

## **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<sup>1</sup>**

**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.

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<sup>1</sup> 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 Appendix B.1: Texas Health & Safety Code, Chapter 382

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 NO<sub>x</sub> 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 NO<sub>x</sub> 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 NO<sub>x</sub> 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 NO<sub>x</sub> 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.

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.

(1) 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 COMMERCIALY 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

Appendix B.1: Texas Health & Safety Code, Chapter 382

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<sup>1</sup>**

**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;

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<sup>1</sup> 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<sup>1</sup>**

**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:*

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<sup>1</sup> 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).<sup>1</sup> 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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<sup>1</sup>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.