas collection and control system requirements in 30 TAC §115.152 are based on the requirements in the proposed version of the original landfill NSPS under 40 CFR 60 Subpart WWW (56 FR 24468, May 30, 1991). Proposed subsection (b) is essentially carried over from existing 30 TAC §113.2061(b), but the text of the proposed rule has been rephrased to more clearly state which specific design requirements of 40 CFR 60 Subpart Cf are satisfied by compliance with 30 TAC §115.152. Tables C.5.1 and 2 below provide a comparison of the Chapter 115, §115.152 requirements with the corresponding requirements of 40 CFR 60 Subpart Cf.

Table C.5.1: Comparison of Gas Collection System Design Requirements

30 TAC §115.152 Requirements	40 CFR 60 Subpart Cf Requirements
§115.152(a)(1): GCCS must meet §60.752(b)(2)(ii) as proposed May 30, 1991, or alternate approved by the executive director: Proposed §60.752(b)(2)(ii): Install a collection and control system within 1 1/2 years of the submittal of the design plan or notification of intent. The collection system shall effectively capture the gas that is generated within the landfill. The collection system shall: (A) Be designed to handle the maximum expected gas flowrate over the lifetime of the gas control or treatment system equipment from the entire area of the landfill that warrants control over the equipment lifetime;	§60.33f(b)(2),(3) (2) Active. An active collection system must: (i) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment.
(B) Collect gas from each area, cell, or group of cells in the landfill in which refuse has been placed for a period of 2 years or more.	(ii) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade.
(C) Collect gas at a sufficient extraction rate.	(iii) Collect gas at a sufficient extraction rate.
No directly parallel requirement. However, per proposed §60.752(b)(2)(ii) cited above, the capture system must "effectively capture the gas that is generated within the landfill." In addition, the other requirements cited above will also minimize off-site migration.	(iv) Be designed to minimize off-site migration of subsurface gas
Proposed §60.752(b)(2)(ii), as referenced by 30 TAC §115.152(a)(1), does not distinguish between active and passive collection systems. Passive systems must meet the same requirements cited above. *30 TAC §115.152 does not address landfill liners. However, MSW landfills in Texas are independently required to comply with liner requirements in 30 TAC §330.331, which reflects the requirements of 40 CFR §258.40.*	(3) Passive. A passive collection system must: (i) Comply with the provisions specified in paragraphs (b)(2)(i), (ii), and (iv) of this section. (ii) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners must be installed as required under §258.40 of this chapter.

Although there are some differences, the 30 TAC §115.152 gas collection system requirements summarized in Table C.5.1 are substantially equivalent to the corresponding requirements of Subpart Cf, §60.33f(b). The §115.152 requirements do not explicitly include the requirement of §60.33f(b)(2)(iv) that the collection system "be designed to minimize off-site migration of subsurface gas," but the commission believes that this concern is adequately addressed by the other requirements of §115.152 that require the GCS to "effectively capture the gas that is generated in the landfill" and "collect gas at a sufficient extraction rate." For passive collection systems, the §115.152 requirements also do not specifically require compliance with the liner requirements of 40 CFR §258.40, as referenced by 40 CFR §60.33f(b)(3)(ii). However, MSW landfills in Texas are required by 30 TAC §330.331 to comply with liner design requirements which are similar to and based on the requirements of 40 CFR §258.40, so the liner design criteria are addressed by other Texas regulations independently of §115.152.

Table C.5.2: Comparison of Control System Design Requirements

30 TAC §115.152 Requirements	40 CFR 60 Subpart Cf Requirements
§115.152(a)(2): Control NMOC gas emissions in one of the following ways: (A) the total collected gas is routed to an open flare designed and operated in accordance with 40 CFR §60.18; (B) the total collected gas is routed to a control device which reduces the total collected gas emissions by 98% or to less than 20 parts per million by volume; or *Note: §115.152(a)(2) does not specifically refer to use of boilers or process heaters as control devices, but they would still be required to meet the 98%/20 ppmv control requirements of §115.152(a)(2)(B).*	§60.33f(c). For approval, a state plan must include provisions for the control of the gas collected from within the landfill through the use of control devices meeting the following requirements, except as provided in §60.24. (1) A non-enclosed flare designed and operated in accordance with the parameters established in §60.18 except as noted in §60.37f(d); or (2) A control system designed and operated to reduce NMOC by 98 weight percent; or when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume … . (i) If a boiler or process heater is used as the control device, the landfill gas stream must be introduced into the flame zone. (ii) The control device must be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in §60.37f. (iii) For the closed landfill subcategory, the initial or most recent performance test conducted to comply with subpart WWW of this part; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part on or before July 17, 2014 is sufficient for compliance with this subpart.

30 TAC §115.152 Requirements	40 CFR 60 Subpart Cf Requirements
(C) the total collected gas is routed to a gas treatment system which processes the collected gas for subsequent use or sale. The sum of all emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of subparagraph (A) of this paragraph;	(3) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or beneficial use such as … . Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas must be controlled according to either paragraph (c)(1) or (2) of this section. (4) All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of paragraph (b) or (c) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b) or (c) of this section.

The control system requirements of 30 TAC §115.152 as outlined in Table C.5.2 are phrased somewhat differently than the corresponding requirements of 40 CFR §60.33f(c), but substantively require the same level of emission control. If an open flare is used as a control device, both §115.152(a)(2)(A) and §60.33f(c)(1) require compliance with 40 CFR §60.18. If another type of control device is used, both §115.152(a)(2)(B) and §60.33f(c)(2) require either 98 percent emissions reduction, or control to an NMOC concentration of less than 20 ppmv. In addition, both §115.152(a)(2)(C) and §60.33f(c)(3)-(4) allow landfill gas to be routed to a gas treatment system which processes the collected gas for subsequent use or sale, as long as NMOC emissions from the treatment system are controlled by 98 percent or to a concentration of less than 20 ppmv. 30 TAC §115.152 does not specifically address the use of boilers or process heaters as a control device, but if those types of devices are used as a control device, they would still be required to meet the 98 percent reduction/20 ppmv control requirements of §115.152(a)(2)(B).

For these reasons, the requirements of proposed §113.2404(b) are still substantially equivalent to the corresponding Subpart Cc and Cf requirements for landfill gas collection and control systems. Preserving this previously approved aspect of the Texas MSWL state plan (originally approved under rule §113.2061(b)) is still appropriate and would not result in backsliding of emission standards. Owners or operators of landfills meeting the Chapter 115, §115.152 requirements must still comply with all other applicable requirements of proposed Chapter 113, Division 6 and the associated requirements of 40 CFR 60 Subpart Cf, except for 40 CFR §60.33f(b) and (c).

Attachment 1 to APPENDIX C.5

Excerpts from TCEQ's 1998 Adoption Preamble, 1998 Adopted State Plan, and 1999 *Federal Register* Notice of State Plan Approval

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code §33.201 et. seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the action in 30 TAC §§113.2060, 113.2061, 113.2067, and 113.2069, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q) which requires the commission protect air quality in coastal areas. The purpose of 30 TAC §§113.2060, 113.2061, 113.2067, and 113.2069 is to control air contaminants from MSW landfills. The sections are in compliance with the regulations adopted under 40 CFR adopted under the FCAA, 42 United States Code Annotated, §7401, et. seq. to protect and enhance air quality in the coastal area so as to protect coastal natural resource areas (CNRAs) and promote the public health, safety and welfare.

HEARINGS AND COMMENTERS Public hearings on the proposal were held in Irving, Texas on May 29, 1998, in Austin, Texas on June 1, 1998, and in Houston, Texas on June 4, 1998. Only one commenter, EPA, presented oral comments at the hearings. Written comments were received from Browning-Ferris Industries (BFI), EPA, SCS Engineers (SCS), and the Texas Chapter of the Solid Waste Association of North America (TxSWANA). The public comment period closed on June 8, 1998.

EPA commented that 40 CFR Part 60.24(f) allows for less stringent emission limits or longer compliance schedules, but it does not allow the exemption of an entire class of facilities. EPA also stated that the use of surrogate NMOC values conflicts with the NMOC estimation methods in 40 CFR 60.34(c).

The commission believes that it has applied a less stringent standard to landfills that closed prior to October 9, 1993 in accordance with 40 CFR §60.24(f). The commission bases the application of a less stringent standard for landfills that closed prior to October 9, 1993, on §60.24(f)(1) for "unreasonable cost of control resulting from plant age" and on §60.24(f)(3) for "other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable." The technical justification from Appendix A of the State Plan serves to support this assertion by demonstrating that under the Emission Guideline standards, the landfills that closed prior to October 9, 1993, would very likely not be required to install controls. The application of a less stringent standard would ensure that these landfills would not be required to install controls, thus effectively exempting these landfills from the Emission Guidelines rule. Using NMOC values that reflect actual Tier II testing at existing landfills is justified for this analysis because the commission did not intend to duplicate the steps that a landfill would have to follow in complying with the Emission Guidelines, but rather is predicting the most probable final result.

The commission performed an inventory of landfills that closed between November 8, 1987, and October 9, 1993, to determine which landfills contained sufficient material to require emission testing. The commission did not have reported design capacities for these landfills as this reporting was not a regulatory requirement prior to October 9, 1993. The commission estimated capacity using the following two methods.

First, assuming an average landfill life of 30 years, the commission determined that a facility would have to accept over 251 tons per day of refuse to exceed the testing threshold of 2.5 million megagrams (2.5 M Mg) of placed material. This is approximately 2.75 million tons of material. Second, assuming an average depth of 30 feet and an assumed density of compacted waste, the commission estimated a landfill would have to exceed 67.6 acres to potentially have a capacity greater than 2.5 M Mg.

Using these estimates, there are seven closed landfills that have the potential to exceed the 2.5 M Mg threshold. Two of these are Type IV landfills, which are not authorized to accept household waste and are not subject to the emission guidelines. Of the remaining five, the landfills operated by the City of Killeen and the City of El Paso were expected to exceed the emission threshold of 50 Mg per year on NMOC. A closer analysis of the permit file showed that the El Paso facility closed prior to November 8, 1987.

The commission then performed an estimate of emissions from these landfills using NMOC emission rates obtained from tests conducted at existing and closed facilities in accordance with the methods in 40 CFR §60.754. 40 CFR §60.24(f)(3) allows the use of less stringent emission standards provided there are other factors specific to a class of facilities that make the standard significantly more reasonable. In this case, the commission has sample emission rates from landfills across the state that indicate that an NMOC emission rate of 439 parts per million (ppm) is more reasonable and representative than the EPA default rate of 4,000 ppm. The commission staff and EPA have extensively discussed this issue, and EPA agrees that the use of a rate below the default rate and more representative of monitored landfill emissions within Texas is appropriate for this specific analysis of closed landfills. The commission staff used an arithmetic mean of monitored emission levels which is the origin of the 439 ppm figure. EPA prefers the use of a figure that is one standard deviation above the mean or approximately 706 ppm. Using this higher figure, the commission calculated an estimated emission rate of 56 Mg per year for Killeen by June of 2001, the earliest date by which controls could be installed. This rate would fall below the emission control threshold of 50 Mg per year by 2004. This emission rate drops even lower if the high and low NMOC monitored values are omitted from the calculations and the commission uses a rate one standard deviation above the arithmetic mean.

In summary, the emission rate for Killeen is borderline and will go slightly above to slightly below the control threshold depending on the method of statistical analysis. Using the higher EPA emission rate results in an emission level that drops below the predicted emission threshold within three years of installing controls. The commission has estimated that the cost of control for affected landfills will be $10,000-$12,000 per acre. The Killeen facility is 174 acres which results in a control cost in excess of $1.74 million. The commission believes this to be an excessive and unreasonable cost based on Killeen's location outside ozone non attainment areas and

the commission's analysis demonstrating that the facility would drop below the yearly emission threshold within three years of control installation. Therefore the commission will retain the proposed definition of "existing municipal solid waste landfill" that will exclude the Killeen facility from retrofitting controls.

40 CFR §60.34(c) requires that the state plan contain provisions for use of an approved test method for measuring NMOC. This requirement is in the Texas state plan.

Prior to October 9, 1993, there was no regulatory requirements to report design capacity to the commission. In the absence of these records, the commission believes that its estimation of capacities and consequent definition of existing landfill is reasonable and appropriate. Further refinement of the estimation would require a site-by-site analysis.

EPA commented that application for a less stringent emission standard or compliance schedule is subject to the Regional Administrator's approval, and the rule should include the appropriate language.

The commission does not object to including the EPA Regional Administrator's approval of less stringent emission standards or longer compliance schedules and has made the appropriate change to the rule language.

EPA also suggested that the state plan establish increments of progress for any compliance schedule longer than 12 months though federal law does allow increments to be submitted at a later date for individual facilities.

The proposed rule referred to 40 CFR Part 60 §§60.751-60.759 which contain the requirement for affected landfills to install controls within 30 months of determined application of the emission guidelines. The commission believes that this is a sufficient compliance schedule and wishes to leave the details of contract management to the operators of the affected facilities for greater flexibility. Additionally, the state plan for Oregon, which used an identical compliance schedule as the Texas plan, was approved by EPA. The commission has elected to retain the proposed language and will not include detailed increments of progress requirements.

BFI commented that the commission should incorporate by reference revisions to the federal emission guidelines expected as a result of a settlement between National Solid Waste Management Association (NSWMA) and EPA. They also stated that it would be appropriate to address in the preamble to the final rule the extent to which rate of progress requirements for the Dallas/Fort Worth area would be affected by the promulgated rule and suggested that the commission provide for the repeal of 30 TAC §§115.152-115.159 upon EPA approval of the Texas state plan under FCAA §111(d). TxSWANA also supported this repeal.

The commission has included in the adopted rules, state plan, and preamble, references to the amendment date of the federal rules. This amendment resulted from the settlement between NSWMA and EPA. The commission has also included language in the rules that states that compliance with §§115.152-115.159, Municipal Solid Waste Landfills, will be considered compliance with the adopted emission guidelines. Operators of landfills currently regulated under Chapter 115 may use actual NMOC measurement to determine if a particular landfill exceeds the 150 Mg control threshold in §115.152. The commission believes it is necessary to leave the Chapter 115 requirements in place because 30-34 months will be required for controls specified under these adopted emission guidelines to be implemented. As the adopted emission guidelines become effective the commission will examine the Chapter 115 requirements and make any necessary amendments.

TxSWANA and SCS supported the exclusion of landfills closed prior to October 9, 1993, from the state plan. TxSWANA also commented that §113.2069(b) of the proposal be modified to reference landfills of a design capacity "equal to or greater than 2.5 million megagrams and 2.5 million cubic meters" consistent with the NSWMA and EPA settlement.

The commission has made the appropriate change in the rule language and state plan.

STATUTORY AUTHORITY The new subchapter and sections are adopted under the TCAA, Texas Health and Safety Code, §382.011, which provides the commission authority to control the quality of the state's air; §382.012, which gives the commission authority to develop a comprehensive plan for control of the state's air; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and to specify control methods when required by federal law.

§113.2061. Standards for Air Emissions.

(a) An owner or operator of an existing municipal solid waste landfill (MSWLF) shall comply with all provisions specified in 40 Code of Federal Regulations (CFR) Part 60, §§60.751-60.759 as promulgated on March 12, 1996, and amended on August 17, 1998. For purposes of this rule, the term "Administrator" wherever it appears in 40 CFR Part 60, §§60.751-60.759 shall refer to the commission.

(b) Gas collection and control systems approved by the commission and installed at an MSWLF in compliance with §115.152 of this title (relating to Control Requirements) satisfy the gas collection and control system design requirements of this section.

§113.2067. Exemptions.

A municipal solid waste landfill (MSWLF) may apply for less stringent emission standards or longer compliance schedules than those otherwise required by this division, provided that the owner or operator demonstrates to the executive director and EPA, the following:

(1) unreasonable cost of control resulting from MSWLF age, location, or basic MSWLF design;

(2) physical impossibility of installing necessary control equipment; or

(3) other factors specific to the MSWLF that make application of a less stringent standard or final compliance time significantly more reasonable.

§113.2069. Compliance Schedule.

(a) An owner or operator subject to the requirements of this division shall submit the initial design capacity report in accordance with 40 Code of Federal Regulations (CFR) Part 60, §60.757(a)(2) to the executive director within 90 days from the date the commission publishes notification in the *Texas Register* that the United States Environmental Protection Agency (EPA) has approved this rule.

(b) An owner or operator of a municipal solid waste landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound emission rate report in accordance with 40 CFR §60.757(b)(2) to

APPENDIX A

JUSTIFICATION FOR EXCLUDING PRE-SUBTITLE D CLOSED MSW LANDFILLS FROM THE PLAN TO CONTROL NMOC EMISSIONS

Under Subpart B, 40 CFR 60.24(f), states are authorized to provide for less stringent emission standards or longer compliance schedules for MSW landfills, EG requirements, promulgated under Subpart Cc.

Section 60.24(f) defines general criteria that states must demonstrate to apply less stringent emission standards or longer compliance schedules for a facility or a class of facilities. These criteria include:

a. Unreasonable cost of control resulting from plant age, location, or basic process design;
b. Physical impossibility of installing necessary control equipment; or
c. Other factors specific to the facility or class of facilities that make the application of a less stringent standard or final compliance time significantly more reasonable.

The revised Chapter 113 rules exclude the 142 MSW landfills closed between November 8, 1987, and October 9, 1993, from the requirements of the EG based on criteria (a) and (c). The commission provides general justification of unreasonable cost, and other factors, to demonstrate that the implementation of the EG on these closed facilities is unreasonable. This general justification is also accompanied by a technical impact analysis of projected NMOC emissions from these closed facilities. This technical analysis demonstrates that NMOC emissions from facilities that closed between November 8, 1987, and October 9, 1993, are not of significant concern to necessitate the implementation of these requirements. The commission asserts that the cost justification analysis, and other identified factors, associated with controlling closed landfills are adequate to meet 60.24(f) criteria (a) and (c). The accompanying technical analysis is provided to support the cost justification and complement the demonstration that the implementation of the EG on landfills closed between November 8, 1987, and October 9, 1993, is economically unreasonable.

1. Cost Analysis and Other Factors

The commission has determined that MSW landfills that closed prior to October 9, 1993, may not be economically able to comply with the EG requirements. Many of these landfills would be exempt based on either their design capacity being less than 2.5 M Mg or their emissions being less than 50 Mg per year.

The EG for MSW landfills defines an existing landfill as any MSW landfill that has accepted waste at any time after November 8, 1987, or has design capacity available for future waste deposition. Thus, the EG is retroactively applicable to MSW landfills, some of which may have closed nearly 11 years ago. Since full compliance (i.e. to have controls in place) will not be realized until three years after the state plan is approved by the EPA, controls may be imposed on MSW landfills which may have been closed for nearly 14 years. Furthermore, the cost of preparing design capacity and emissions reports that are based on site-specific data may be cost prohibitive, especially for municipally-owned landfills.

Prior to the implementation of 40 CFR Part 258 (popularly know as the "Subtitle D" requirements) which became effective on October 9, 1993, landfills were not subject to any federal post-closure care requirements. Thus, landfills which have closed after November 8, 1987, and before October 9, 1993, no longer have the option of creating a revenue stream to pay for the cost of compliance. In addition, these landfills were not subject to any financial assurance requirements which may be used by states to determine a landfill's ability to pay for the cost of controls. Since emissions from closed landfills decrease exponentially over time, the commission asserts that the implementation of these requirements are cost-ineffective.

The commission records may not accurately reflect all of the landfills that closed after November 8, 1987. Many of these landfills were unpermitted, grandfathered facilities. Since the ownership of these landfills may have been transferred several times, it may be impossible to identify the responsible parties for these facilities. The closed landfills which are reflected in the commission records did not report their total design capacities because they were not required to do so in the past. Thus, it will be difficult for the commission to properly enforce the EG requirements on these landfills.

The NSPS and the EG were proposed on May 30, 1991, with a projected adoption date set for December 1991. The proposed EG specified that landfills that had closed prior to November 8, 1987, be exempted from the EG, intending that the EG would be applicable only for landfills that closed within five years from the date the EG was to be implemented. However, the NSPS and EG were not adopted until March 12, 1996. The final EG maintained November 8, 1987, as the determining date of which closed landfills should be controlled. The commission maintains that the final EG is inconsistent with the way the EG was initially intended to apply. Since the implementation date of the EG was moved up by five years due to the delay in adopting the EG, the November 8, 1987, date should have also been moved up by five

years. Considering that emissions from closed landfills decrease exponentially over time, the commission maintains that the requirement to control landfills that closed 11 years ago is overly stringent and unreasonable.

2. Technical Analysis

The technical analysis utilizes the EPA landfill gas emissions estimation model to project future NMOC emissions from closed MSW landfills. Using various approaches in determining model parameters, the commission generates emission curves to estimate each facility's expected NMOC emissions rate by the year 2000. The commission maintains that most, if not all, landfills which closed between November 8, 1987 and October 9, 1996, have NMOC emission rates below the 50 Megagrams (Mg) per year emissions rate cutoff by the year 2000. The generated curves are based on using a regulatory generation potential, Lo of 170, a K of 0.02 for arid landfills and 0.05 for non-arid landfills, and representative site-specific NMOC concentrations (C_{NMOC}) of 475 ppm for arid landfills and 479 ppm for non-arid landfills. The analysis also assumes an average landfill life of 30 years and an average landfill depth of 30 feet.

a. Projected NMOC Emissions Using Site-Specific Data

The EPA regulatory emission estimation model was used to estimate year 2000 emissions for MSW landfill facilities with several assumed design capacities and closure years. These test cases are shown in Table A. In each test case, an average landfill life of 30 years was used. The results obtained from these test cases were based on using the default regulatory generation potential, Lo of 170 and generation rate constant, K of 0.05 for non-arid landfills and 0.02 for arid landfills. An average site-specific data was, however, used for C_{NMOC} in lieu of the default value specified in the model. This is consistent with the EPA approach to use site-specific data whenever this data is available.

TABLE A

Test Cases

Design Capacity (Mg)	Closure Year	Average landfill life (yrs)
3.0	1987	30
3.0	1990	30
3.0	1993	30
3.0	1996	30
3.0	1999	30
6.0	1987	30
6.0	1990	30
6.0	1993	30
6.0	1996	30
6.0	1999	30
9.0	1987	30
9.0	1990	30
9.0	1993	30
9.0	1996	30
9.0	1999	30
12.0	1987	30
12.0	1990	30
12.0	1993	30
12.0	1996	30
12.0	1999	30

b. Average Site-Specific C_{NMOC} Concentrations

The commission is currently regulating some MSW landfills under 30 TAC Chapter 115, Control of Air Pollution From Volatile Organic Compounds, §§115.152 to 115.159. In compliance with the state rule and the EPA NSPS, several MSW landfills in Texas conducted Tier II tests to determine site-specific NMOC concentrations. Table B shows a list of these facilities and the performed test methods.

TABLE B

Landfill NSPS and Chapter 115 Tier II C_{NMOC} Concentrations

Landfill	MSW Permit No.	County	Design Capacity (million m^3 or Mg)	NMOC Concentration (ppm)	Test Method
BFI (Southwest) [Canyon, TX]	1663A	Randall	3.0	290	25C
Arlington	358	Tarrant	7.36	821	25C
Baytown Landfill	1535A	Harris	8.97	387	25C
BFI FM521/Blue Ridge	1505	Fort Bend	11.80	324	25C
BFI Beaumont/Golden Triangle	2027	Jefferson	6.6	691	25C
Corsicana Landfill	2190	Nazarro	21.62	429	25C
Farmers Branch, Camelot	1312	Dallas	10.80	411	18
Hawthorn Park	2185	Harris	3.98	128	25C
Lacy Lakeview Recycling and Disposal Facility	1646A	McLennan	4.71	1122	25C
Laidlaw/Turkey Creek	1417B	Johnson	15.52	60	25C
Mexia Landfill	1558A	Limestone	3.40	541	25C
Rock Prairie Road	1444A	Brazos	3.18	498.75	25C
Temple Recycling and Disposal Facility	692	Bell	5.05	251	25C
Williamson County Recycling and Disposal Facility	1405A	Williamson	9.63	747	25C
Lubbock (arid site)	69	Lubbock	5.13	516	25C
City of El Paso-Clint (arid site)	1482	El Paso	7.0	433	25C

Table B includes C_{NMOC} data for 14 sites located in non-arid areas and two sites located in arid areas. An arithmetic average C_{NMOC} of 475 for arid landfills and 479 for non-arid landfills were computed and used as representative C_{NMOC} for arid and non-arid landfills in Texas.

c. Year 2000 Emission Estimates

The results obtained from the test cases were then used to generate graphs which show the expected levels of NMOC emissions by the year 2000 for a typical representative facility with a specified design capacity and closure year. Figures 1 and 2 show year 2000 emission rates for typical facilities located in arid and non-arid areas, respectively.

Figure A: Arid Areas

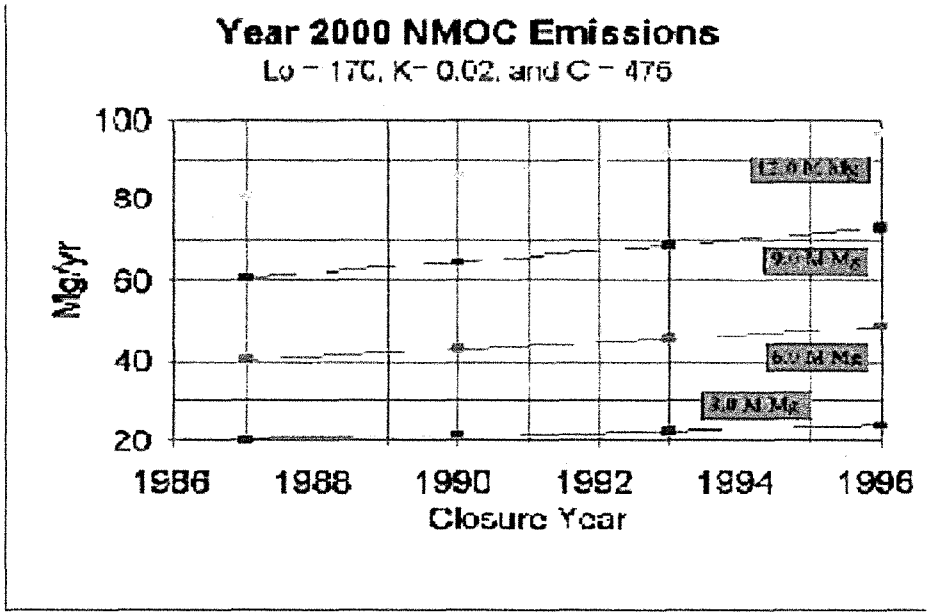
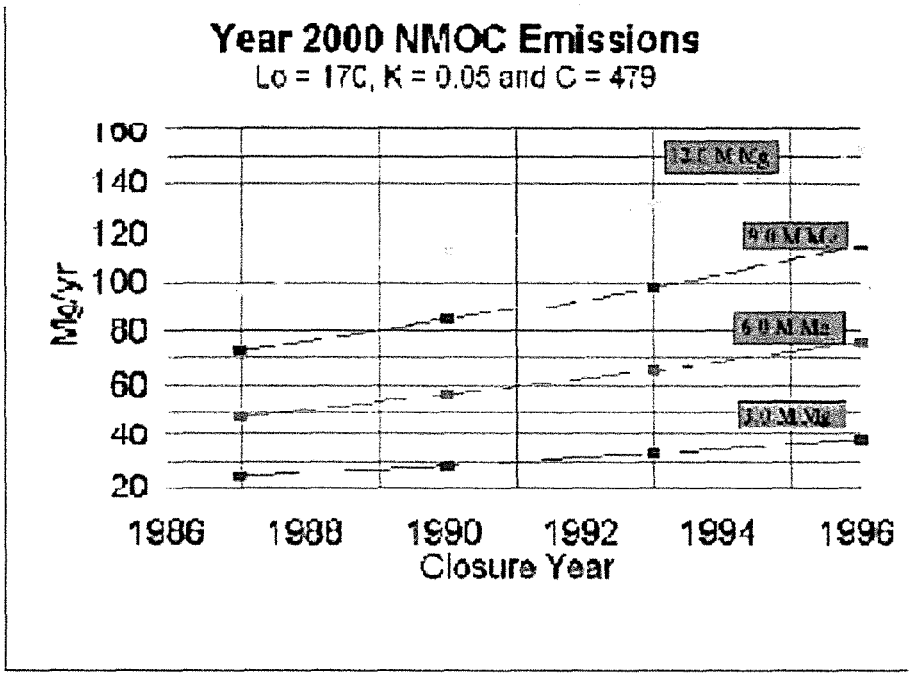


Figure 2: Non-Arid Areas



d. MSW Landfills Inventory

Of the 459 MSW landfills which are subject to the EG and the NSPS in Texas, 244 have closed since November 8, 1987. 142 landfills closed between November 8, 1987, and October 9, 1993, and 102 landfills closed between October 9, 1993, and February 1997.

The commission records may not accurately reflect all of the landfills that closed after November 8, 1987. The closed MSW landfills which are reflected in the commission records did not report total design capacities because this was not a requirement in the MSW regulations. However, some of the data that had been reported may be useful in estimating total design capacities for these facilities. The commission records contain information on the daily refuse acceptance rate and the area, specified in acres, for each reported closed landfill. With an assumed average life for each landfill, the daily refuse acceptance rate may be used to estimate total design capacity. Similarly, with an assumed average depth for each landfill, the area size may be used to develop another estimate of the total design capacity. A more representative estimate of the total design capacity would be the average of the two design capacities generated by the daily refuse acceptance data and the area size data.

e. Design capacity

A typical average life of 30 years and a depth of 30 feet were assumed as representative conditions of all closed landfills. With an average life of 30 years, a landfill has to exceed 251 tons per day of daily acceptance rate to potentially be considered to have a total design capacity greater that 2.5 million (M) Mg:

$$2500000.Mg(1.1\frac{tons}{Mg})(\frac{1}{30year})(\frac{1year}{365days})=251\frac{tons}{day}$$

Table C shows all MSW landfills which closed between November 8, 1987, and October 9, 1993, and had daily refuse acceptance rate greater than 250 tons per day. Table C also shows the estimated design capacities after adjustments were made to account for variations in area size.

TABLE C: Closed MSW landfills with Daily Refuse Acceptance Rate Greater Than 251

Permit Number, Landfill Type		Owner/Operator	Daily Accept. rate (tons/day)	Area Size (acres)	Adjusted Design Capacity M Mg
14	4	BFI/Pinn Road	670	36	4.00
667	3	Stonewall County	250	5	1.34
730	1	City of El Paso	1500	619	18.91
1134	1	City of Abilene	250	111.2	3.30
1259	4	Olshan Demolition Co.	4009	18.59	20.3
1472	1	Warner, Dwaine	300	14	1.75

With an average depth of 30 feet, an MSW landfill has to exceed 67.6 acres to potentially be considered to have a design capacity greater than 2.5 M Mg:

$$2500000m^3(35.3147\frac{ft^3}{m^3})(\frac{1}{30ft})(2.29568E-5\frac{acre}{ft^2})=67.6acres$$

Table D shows all MSW landfills which closed between November 8, 1987, and October 9, 1993, and had an area size greater than 67.6 acres. Table D also shows the estimated design capacities after adjustments were made to account for variations in the daily acceptance rate.

TABLE D: MSW landfills with Areas Size Greater Than 67.6 Acres

Permit Number, Landfill Type		Owner/Operator	Area Size (acres)	Daily Accept. rate (tons/day)	Adjusted Design Capacity M Mg
354	1	City of Alpine	122.5	14	2.33
366	1	City of Anson	75.9	7	1.44
424	1	City of Corpus Christi	90.74	150	2.42
440	1	City of Denison	110	91	2.48
455	2	City of Fairfield	65.5	6	1.24
505	1	Joint Cities LRB	95	26	1.89
513	1	City of Killeen	418.25	100	8.23
528	1	City of Liberty	78.56	50	1.7
690	1	City of Tyler	185	0	3.42
730	1	City of El Paso	619	1500	18.91
742	1	Gregg County	116	21	2.25
915	2	City of Nixon	78.1	3	1.46
976	1	City of Fort Stockton	87.7	18	1.71
1051	3	A. R. Heisler	77.21	1	1.43
1087	1	City of Graham	275	13	5.15

1134	1	City of Abilene	111.2	250	3.3
1093	1	City of Matagorda	71.25	25	1.44
1250	1	City of West University Place	75	32	1.55

Based on Tables C and D, only 7 of the 142 MSW landfills that closed between November 8, 1987, and October 9, 1996, are estimated to be over 2.5 M Mg total design capacity. Two of these 7 MSW landfills are type IV MSW landfills. Type IV MSW landfills, by definition, are not authorized to accept household waste and therefore, are not subject to the EG. Table E shows the list of the MSW landfill facilities with estimated total design capacities greater than 2.5 M Mg. Table E also shows the estimated year 2000 NMOC emission rates associated with these facilities. These estimated are derived from Figures A and B.

Table 5: MSW Landfills Greater Than 2.5 M Mg Design Capacity and Year 2000 Emission

Permit Number, Landfill Type		Owner/Operator	Design Capacity (M Mg)	Closure Year	Estimated year 2000 Emissions
513	1	City of Killeen	8.23	3/1990	74
690	1	City of Tyler	3.42	3/1990	33
730	1	City of El Paso	18.91	6/1988	130
1087	1	City of Graham	5.15	1988	40
1134	1	City of Abilene	3.3	3/1990	24

Of the 5 facilities with estimated design capacities greater than 2.5 M Mg, only two are expected to exceed the 50 Mg per year NMOC emission rate cutoff by the year 2000. These are the City of Killeen, permit number 513, and the City of El Paso, permit number 730.

Further analysis into these two sites has revealed the following:

Only 174 acres of the 418 acres that were initially permitted by the City of Killeen, permit number 513, had actually been filled. This warrants an adjustment to the NMOC emission rate estimate to account for the refuse that had only been placed in the landfill. Based on 174 acres, the estimated design capacity for the City of Killeen MSW landfill was modified to 3.72 M Mg and its associated year 2000 NMOC emissions rate was consequently estimated at 39 Mg per year.

Only 147 acres of the 619 acres that were initially permitted by the City of El Paso, permit number 730, had actually been filled. In addition the landfill had not received waste since October 1985 and therefore, would not be subject to the EG.

Of the 142 MSW landfills that closed between November 8, 1987, and October 9, 1993, only Killeen was expected to exceed the 50 Mg per year NMOC emission rate cutoff by the year 2000. The emission rate for Killeen is borderline and will go slightly above to slightly below the control threshold depending on the method of statistical analysis. The commission estimates that the emission rate drops below the EPA emission threshold within three years of installing controls. The commission has estimated that the cost of control for affected landfills will be $10,000-$12,000 per acre. The Killeen facility is 174 acres which results in a control cost in excess of $1.74 million. The commission believes this to be an excessive and unreasonable cost based on Killeen's location outside ozone non attainment areas and the commission's analysis demonstrating that the facility would drop below the yearly emission threshold within three years of control installation. Therefore the commission will retain the proposed definition of "existing municipal solid waste landfill" that will exclude the Killeen facility from retrofitting controls.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 1, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart Q—Iowa

2. Subpart Q is amended by adding § 62.3914 and an undesignated center heading to read as follows:

Air Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators

§ 62.3914 Identification of plan.

(a) Identification of plan. Iowa plan for the control of air emissions from hospital/medical/infectious waste incinerators submitted by the Iowa Department of Natural Resources on January 29, 1999.

(b) Identification of sources. The plan applies to existing hospital/medical/ infectious waste incinerators constructed on or before June 20, 1996.

(c) Effective date. The effective date of the plan is August 16, 1999.

[FR Doc. 99–15165 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TX–108–1–7408a; FRL–6361–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the Governor of Texas on November 3, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Municipal Solid Waste (MSW) Landfills. The EG require States to develop plans to collect landfill gas from large MSW landfills.

DATES: This direct final rule is effective on August 16, 1999, without further notice, unless we receive adverse comments by July 19, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Texas Natural Resource Conservation Commission offices, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is Being Taken by EPA Today?

We are approving the Texas State Plan to control landfill gas from existing MSW landfills, as submitted to us by Texas on November 3, 1998. This State Plan does not affect those existing MSW landfills located in Indian Country.

We are publishing this action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective August 16, 1999, unless by July 19, 1999, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective August 16, 1999.

II. Why Do We Need To Regulate Landfill Gas?

Landfill gas contains a mixture of volatile organic compounds (VOCs), other hazardous air pollutants (HAPs), and methane. These VOC emissions can contribute to ozone formation, which can cause adverse health effects to humans and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. We presented our concerns with the health and welfare effects of landfill gases in the preamble to our proposed EG (56 FR 24468, May 30, 1991).

III. What Is Being Acted on in This Document?

When we developed our New Source Performance Standard (NSPS) for landfills, we also developed EG to control landfill gas from older landfills (See 61 FR 9905–9944, March 12, 1996). The Texas Natural Resource Conservation Commission (TNRCC) developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

IV. What Is a State Plan?

Section 111(d) of the Act requires that ''designated'' pollutants controlled under the NSPS must also be controlled at existing sources in the same source category. To ensure proper implementation of the requirements of section 111(d), we approved 40 CFR part 60, subpart B (40 FR 53340, November 17, 1975). Subpart B provides that, once an NSPS is promulgated, we then publish an EG applicable to the control of the same pollutant from designated (existing) facilities. Affected States must then adopt the EG into their body of regulations.

V. What Does the Texas State Plan Contain?

The Texas State Plan was reviewed for approval against the following criteria: 40 CFR Part 60, §§ 60.23 through 60.26, subpart B—Adoption and Submittal of State Plans for Designated Facilities; and, 40 CFR part 60, §§ 60.30c through 60.36c, subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.

The evaluation of the Texas State Plan indicates that it contains:

1. a demonstration of the State's legal authority to implement the section 111(d) State Plan, as authorized under the Texas Clean Air Act Sections 382.011, 382.012, and 382.017;
2. an incorporation of the Federal regulations into the Texas Administrative Code (TAC) at 30 TAC Chapter 113, Subchapter D, Sections 113.2060, Definitions; 2061, Standards for Air Emissions; 2067, Exemptions; and 2069, Compliance Schedule;
3. an inventory of approximately 113 known designated facilities, with estimated design capacities, as listed in Tables 4, 5a, and 5b of the State Plan;
4. emission limits that are as stringent as the EG, listed in TAC Section 113.2061;
5. a process to review gas collection system design plans;
6. a final compliance date 30 months after the date a designated facility reaches or exceeds 50 Mg of NMOC emissions annually;
7. testing, monitoring, reporting and recordkeeping requirements for the designated facilities, as listed in TAC Section 113.2061;
8. records from the three public hearings; and,
9. provisions for progress reports to EPA.

The Texas State Plan does deviate from the EG on two issues. The EG defines designated facilities as those that have accepted waste after November 8, 1987. The TNRCC provided a detailed technical analysis which indicates that no designated landfills which closed between November 8, 1987, and October 9, 1993, will have estimated non-methane organic compounds (NMOC) emissions above the 50 megagram (Mg) control threshold by the year 2000. Controlling these closed landfills would not result in a significant reduction in NMOC emissions compared to the cost to install gas collection systems at these sites. Our Code of Federal Regulations (CFR), at 40 CFR § 60.24(f), allows for less stringent regulations if a technical or economic justification supports it. Based on § 60.24(f), the TNRCC adjusted its definition to reflect actual conditions in Texas. The definition of MSW landfills in Texas then includes facilities that have accepted waste since November 8, 1987, and either closed after October 8, 1993, or are currently still accepting waste. We agree with the justification for excluding this group of MSW landfills from the State Plan, and accept the State's use of § 60.24(f) to change its definition of MSW landfills in Texas.

Second, the Texas State Plan does not include specific increments of progress towards the final 30 month compliance date, as discussed in 40 CFR 60.24(e)(1). However, the State can develop separate increments of progress for each designated facility and submit these as revisions to the State Plan within a year of the Federal approval of the Texas State Plan (40 CFR 60.24(e)(2)). For this reason we can approve the State Plan in its current form. We fully expect the TNRCC to submit increments of progress within a year of our approval of this State Plan. Please request a copy of our official file to review our detailed discussion of the requirements of the NSPS and EG, along with our evaluation of the Texas State Plan.

VI. How Can I Determine Whether My Landfill Is Subject to These Regulations?

Any MSW landfill which began construction, reconstruction or modification before May 30, 1991, and has accepted waste at any time since October 9, 1993, is affected by the EG and the Texas State Plan. If your facility meets these two criteria, your landfill is subject to these regulations.

VII. What Steps Do I Need To Take?

- You must report your landfill's design capacity to the TNRCC within 90 days of the effective date of our approval of the Texas State Plan (See Section 113.2069).
- If your landfill has a design capacity above 2.5 million Mg, you must also estimate and report your annual NMOC emission rate to the TNRCC within the same 90-day timeframe (See Section 113.2069).
- If your landfill has a design capacity below 2.5 million Mg, you have met all the requirements of the Texas State Plan. However, if you modify your landfill and increase the design capacity above the 2.5 million Mg threshold, you must submit an amended design capacity report to the TNRCC within 90 days of the modification. You must also estimate and submit your annual NMOC emission rate to the TNRCC within 90 days of the modification (Section 113.2061). Your landfill will then be considered an NSPS source and subject to the requirements listed under 40 CFR part 60, subpart WWW.
- You must have a gas collection system installed and operating within 30 months of the date you project to be at or above the 50 Mg threshold (Section 113.2061).
- You must record and keep accurate records regarding site information and

gas collection system operational data (Section 113.2061).

VIII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because approvals under section 111 of the Federal Clear Air Act (the Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take

effect until 60 days after it is published in the **Federal Register**. This action is not a ''major'' rule as defined by 5 U.S.C. 804(2). This rule will be effective August 16, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: June 7, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 62.10850 is amended by adding paragraph (b)(3) to read as follows:

§ 62.10850 Identification of plan.

* * * * *

(b) * * *

(3) Control of landfill gas emissions from existing municipal solid waste landfills, submitted by the Governor on November 3, 1998.

* * * * *

3. Subpart SS is amended by adding a § 62.10880 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10880 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since October 8, 1993, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 99–15265 Filed 6–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[LA–51–7413a; FRL–6360–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the Louisiana Department of Environmental Quality (LDEQ) on December 30, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (MWI). The EG requires States to develop plans to reduce toxic air emissions from all MWIs. We are also approving a revision to the Louisiana State Plan as it pertains to existing municipal solid waste landfills. This revision adds certain increments of progress so that we can more effectively track facilities' progress towards compliance.

DATES: This direct final rule is effective on August 16, 1999, without further notice, unless we receive adverse comments by July 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Lt. Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Louisiana Department of Environmental Quality offices, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana 70884–2135.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote at (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is Being Taken by EPA Today?

We are approving the Louisiana State Plan, as submitted on December 30, 1998, for the control of air emissions from MWIs, except for those MWIs located in Indian Country. When we developed our New Source Performance Standard (NSPS) for MWIs, we also developed EG to control air emissions from older MWIs. See 62 FR 48348–48391, September 15, 1997. The LDEQ developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We approved Louisiana's section 111(d) State plan for municipal solid waste landfills on August 29, 1997 (62 FR 45730). In accordance with our EG for this category of sources, LDEQ is allowed to develop increments of progress separately and submit them as a revision to the State Plan. Our detailed discussion of this requirements was discussed in 62 FR 45730.

1. Design plans are due on or before January 28, 1999;

2. Awarding of contracts is due on or before June 28, 1999;

3. Initiation of on-site construction is due on or before March 28, 2000;

4. Initial performance tests must be completed on or before March 28, 2000;

5. Final compliance must be met on or before April 28, 2000. These increments of progress satisfy the requirements of the EG for municipal solid waste landfills, and we are approving them today as a revision to the State Plan.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective August 16, 1999, unless by July 19, 1999, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public

APPENDIX C.6

Response to Public Comments

(Reserved until Adoption)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, and 113.2412; and amended §113.2069.

The proposed new and amended sections are included in the accompanying proposed revisions to the Federal Clean Air Act (FCAA), §111(d) Texas State Plan for Existing Municipal Solid Waste (MSW) Landfills. If adopted by the commission, the revisions to Chapter 113 and the associated revisions to the state plan will be submitted to the U.S. Environmental Protection Agency (EPA) for review and approval.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed amendments to Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, are necessary to implement emission guidelines in 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. These emission guidelines (2016 emission guidelines) were promulgated by the EPA on August 29, 2016 (81 FR 59276), and amended on August 26, 2019 (84 FR 44547), and March 26, 2020 (85 FR 17244). The August 26, 2019, amendments to Subpart Cf were vacated on April 5, 2021, by the D.C. Circuit Court of Appeals, and are not included in this proposal. On May 21, 2021, the EPA also published a federal plan (86 FR 27756) to implement the 2016 emission guidelines for MSW landfills located in states where an approved FCAA, §111(d), state plan is not in effect. The federal plan for MSW landfills

was adopted under 40 CFR Part 62, Subpart OOO.

The FCAA, §111, requires the EPA to develop performance standards and other requirements for categories of sources which the EPA finds "…causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." Under FCAA, §111, the EPA promulgates New Source Performance Standards (NSPS) and Emission Guidelines. NSPS regulations promulgated by the EPA apply to new stationary sources for which construction begins after the NSPS is proposed, or that are reconstructed or modified on or after a specified date. Emission Guidelines promulgated by the EPA are similar to NSPS, except that they apply to existing sources which were constructed on or before the date the NSPS is proposed, or that are reconstructed or modified before a specified date. Unlike the NSPS, emission guidelines are not enforceable until the EPA approves a state plan or adopts a federal plan for implementing and enforcing them.

States are required under the FCAA, §111(d), and 40 CFR Part 60, Subpart B, to adopt and submit to the EPA for approval a state plan to implement and enforce emission guidelines promulgated by the EPA. A state plan is required to be at least as protective as the corresponding emission guidelines. The FCAA also requires the EPA to develop, implement, and enforce a federal plan to implement the emission guidelines. The federal plan applies to affected units in states without an approved state plan.

In 1996, the EPA promulgated the original NSPS for MSW landfills under 40 CFR Part 60 Subpart WWW, and corresponding emission guidelines (the 1996 emission guidelines) under 40 CFR Part 60 Subpart Cc. TCEQ adopted rules under Chapter 113, Subchapter D, Division 1, and a corresponding §111(d) state plan, to implement the 1996 emission guidelines on October 7, 1998 (23 TexReg 10874). The EPA approved TCEQ's rules and state plan for existing MSW landfills on June 17, 1999 (64 FR 32427).

On August 29, 2016, the EPA adopted a new NSPS (40 CFR Part 60 Subpart XXX) and new emission guidelines (40 CFR Part 60 Subpart Cf) for MSW landfills, which essentially replaced the 1996 NSPS and emission guidelines. The 2016 emission guidelines lowered the emission threshold at which a landfill gas collection system is required from 50 megagrams (Mg) of non-methane organic compounds (NMOC) to 34 Mg of NMOC. The EPA's 2016 adoption of NSPS Subpart XXX and the 2016 emission guidelines under Subpart Cf also included changes to monitoring, recordkeeping, and reporting requirements, relative to the original 1996 requirements of Subparts WWW and Cc.

The original deadline for states to submit a state plan to implement the EPA's 2016 emission guidelines for MSW landfills was May 30, 2017. The TCEQ submitted a request for an extension to this deadline as provided under 40 CFR §60.27(a). In June 2017, TCEQ received a response from EPA Region 6 which stated that, as a result of the stay in effect at that time, "…a state plan submittal is not required at this time." The

stay expired August 29, 2017. On October 17, 2017, the EPA released a "Desk Statement" concerning the emission guidelines, which stated that "…we do not plan to prioritize the review of these state plans nor are we working to issue a Federal Plan for states that failed to submit a state plan. A number of states have expressed concern that their failure to submit a state plan could subject them to sanctions under the Clean Air Act. As the Agency has previously explained, states that fail to submit state plans are not subject to sanctions (e.g., loss of federal highway funds)." Given that the EPA's Desk Statement indicated that submittal of state plans was not a priority, and considering that the EPA had stated that a reconsideration rulemaking of the NSPS and emission guidelines was impending, TCEQ put state plan development on hiatus to monitor developments in the federal rules. On August 26, 2019, the EPA promulgated rules which established a new deadline of August 29, 2019, for states to submit a §111(d) state plan for the 2016 emission guidelines. However, the August 26, 2019, rules were vacated and remanded on April 5, 2021, effectively restoring the original Subpart B deadline of May 30, 2017. *(Environmental Defense Fund v. EPA*, No. 19-1222 (D.C. Circuit, 2021)).

On March 12, 2020, the EPA published a finding of failure to submit (85 FR 14474) that determined that 42 states and territories, including the State of Texas, had failed to submit the required §111(d) state plans to implement the 2016 emission guidelines for MSW landfills. On May 21, 2021, the EPA published a federal plan under 40 CFR Part 62, Subpart OOO, to implement the 2016 emission guidelines for MSW landfills in

states where an approved §111(d) state plan for the 2016 emission guidelines was not in effect. This federal plan became effective on June 21, 2021, and currently applies to MSW landfills in Texas and numerous other states without an approved state plan implementing the 2016 emission guidelines. The overall requirements of the federal plan are similar to the emission guidelines in Subpart Cf, but EPA included certain changes and features in the federal plan to simplify compliance obligations for landfills that are already controlling emissions under prior landfill regulations such as 40 CFR Part 60, Subpart WWW, or state rules adopted as part of a previously approved state plan for the 1996 emission guidelines. Once a state has obtained approval for a §111(d) state plan implementing the 2016 emission guidelines, most requirements of the federal plan no longer apply, as affected sources would instead comply with the requirements of the approved state plan. (Some of the compliance deadlines and increments of progress specified in the federal plan may still apply.)

In order to implement the EPA's 2016 emission guidelines, TCEQ must revise the corresponding Chapter 113 rules and state plan for existing MSW landfills. The proposed changes to Chapter 113 include amendments to §113.2069 in Subchapter D, Division 1, and several new sections under a proposed Division 6. The proposed rules would phase out the requirement to comply with the commission's existing Division 1 rules and phase in new rules corresponding to the EPA's 2016 emission guidelines. The proposed Division 6 rules also incorporate certain elements from the 40 CFR Part 62 Subpart OOO federal plan to facilitate ongoing compliance for MSW landfills in Texas

which have been required to comply with the federal plan since it became effective on June 21, 2021. The transition date for the applicability of the proposed Division 6 rules, and non-applicability of the existing Division 1 rules, would be the effective date of the EPA's approval of Texas' revisions to the §111(d) state plan. This is discussed in more detail in the section-by-section discussion for the proposed changes to §113.2069 and proposed new §113.2412.

Interested persons are encouraged to consult the EPA's 2016 emission guidelines under 40 CFR Part 60 Subpart Cf, and the federal plan under 40 CFR Part 62 Subpart OOO, for further information concerning the specific requirements that are the subject of this proposed rulemaking. In a concurrent action, the commission is proposing a state plan revision to implement and enforce the 2016 emission guidelines that are the subject of this proposed rulemaking.

Section by Section Discussion

§113.2069, Compliance Schedule and Transition to 2016 Landfill Emission Guidelines

The commission proposes an amendment to §113.2069. Proposed subsection (c) serves as a transition mechanism for owners or operators of existing MSW landfills to end compliance with the requirements of Chapter 113, Subchapter D, Division 1, and begin compliance with the requirements of Subchapter D, Division 6, based on the implementation date specified in §113.2412. The implementation date is a future date established when the EPA's approval of the revised Texas §111(d) state plan for the

2016 emission guidelines for landfills becomes effective. On and after this date, owners or operators of MSW landfills will no longer be required to comply with the Division 1 rules, but must instead comply with the applicable requirements of Division 6.

The Division 1 rule requirements were created to implement the 1996 emission guidelines contained in 40 CFR Part 60 Subpart Cc, which have been supplanted by the more stringent 2016 emission guidelines contained in 40 CFR Part 60 Subpart Cf. These Division 1 rules will no longer be needed once the EPA approves TCEQ's new Division 6 rules and the corresponding §111(d) state plan to implement the 2016 emission guidelines.

The commission also proposes to revise the title of §113.2069 to reflect that the section now contains provisions for the transition from the Chapter 113, Division 1, requirements to the new Division 6 rules implementing the 2016 emission guidelines.

Division 6: 2016 Emission Guidelines for Existing Municipal Solid Waste Landfills

§113.2400, Applicability

The commission proposes new §113.2400, which contains requirements establishing the applicability of the new Subchapter D, Division 6, rules which implement the 2016 emission guidelines. Proposed subsection (a) specifies that the Division 6 rules apply

to existing MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014, except for certain landfills exempted under the provisions of proposed §113.2406. The applicability of the proposed Division 6 requirements includes MSW landfills which were previously subject to the requirements of Chapter 113, Subchapter D, Division 1; the requirements of 40 CFR Part 60 Subpart WWW; or the requirements of the federal plan adopted by the EPA to implement the 2016 emission guidelines (40 CFR Part 62 Subpart OOO).

Proposed subsection (b) is intended to clarify that physical or operational changes made to an existing landfill solely for purposes of achieving compliance with the Division 6 rules will not cause the landfill to become subject to NSPS under 40 CFR Part 60, Subpart XXX. This proposed subsection corresponds to 40 CFR Part 60, Subpart Cf, §60.31f(b).

Proposed subsection (c) is intended to clarify that MSW landfills which are subject to 40 CFR Part 60 Subpart XXX are not subject to the requirements of proposed Division 6. 40 CFR Part 60 Subpart XXX applies to landfills which have been modified, constructed, or reconstructed after July 17, 2014, whereas the proposed Division 6 requirements apply to MSW landfills which have not been modified, constructed, or reconstructed after July 17, 2014.

Proposed subsection (d) establishes that the requirements of Division 6 do not apply

until the implementation date specified in proposed §113.2412(a). This implementation date corresponds to the future date when the EPA's approval of Texas' revised §111(d) state plan for existing MSW landfills becomes effective. Until that date, owners or operators of existing MSW landfills must continue complying with the Chapter 113, Division 1, requirements for existing MSW landfills. The EPA will publish a notice in the *Federal Register* once their review of the revised Texas §111(d) state plan has been completed.

§113.2402, Definitions

The commission proposes new §113.2402, which identifies the definitions that apply for the purposes of Subchapter D, Division 6. Proposed subsection (a) incorporates the definitions in 40 CFR §§60.2 and 60.41f by reference, as amended through May 16, 2007, and March 26, 2020, respectively. Proposed subsections (b) and (c) address certain exceptions or additional definitions relevant to the proposed Division 6 rules.

Proposed subsection (b) establishes that the term "Administrator" as used in 40 CFR Part 60, §§60.30f – 60.41f shall refer to the commission, except for the specific purpose of 40 CFR §60.35f(a)(5), in which case the term "Administrator" shall refer to the Administrator of the EPA. Under 40 CFR §60.30f(c)(1), approval of alternative methods to determine NMOC concentration or a site-specific methane generation rate constant cannot be delegated to States. The federal rule associated with approval of these alternative methods is 40 CFR §60.35f(a)(5), so for purposes of this specific rule

the EPA must remain "the Administrator."

Proposed subsection (c) establishes a definition of a "legacy controlled landfill" for use with the proposed Division 6 rules. The proposed definition parallels the definition of "legacy controlled landfill" used by the EPA in the 40 CFR Part 62, Subpart OOO federal plan, with minor changes to align this definition with the Chapter 113 landfill rules. In plain language, a legacy controlled landfill is a landfill which submitted a collection and control system design plan before May 21, 2021, to comply with previous standards for MSW landfills (either 40 CFR Part 60, Subpart WWW, or 30 TAC Chapter 113, Division 1). This includes not only landfills which have already completed construction and installation of the GCCS, but also those that have submitted design plans and are within the 30-month timeline to install and start-up a GCCS according to 40 CFR §60.752(b)(2)(ii) (if subject to NSPS Subpart WWW), or the corresponding requirements of Chapter 113, Division 1.

§113.2404, Standards for existing municipal solid waste landfills

The commission proposes new §113.2404, which contains the technical and administrative requirements for affected MSW landfills under Subchapter D, Division 6.

Proposed subsection (a) specifies the following requirements for MSW landfills subject to Division 6: default emission standards; operational standards; compliance, testing, and monitoring provisions; recordkeeping and reporting provisions; and other

technical and administrative requirements. Proposed subsection (a) refers directly to the provisions of 40 CFR Part 60, Subpart Cf, as amended, for the relevant requirement. The various sections of Subpart Cf have been amended at different times, so the most recent amendment date of each rule section is noted in the proposed rule text. Owners or operators of existing MSW landfills subject to Division 6 would be required to comply with the referenced requirements of Subpart Cf, as applicable, unless otherwise specified within the Division 6 rules. Certain landfills, such as legacy controlled landfills, are subject to different (non-Subpart Cf) requirements as addressed in proposed §113.2404(b), (c), and (d), and in §113.2410.

Proposed subsection (b) establishes that landfill gas collection and control systems that are approved by the commission and installed in compliance with 30 TAC §115.152 are deemed to satisfy certain technical requirements of these emission guidelines. Proposed subsection (b) is intended to reduce potentially duplicative requirements relating to the landfill gas collection and control system. The gas collection and control system requirements in 30 TAC §115.152 are based on the requirements in the proposed version of the original landfill NSPS under 40 CFR Part 60, Subpart WWW (56 FR 24468, May 30, 1991). Proposed subsection (b) is essentially carried over from existing 30 TAC §113.2061(b), but the text of the proposed rule has been rephrased to more clearly state which specific design requirements of 40 CFR Part 60, Subpart Cf are satisfied. A detailed explanation of the 30 TAC §115.152 requirements and how they compare to the corresponding requirements of 40 CFR Part

60, Subpart Cf is provided in Appendix C.5 of the proposed state plan document. The technical requirements of 30 TAC §115.152 are still substantially equivalent to the corresponding Subparts Cc and Cf requirements for landfill gas collection and control systems, so preserving this previously approved aspect of the Texas state plan is still appropriate and would not result in any backsliding of emission standards or control system requirements. Owners or operators of landfills meeting the Chapter 115 requirements must still comply with all other applicable requirements of Division 6 and the associated requirements of 40 CFR Part 60, Subpart Cf, except for 40 CFR §60.33f(b) and (c).

Proposed subsection (c) allows legacy controlled landfills or landfills in the closed landfill subcategory that have already completed initial or subsequent performance tests to comply with prior landfill regulations (such as 40 CFR Part 60 Subpart WWW, or the Chapter 113, Subchapter D, Division 1, rules) to use those performance test results to comply with the proposed Division 6 rules. This proposed subsection parallels similar language in Subpart Cf at 40 CFR §60.33f(c)(2)(iii), but adds legacy controlled landfills as eligible to use this provision. This is consistent with the approach EPA used for the federal plan at 40 CFR §62.16714(c)(2)(iii). The commission believes that expanding the provision to include legacy controlled landfills, as the EPA did with the federal plan, is reasonable and will not reduce the effectiveness of the emission guidelines as implemented by the proposed revisions to the Texas §111(d) state plan for landfills. This provision will minimize the need for costly re-testing when

appropriately recent test results are already available as a result of testing for compliance with prior landfill emission standards. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with the federal plan for purposes of this requirement should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (d) specifies that legacy controlled landfills shall comply with the requirements of 40 CFR §62.16714(b)(1), as amended through May 21, 2021, in lieu of the requirements of 40 CFR §60.33f(b)(1). This change in requirements (relative to the Subpart Cf requirements) is necessary and reasonable because in the 40 CFR Part 62, Subpart OOO federal plan, 40 CFR §62.16714(b)(1)(ii) addresses the 30-month control deadlines for both legacy controlled landfills and landfills in the closed landfill subcategory, where the corresponding Subpart Cf requirement of 40 CFR §60.33f(b)(1)(ii) only addresses landfills in the closed landfill subcategory. The approach the EPA used in the federal plan to address legacy controlled landfills is an improvement relative to the corresponding provisions of Subpart Cf. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with the federal plan for purposes of this requirement should reduce the potential for confusion or noncompliance while having no adverse effect on

emissions or the environment.

§113.2406, Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules

The commission proposes new §113.2406, which contains exemptions from the proposed Subchapter D, Division 6, requirements.

Proposed subsection (a) would exempt certain MSW landfills from the requirements of Division 6. This proposed exemption is carried over from the Division 1 landfill rules (30 TAC §113.2060(2)(A)) and the previously approved state plan, but has been rephrased as an explicit exemption rather than as a part of the definition of existing MSW landfill. The proposed rule exempts MSW landfills which have not accepted waste since October 9, 1993, and have no remaining waste disposal capacity. This proposed exemption modifies the applicability of the rules relative to the default federal requirements of 40 CFR Part 60, Subparts Cc and Cf, because it excludes MSW landfills which stopped accepting waste between November 8, 1987 (the date specified in the federal guidelines) and October 9, 1993. This proposed exemption is in accordance with 40 CFR §60.24(f) criteria, which allow a state rule to be less stringent for a particular designated class of facilities provided the state can show that factors exist which make application of a less stringent standard significantly more reasonable. When TCEQ adopted the Chapter 113, Division 1, rules for existing MSW landfills in 1998, the commission's analysis found that only one landfill (City of Killeen) which

closed within the relevant time period had an estimated emission rate above the control threshold of 50 Mg/yr, and that the Killeen landfill's emissions were projected to fall below the 50 Mg/yr control threshold by 2004. The commission also estimated that, using an alternate calculation method, the emissions from the landfill would be even lower, and would be "borderline" relative to the 50 Mg/yr threshold. The commission further determined that the cost of installing and operating a gas collection and control system for the landfill would be unreasonable based on the short period of time the facility was projected to be above the 50 Mg/yr threshold. (*See* 23 TexReg 10876, October 23, 1999.) In EPA's approval of the TCEQ's original state plan submittal, the EPA acknowledged that no designated landfills which closed between November 8, 1987, and October 9, 1993, would have estimated non-methane organic compounds (NMOC) emissions above the 50 megagram (Mg) control threshold, and that controlling these closed landfills would not result in a significant reduction in NMOC emissions compared to the cost to install gas collection systems. (*See* 64 FR 32428.) As many years have passed since the original Texas state plan was approved in 1999, none of the landfills which stopped accepting waste during the relevant 1987-1993 time period would have current NMOC emissions above the 50 Mg/year threshold. The previous state plan analysis and other supporting material relating to this proposed exemption is included in Appendix C.5 of the proposed state plan document.

Proposed subsection (b) allows an owner or operator of an MSW landfill to apply for

less stringent emission standards or longer compliance schedules, provided that the owner or operator demonstrates to the executive director and to the EPA that certain criteria are met. An exemption under subsection (b) may be requested based on unreasonable cost of control, the physical impossibility of installing control equipment, or other factors specific to the MSW landfill that make application of a less stringent standard or compliance deadline more reasonable. The proposed provisions of subsection (b) are carried over from functionally identical provisions in the EPA-approved Division 1 landfill rules at 30 TAC §113.2067. The proposed exemption is consistent with the federal requirements in 40 CFR §60.24(f) for obtaining a less stringent emission standard or compliance schedule.

Proposed subsection (c) contains language to clarify how an owner or operator of an affected MSW landfill would request an alternate emission standard or alternate compliance schedule. Requests should be submitted to the TCEQ Office of Air, Air Permits Division, and a copy should be provided to the EPA Region 6 office.

§113.2408, Federal Operating Permit requirements

The commission proposes new §113.2408 to address federal operating permit requirements for MSW landfills subject to the proposed Chapter 113, Subchapter D, Division 6, rules. Proposed §113.2408 requires that owners or operators of MSW landfills subject to Division 6 obtain a federal operating permit as required under 40 CFR §60.31f(c) and (d) and applicable requirements of 30 TAC Chapter 122, Federal

Operating Permits Program. Under 40 CFR §60.31f(c), a federal operating permit is not required for MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters, unless the landfill is otherwise subject to the requirement to obtain an operating permit under 40 CFR Part 70 or 71. For purposes of submitting a timely application for an operating permit, the owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the Texas landfill state plan under §111(d) of the CAA, and not otherwise subject to either Part 70 or 71, becomes subject to the requirements of 40 CFR §70.5(a)(1)(i) or §71.5(a)(1)(i), 90 days after the effective date of the §111(d) state plan approval, even if the design capacity report is submitted earlier.

As stated in 40 CFR §60.31f(d), when an MSW landfill subject to the proposed Division 6 rules is closed (as defined in Subpart Cf) the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not otherwise subject to the requirements of either Part 70 or 71 and either of the following conditions are met: (1) The landfill was never subject to the requirement to install and operate a gas collection and control system under 40 CFR §60.33f; or (2) the landfill meets the conditions for control system removal specified in 40 CFR §60.33f(f).

§113.2410, Initial and Annual Reporting, and Modified Reporting Requirements for Legacy Controlled Landfills

The commission proposes new §113.2410 to address certain initial reports and design plans which must be submitted to the executive director and to establish modified reporting requirements for legacy controlled landfills.

Proposed subsection (a) identifies the requirements for initial reports of design capacity, non-methane organic compound (NMOC) emissions, and initial gas collection and control system design plans. These proposed reporting requirements correspond to certain reports required by 40 CFR §60.38f and by the 40 CFR Part 62, Subpart OOO federal plan. The proposed subsection (a) rules do not require an owner or operator that has already submitted the specified reports to comply with the Subpart OOO federal plan to re-submit the reports to TCEQ unless specifically requested.

The commission is proposing an additional reporting requirement in 30 TAC §113.2410(a)(4) that would require owners or operators of existing MSW landfills to provide annual calculations of NMOC emissions. This proposed requirement is necessary to enable TCEQ to maintain current information on NMOC emissions from designated facilities covered by the proposed state plan and provide updated emissions inventory information to the EPA in compliance with federal annual progress report requirements of 40 CFR §60.25(e) and (f). The commission is proposing to exclude landfills with a capacity less than 2.5 million Mg by mass or 2.5 million cubic meters by volume from this annual NMOC inventory reporting requirement, as these small landfills are exempt from most substantive requirements

of 40 CFR Part 60, Subpart Cf and 40 CFR Part 62, Subpart OOO, and the NMOC calculation's results would not affect the applicable emission control requirements or monitoring requirements for these small sites. If a small site were to increase capacity above the 2.5 Mg or 2.5 million cubic meter threshold, the applicable control requirements and monitoring requirements for the site would be determined by the NMOC calculation methodology specified in 40 CFR Part 60, Subpart Cf.

For the annual NMOC emission inventory reports required by proposed §113.2410(a)(4), TCEQ is proposing that designated facilities use calculation methods specified in the EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42), as opposed to the calculation methods specified in 40 CFR Part 60, Subpart Cf. The proposed use of AP-42 calculation methods for purposes of the emissions inventory, rather than the methods in 40 CFR Part 60, Subpart Cf, is in accordance with federal guidance for the implementation of §111(d) state plans for MSW landfills (EPA-456R/98-009, *Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfills Emission Guidelines*). In this guidance, the EPA explains that the calculation methods (AP-42 vs. the emission guideline rule itself) are intentionally different, as the AP-42 methodology for emission inventories is designed to reflect typical or average landfill emissions, while the emission guideline rule methodology is purposefully conservative to protect human health, encompass a wide range of MSW landfills, and encourage the use of site-specific data.

At this time, the commission is not proposing a specific method that affected facilities would use to submit the annual NMOC emission inventory reports. The commission anticipates that an electronic method would facilitate more efficient collection and analysis of the data. The annual reporting might be implemented through modification of the commission's existing Annual Emissions Inventory Report (AEIR) system, the commission's existing e-permitting system, or through a separate portal or interface. The commission invites comment on possible methods for submittal of these annual NMOC inventory reports. Depending on the comments received and other factors, the commission may specify the method of reporting in the final rule, if adopted, or in guidance posted on the commission's website.

It should be noted that proposed 30 TAC §113.2410 does not comprehensively include all reporting requirements, and that owners or operators of MSW landfills subject to Subchapter D, Division 6, must also comply with any additional reporting requirements specified in 40 CFR §60.38f or elsewhere in 40 CFR Part 60, Subpart Cf, even if not specifically identified in §113.2410.

Proposed subsection (b) establishes certain exemptions from reporting requirements for legacy controlled landfills which have already submitted similar reports to comply with prior regulations that applied to MSW landfills. Specifically, the owner or operator of a legacy controlled landfill is not required to submit an initial design capacity report, initial or subsequent NMOC emission rate report, collection and control system

design plan, initial performance test report, or the initial annual report, if those report(s) were already provided under the requirements of 40 CFR Part 60, Subpart WWW, or the Chapter 113, Subchapter D, Division 1, rules. This proposed exemption corresponds to the approach EPA used for legacy controlled landfills in the 40 CFR Part 62, Subpart OOO, federal plan (specifically, 40 CFR §62.16711(h)). The commission has included this proposed provision because the approach the EPA used in the federal plan to address reporting for legacy controlled landfills is an improvement relative to the corresponding provisions of Subpart Cf. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with this aspect of the federal plan should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (c) establishes that owners or operators of legacy controlled landfills that have already submitted an annual report under 40 CFR Part 60, Subpart WWW, or Chapter 113, Subchapter D, Division 1, are required to submit the following annual report under Division 6 no later than one year after the most recent annual report was submitted, as specified in 40 CFR §62.16724(h). This is a clarification of the timing requirements for the annual reports of legacy controlled landfills transitioning from the prior-effective landfill regulations (40 CFR Part 60 Subpart WWW, or Chapter 113, Subchapter D, Division 1) to the new Division 6 regulations. This proposed subsection corresponds to the approach EPA used for legacy controlled landfills in the

40 CFR Part 62, Subpart OOO, federal plan (specifically, 40 CFR §62.16724(h)). Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113 and maintaining consistency with this aspect of the federal plan should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (d) requires owners or operators of legacy controlled landfills that demonstrate compliance with the emission control requirements of Division 6 using a treatment system (as defined in 40 CFR §60.41f) to comply with 40 CFR §62.16724(d)(7). This requires the preparation of a site-specific treatment system monitoring plan no later than May 23, 2022. Legacy controlled landfills affected by this rule will have been required to prepare this plan by May 23, 2022, to comply with the federal plan, even though the proposed Subchapter D, Division 6, rules were not yet effective or approved by the EPA at that time. This proposed requirement maintains consistency with this aspect of the federal plan and ensures that TCEQ will have continuing authority to enforce this requirement for any legacy controlled landfills which fail to prepare the required treatment system monitoring plan.

§113.2412, Implementation Date and Increments of Progress

The commission proposes new §113.2412 to establish an implementation date and required increments of progress for the proposed Subchapter D, Division 6, rules.

Proposed subsection (a) contains language that requires owners or operators of existing MSWLF to comply with the Division 6 requirements beginning on the effective date of the EPA's approval of Texas' revised §111(d) state plan implementing the 2016 emission guidelines for existing MSW landfills. Prior to this implementation date, owners or operators of existing MSW landfills shall continue to comply with the Chapter 113, Subchapter D, Division 1, rules; 40 CFR Part 60, Subpart WWW; and/or 40 CFR Part 62, Subpart OOO, as applicable. On and after the implementation date specified in this subsection, owners or operators of existing MSW landfills would no longer be required to comply with the Chapter 113, Subchapter D, Division 1, requirements or the federal requirements of Subparts WWW or OOO.

Proposed subsection (b) requires owners or operators of MSW landfills subject to Subchapter D, Division 6, to comply with all applicable requirements of progress specified in 40 CFR Part 62, Subpart OOO, Table 1, as amended through May 21, 2021. These increments of progress set deadlines for certain milestones, such as the submittal of the cover page of the final control plan; the awarding of contracts; the beginning of on-site construction; the completion of on-site construction; and final compliance. The commission is proposing to require the same increments of progress as the 40 CFR Part 62 federal plan because the federal plan is already in effect, and maintaining consistency with the Subpart OOO requirements will minimize confusion and the potential for noncompliance for owners or operators who have already started

the process of designing and installing controls to comply with the federal plan. In addition, 40 CFR §62.16712(c)(1), indicates that facilities subject to the federal plan will remain subject to the schedule in Table 1, even if a subsequently approved state or tribal plan contains a less stringent schedule. As stated in footnote 2 of Subpart OOO, Table 1, increments of progress that have already been completed under previous regulations do not have to be completed again.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. The federal plan adopted under 40 CFR Part 62, Subpart OOO, may have a fiscal impact to units of local government, but the proposed transfer of regulatory authority to the agency does not change that fiscal impact.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit of the proposed transfer anticipated would be a more accessible point of contact (TCEQ) for the public and the regulated community for the regulation of landfill emissions. Because this proposal designates the TCEQ as the implementing agency for federal emission guidelines for landfills, the public may also

utilize the Small Business and Local Government Assistance program (TexasEnviroHelp.org), which provides free technical assistance for the agency's regulatory programs.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. The federal plan adopted under 40 CFR Part 62, Subpart OOO, may have a fiscal impact to businesses or individuals, but the proposed transfer of regulatory authority to the agency does not change that fiscal impact.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does create a new regulation in Chapter 113, Subchapter D, Division 6. The proposed rulemaking phases out the requirement to comply with Chapter 113, Subchapter D, Division 1, but does not repeal it. The proposed rulemaking increases the number of individuals subject to landfill regulations under Chapter 113; however, those

individuals are regulated under the federal standards and other regulations by the agency. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Tex. Gov't Code Ann., §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A "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. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a "Major environmental rule," which are listed in Tex. Gov't Code Ann., §2001.0225. Tex. Gov't Code Ann., §2001.0225 applies only 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.

The specific intent of these proposed rules is to comply with federal emission guidelines for existing municipal solid waste landfills mandated by 42 United States Code (U.S.C.), §7411 (Federal Clean Air Act (FCAA), §111); and required to be included in operating permits by 42 U.S.C., §7661a (FCAA, §502) as specified elsewhere in this preamble. These sources are required to comply with the federal emission guidelines whether or not the commission adopts rules to implement the federal emission guidelines. The sources are required to comply with federal plans adopted by EPA if states do not adopt state plans. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards for: 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.

Under 42 U.S.C., §7661a (FCAA, §502), states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA; including emission guidelines, which are required under 42 U.S.C., §7411 (FCAA, §111). Similar to requirements in 42 U.S.C., §7410 (FCAA, §110) regarding the requirement to adopt

and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 U.S.C., §7661a (FCAA, §502), and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Additionally, states are required by 42 U.S.C., §7411 (FCAA, §111), to adopt and implement plans to implement and enforce emission guidelines promulgated by the EPA.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. Such rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the

commission routinely proposes and adopts rules designed to incorporate or satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission concludes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature.

While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and in fact creates no additional impacts since the proposed rules do not modify the federal emission guidelines in any substantive aspect, but merely provide for minor administrative changes as described elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in

effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. -- Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Mosley v. Tex. Health & Human Services Comm'n*, 593 S.W.3d 250 (Tex. 2019); *Tex. Ass'n of Appraisal Districts, Inc. v. Hart*, 382 S.W.3d 587 (Tex. App.--Austin 2012, no pet.); *Tex. Dep't of Protective & Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170 (Tex. 2004).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance," Tex. Gov't Code Ann., §2001.035. The legislature specifically identified Tex. Gov't Code Ann., §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Tex. Gov't Code Ann., §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble.

The emission guidelines being proposed for incorporation are federal standards that are required by 42 U.S.C., §7411 (FCAA, §111), and are required to be included in

permits under 42 U.S.C., §7661a (FCAA, §502). They are proposed with only minor administrative changes and will not exceed any standard set by state or federal law. These proposed rules will not implement an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA will delegate implementation and enforcement of the emission guidelines to Texas if this rulemaking is adopted and EPA approves the rules as part of the State Plan required by 42 U.S.C. §7411(d) (FCAA, §111(d)). The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Tex. Gov't Code Ann., §2001.0225(b).

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 evaluated the proposed rulemaking and performed an assessment of whether the requirements of Tex. Gov't Code Ann., Chapter 2007, are applicable. Under Tex. Gov't Code Ann., §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part, or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action as required by Tex. Gov't Code Ann., §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to propose rules to implement the federal emission guidelines for municipal solid waste landfills, mandated by 42 U.S.C., §7411 (FCAA, §111), and required to be included in operating permits by 42 U.S.C., §7661a (FCAA, §502), to facilitate implementation and

enforcement of the emission guidelines by the state. States are also required to submit state plans for the implementation and enforcement of the emission guidelines to EPA for its review and approval.

Tex. Gov't Code Ann., §2007.003(b)(4), provides that the requirements of Chapter 2007 of the Texas Government Code do not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law. In addition, the commission's assessment indicates that Texas Government Code Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. For the reasons stated above, this action is exempt under Tex. Gov't Code Ann. §2007.003(b)(13).

Any reasonable alternative to the proposed rulemaking would be excluded from a takings analysis required under Chapter 2007 of the Texas Government Code for the same reasons as elaborated in this analysis. As discussed in this preamble, states are not free to ignore the federal requirements to implement and enforce the federal emission guidelines for municipal solid waste landfills, including the requirement to submit state plans for the implementation and enforcement of the emission guidelines to EPA for its review and approval; nor are they free to ignore the federal requirement to include the emission guideline requirements in state issued federal operating

permits. If the state does not adopt the proposed rules, the federal rules will continue to apply, and sources must comply with a federal plan that implements those rules. The proposed rules present as narrowly tailored an approach to complying with the federal mandate as possible without unnecessary incursion into possible private real property interests. Consequently, the proposed rules will not create any additional burden on private real property. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007; nor does the Texas Government Code, Chapter 2007, apply to the proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and

policies.

The CMP goal applicable to this proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed amendments to Chapter 113 would update TCEQ rules to implement federal emission guidelines for existing landfills under 40 CFR Part 60, Subpart Cf. These guidelines require certain landfills to install and operate gas collection systems to capture and control emissions. The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking also complies with applicable requirements of 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities.

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

Sites which would be required to obtain a federal operating permit under proposed §113.2408 are already required to obtain a federal operating permit under existing federal regulations. The proposed Subchapter D, Division 6, rules would be applicable

requirements under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program and these rules must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 113 requirements.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on February 23, 2023, 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.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, February 21, 2023. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, February 22,

2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzRjOGJmNTktODQxNy00MWY2LWE1MTAtODk0ZTY4MTllYTg4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

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 or 1-800-RELAY-TX (TDD). The hearing will be conducted in English. Language interpretation services may be requested. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted through the TCEQ Public Comments system at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to

comments being submitted electronically. All comments should reference Rule Project Number 2017-014-113-AI. The comment period closes on February 28, 2023. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Michael Wilhoit, Air Permits Division, (512) 239-1222.

SUBCHAPTER D: DESIGNATED FACILITIES AND POLLUTANTS

DIVISION 1: MUNICIPAL SOLID WASTE LANDFILLS

§113.2069

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, which 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, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private

property to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; THSC, §382.022, concerning Investigations, which authorizes the commission to make or require the making of investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The proposed amended section implements TWC, §§5.102-5.103, and 5.105; as well as THSC, §§382.002, 382.011 - 382.017, 382.021-382.022, and 382.051.

§113.2069. Compliance Schedule and Transition to 2016 Landfill Emission Guidelines.

(a) An owner or operator subject to the requirements of this division shall submit the initial design capacity report in accordance with 40 Code of Federal Regulations (CFR) Part 60, §60.757(a)(2) to the executive director within 90 days from

the date the commission publishes notification in the [Texas Register] *Texas Register* that the United States Environmental Protection Agency (EPA) has approved this rule.

(b) An owner or operator of a municipal solid waste landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound emission rate report in accordance with 40 CFR §60.757(b)(2) to the executive director within 90 days from the date the commission publishes notification in the [Texas Register] *Texas Register* that EPA has approved this rule.

(c) On and after the implementation date specified in §113.2412 of this title, owners or operators of landfills subject to the requirements of this division shall instead comply with the applicable requirements of Division 6 of this subchapter.

SUBCHAPTER D: DESIGNATED FACILITIES AND POLLUTANTS

DIVISION 6: 2016 EMISSION GUIDELINES FOR EXISTING MUNICIPAL SOLID WASTE LANDFILLS

§§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, 113.2412

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which 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, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.015, concerning Power to Enter Property, which

authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; THSC, §382.022, concerning Investigations, which authorizes the commission to make or require the making of investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also proposed under TWC, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; TWC, §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and TWC, §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The proposed new sections implement TWC, §§5.102 - 5.103, and 5.105; as well as THSC, §§382.002, 382.011 - 382.017, 382.021 - 382.022 and 382.051.

§113.2400. Applicability.

(a) The requirements of this division apply to existing municipal solid waste landfills (MSWLFs) for which construction, reconstruction, or modification was commenced on or before July 17, 2014, except for landfills exempted under §113.2406 of this title (relating to Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules).

(b) Physical or operational changes made to an existing MSWLF solely to comply with these emission guidelines are not considered a modification or reconstruction and would not subject an existing MSWLF to the requirements of a standard of performance for new MSWLFs (such as 40 Code of Federal Regulations (CFR) Part 60, Subpart XXX).

(c) The requirements of this division do not apply to landfills which are subject to 40 CFR Part 60, Subpart XXX (Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification after July 17, 2014).

(d) The requirements of this division do not apply until the implementation date specified in §113.2412 of this title (relating to Implementation Date and Increments of Progress).

§113.2402. Definitions.

(a) Except as provided in subsections (b) and (c) of this section, the terms used in this division are defined in 40 CFR §60.2 as amended through May 16, 2007, and 40 CFR §60.41f as amended through March 26, 2020, which are incorporated by reference.

(b) The term "Administrator" wherever it appears in 40 CFR Part 60, §§60.30f - 60.41f, shall refer to the commission, except for purposes of 40 CFR §60.35f(a)(5). For purposes of 40 CFR §60.35f(a)(5), the term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(c) Legacy controlled landfill--any municipal solid waste landfill subject to this division that submitted a gas collection and control system (GCCS) design plan prior to May 21, 2021, in compliance with 40 CFR §60.752(b)(2)(i) or 30 TAC §113.2061 of this title (relating to Standards for Air Emissions), depending on which regulation was applicable to the landfill. This definition applies to those landfills that completed construction and began operations of the GCCS and those that are within the 30-month timeline for installation and start-up of a GCCS according to 40 CFR §60.752(b)(2)(ii), or the requirements of 30 TAC Chapter 113, Subchapter D, Division 1.

§113.2404. Standards for Existing Municipal Solid Waste Landfills.

(a) Except as specifically provided otherwise in §§113.2400 - 113,2412 of this title, an owner or operator of an existing municipal solid waste landfill (MSWLF) subject to the requirements of this division shall comply with the applicable provisions specified in 40 CFR Part 60, Subpart Cf, as follows:

(1) 40 CFR §60.31f, relating to Designated Facilities, as amended through August 29, 2016;

(2) 40 CFR §60.32f, relating to Compliance Times, as amended through August 29, 2016;

(3) 40 CFR §60.33f, relating to Emission Guidelines for municipal solid waste landfill emissions, as amended through August 29, 2016;

(4) 40 CFR §60.34f, relating to Operational Standards for collection and control systems, as amended through March 26, 2020;

(5) 40 CFR §60.35f, relating to Test methods and procedures, as amended through August 29, 2016;

(6) 40 CFR §60.36f, relating to Compliance provisions, as amended through March 26, 2020;

(7) 40 CFR §60.37f, relating to Monitoring of operations, as amended through March 26, 2020;

(8) 40 CFR §60.38f, relating to Reporting guidelines, as amended through March 26, 2020;

(9) 40 CFR §60.39f, relating to Recordkeeping guidelines, as amended through March 26, 2020; and

(10) 40 CFR §60.40f, relating to Specifications for active collection systems, as amended through August 29, 2016.

(b) Gas collection and control systems approved by the commission and installed at an MSWLF in compliance with §115.152 of this title (relating to Control Requirements), satisfy the gas collection and control system design requirements of 40 CFR §60.33f(b) and (c) for purposes of this section.

(c) Legacy controlled landfills or landfills in the closed landfill subcategory that have already installed control systems and completed initial or subsequent

performance tests may comply with this division using the initial or most recent performance test conducted to comply with 40 CFR Part 60, Subpart WWW, or 30 TAC Chapter 113, Subchapter D, Division 1 of this title.

(d) Legacy controlled landfills shall comply with the requirements of 40 CFR §62.16714(b)(1), as amended through May 21, 2021, in lieu of the requirements of 40 CFR §60.33f(b)(1).

§113.2406. Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules.

(a) A municipal solid waste landfill (MSWLF) meeting the following conditions is not subject to the requirements of this division:

(1) The MSWLF has not accepted waste at any time since October 9, 1993; and

(2) The MSWLF does not have additional design capacity available for future waste deposition, regardless of whether the MSWLF is currently open or closed.

(b) A MSWLF may apply for less stringent emission standards or longer compliance schedules than those otherwise required by this division, provided that the owner or operator demonstrates to the executive director and EPA, the following:

(1) unreasonable cost of control resulting from MSWLF age, location, or basic MSWLF design;

(2) physical impossibility of installing necessary control equipment; or

(3) other factors specific to the MSWLF that make application of a less stringent standard or final compliance time significantly more reasonable.

(c) Owners or operators requesting alternate emission standards or compliance schedules under subsection (b) of this section shall submit requests and supporting documentation to the TCEQ Office of Air, Air Permits Division and provide a copy to the United States Environmental Protection Agency, Region 6.

§113.2408. Federal Operating PermitRequirements.

The owner or operator of an existing municipal solid waste landfill subject to the requirements of this division shall comply with the applicable requirements of 40 CFR §60.31f(c) and (d), and 30 TAC Chapter 122, Federal Operating Permits Program, relating to the requirement to obtain and maintain a federal operating permit.

§113.2410. Initial and Annual Reporting, and Modified Reporting Requirements for

Legacy Controlled Landfills.

(a) An owner or operator of a municipal solid waste landfill (MSWLF) subject to the requirements of this division shall comply with the following reporting requirements, except as otherwise specified for legacy controlled landfills in subsections (b) - (d) of this section.

(1) The owner or operator shall submit the initial design capacity report in accordance with 40 CFR Part 60, §60.38f(a), to the executive director within 90 days from the implementation date specified in §113.2412 of this title (relating to Implementation Date and Increments of Progress). Owners or operators that have already submitted an initial design capacity report to EPA to satisfy 40 CFR §62.16724 are not required to submit the report again, unless specifically requested by the executive director.

(2) An owner or operator of anMSWLF with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound (NMOC) emission rate report in accordance with 40 CFR §60.38f(c) to the executive director within 90 days from the implementation date specified in §113.2412 of this title. Owners or operators that have already submitted an initial NMOC report to

EPA to satisfy 40 CFR §62.16724 are not required to submit the report again, unless specifically requested by the executive director.

(3) An owner or operator of anMSWLF subject to the requirements of this division shall comply with applicable requirements of 40 CFR §60.38f(d) and (e) concerning the submittal of a site-specific gas collection and control system design plan to the executive director. Owners or operators that have already submitted a design plan to EPA to satisfy 40 CFR §62.16724 are not required to submit the design plan again, unless specifically requested by the executive director.

(4) Owners or operators of an MSWLF subject to the requirements of this division shall provide to the executive director an annual emission inventory report of landfill-generated non-methane organic compound (NMOC) emissions. This annual NMOC emission inventory report is not required for an MSWLF with a capacity less than 2.5 million megagramsby mass or 2.5 million cubic meters by volume. This annual NMOC emission inventory report is separate and distinct from any initial or annual NMOC emission rate reports required under 40 CFR §60.38f.

(A) Annual NMOC emission inventory reports required under this paragraph shall include the landfill's uncontrolled and (if equipped with a control system) controlled NMOC emissions in megagrams per year (Mg/yr) for the preceding calendar year. For purposes of these annual emission inventory reports,

NMOC emissions will be calculated using the procedures specified in the U.S. EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42). Note that the use of AP-42 calculations for these annual NMOC emission inventory reports is different from the calculation method that is required for NMOC emission rate reports prepared for purposes of 40 CFR Part 60, Subpart Cf or 40 CFR Part 62, Subpart OOO.

(B) Annual NMOC emission inventory reports required under this paragraph shall be submitted no later than March 31 of each year following the calendar reporting year. These reports shall be submitted using the method designated by the executive director.

(5) This section only addresses certain specific reports for MSWLFs which are subject to this division. Owners or operators of an MSWLF subject to this division shall also comply with any additional reporting requirements specified in 40 CFR §60.38f or elsewhere in 40 CFR Part 60, Subpart Cf, except as otherwise specified for legacy controlled landfills in subsections (b) - (d) of this section.

(b) Owners or operators of legacy controlled landfills are not required to submit the following reports, provided these reports were submitted under 40 CFR Part 60, Subpart WWW, or Chapter 113, §113.2061 (relating to Standard for Air Emissions), on or before June 21, 2021:

(1) Initial design capacity report specified in 40 CFR §60.38f(a);

(2) Initial or subsequent NMOC emission rate report specified in 40 CFR §60.38f(c);

(3) Collection and control system design plan specified in 40 CFR §60.38f(d);

(4) Initial annual report specified in 40 CFR §60.38f(h); and

(5) Initial performance test report specified in 40 CFR §60.38(f)(i).

(c) Owners or operators of legacy controlled landfills that have already submitted an annual report under 40 CFR Part 60, Subpart WWW, or Chapter 113, Division 1, of this title, are required to submit the annual report under this divisionno later than one year after the most recent annual report was submitted.

(d) Owners or operators of legacy controlled landfills that demonstrate compliance with the emission control requirements of this division using a treatment system as defined in 40 CFR §60.41f must comply with 40 CFR §62.16724(d)(7) as amended through May 21, 2021.

§113.2412. Implementation Date and Increments of Progress.

(a) Upon the effective date of United States Environmental Protection Agency (EPA) approval of the Texas §111(d) state plan for the implementation of 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills), owners or operators of municipal solid waste landfills (MSWLFs) covered by the applicability provisions of §113.2400(a) of this title (relating to Applicability), must comply with the requirements of this division.

(b) Owners or operators of an MSWLF subject to this division shall comply with all applicable increments of progress specified in 40 CFR Part 62, Subpart OOO, Table 1, as amended through May 21, 2021.