HEALTH AND SAFETY CODE

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

SUBTITLE C. AIR QUALITY

CHAPTER 382. CLEAN AIR ACT

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.139, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0893, eff. April 2, 2015.

Sec. 382.003. DEFINITIONS. In this chapter:

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

(1-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 APPLICATION PENDING. (a) To the extent permissible under federal law and notwithstanding Section 382.0518, a person who submits an application for a permit for a modification of or a lesser change to an existing facility under this subtitle may, at the person's own risk, begin construction related to the application after the application is submitted and before the commission has issued the permit.

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

Added by Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 1, eff. September 1, 2005.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

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

(1) administer this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

(1) capable of using natural gas; and

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

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

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

(2) fuel oil used during:

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

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

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

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

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

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

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

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

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

(2) show proper credentials.

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

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

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

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

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

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

(b) A member, employee, or agent of the commission may examine during regular business hours any records or memoranda relating to the operation of any air pollution or emission control equipment or facility, or relating to emission of air contaminants. This subsection does not authorize the examination of records or memoranda relating to the operation of equipment or a facility on property designed for and used exclusively as a private residence housing not more than three families.

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

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

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

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

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

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

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

(c) When considering the addition or removal of an area to or from the air pollutant watch list, the commission shall provide

the monitoring data related to the area to the state senator and representative who represent the area.

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

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

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

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

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

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

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

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

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

proposed rules requires use of those procedures.

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

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

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

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

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

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

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

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

Sec. 382.0171. ALTERNATIVE FUELS AND SELECT-USE TECHNOLOGIES. (a) In adopting rules, the commission shall encourage and may allow the use of natural gas and other alternative fuels, as well as select-use technologies, that will reduce emissions.

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

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

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

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

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

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

(1) authorize the use of emissions reductions achieved outside the United States to satisfy otherwise applicable emissions reduction requirements if the commission finds that the emissions reductions achieved outside the United States are surplus to requirements imposed by applicable law and are appropriately quantifiable and enforceable; and

(2) allow the use of reductions in emissions of one air

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

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

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

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

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.02, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 960, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 820 (S.B. 784), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 1, eff. September 1, 2005.

Sec. 382.0173. ADOPTION OF RULES REGARDING CERTAIN STATE IMPLEMENTATION PLAN REQUIREMENTS AND STANDARDS OF PERFORMANCE FOR CERTAIN SOURCES. (a) The commission shall adopt rules to comply with Sections 110(a)(2)(D) and 111(d) of the federal Clean Air Act (42 U.S.C. Sections 7410 and 7411). In adopting the rules, at a minimum the commission shall adopt and incorporate by reference 40 C.F.R. Subparts AA through II and Subparts AAA through III of Part 96 and 40 C.F.R. Subpart HHHH of Part 60. The commission shall adopt a state implementation plan in accordance with the rules and submit the plan to the United States Environmental Protection Agency for approval according to the schedules adopted by that agency.

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

(c) Additional requirements regarding NOx allocations:

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

(2) Nitrogen oxide allowances shall be established for the 2009-2014 control periods for units commencing operation before January 1, 2001, using the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

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

90 percent;

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

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

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

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

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

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

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

(B) for units commencing operation on or after January 1, 2001, in accordance with the formulas set forth by USEPA in 40 C.F.R. 96.142 with any corrections to this section that may be issued by USEPA prior to the allocation date.

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

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

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

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

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

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

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

Added by Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 56 (S.B. 1672), Sec. 1, eff. May 10, 2007.

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

contaminants resulting from that burning.

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

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

(2) is burned:

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

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

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

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

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

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

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

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

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

(C) located outside of a municipality; and

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

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

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

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

(e) A fire department employee who will supervise a burning under Subsection (d)(1)(D) shall notify the commission of each

burning supervised by the employee, and the commission shall provide the employee with information on practical alternatives to burning.

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

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 419 (S.B. 1710), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 904 (H.B. 39), Sec. 1, eff. September 1, 2005.

Reenacted and amended by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 8.001, eff. September 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 145 (H.B. 1619), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 478 (H.B. 2386), Sec. 1, eff. September 1, 2017.

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

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

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

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

Amended by:

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

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

(b) The commission may not prohibit or limit the idling of any motor vehicle with a gross vehicle weight rating greater than 8,500 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the United States Environmental

Protection Agency or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling.

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

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

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

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

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

Sec. 382.020. CONTROL OF EMISSIONS FROM FACILITIES THAT HANDLE CERTAIN AGRICULTURAL PRODUCTS. (a) The commission, when it determines that the control of air pollution is necessary, shall adopt rules concerning the control of emissions of particulate matter from plants at which grain, seed, legumes, or vegetable fibers are handled, loaded, unloaded, dried, manufactured, or processed according to a formula derived from the process weight of the materials entering the process.

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

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

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

efficiency and measurement.

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

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

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

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

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

(1) acid deposition;

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

(3) climatic changes, including global warming.

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

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

(1) ambient air sampling;

(2) stack-sampling;

(3) visual observation; or

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

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

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

(2) the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the commission. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

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

(a) In this section:

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

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

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

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

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

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

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

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

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

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

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

(B) the location of the reporting regulated entity;

(C) the date and time the emissions began;

(D) the duration of the emissions;

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

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

(G) the cause of the emissions; and

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

(c) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at concentrations of less than 0.02

percent by weight that is equipped with a continuous emission monitoring system that completes a minimum of one cycle per operation (sampling, analyzing, and data recording) for each successive 15-minute interval who is required to submit excess emission reports by other state or federal regulations, shall, by commission rule, be allowed to submit information from that monitoring system to meet the requirements under Subsection (b)(3) so long as the notice submitted under Subsection (b)(2) contains the information required under Subsection (b)(3). Such excess emission reports shall satisfy the recordkeeping requirements of Subsection (b)(1) so long as the information in such reports meets commission requirements. This subsection does not require the commission to revise the reportable quantity for boilers and combustion turbines.

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

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

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

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

(f) An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year

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

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

(h) The commission may allow operators of pipelines, gathering lines, and flowlines to treat all such facilities under common ownership or control in a particular county as a single regulated entity for the purpose of assessment and regulation of emissions events.

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

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 2, eff. September 1, 2011.

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

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

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

(2) the cause of the emissions event;

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

(4) the duration of the emissions event;

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

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

(c) The commission shall require a facility to take action to reduce emissions from excessive emissions events. Consistent with commission rules, a facility required to take action under this subsection must either file a corrective action plan or file a letter of intent to obtain authorization for emissions from the excessive emissions events, provided that the emissions are sufficiently frequent, quantifiable, and predictable. If the intended authorization is a permit, a permit application shall be filed within 120 days of the filing of the letter of intent. If the intended authorization is a permit by rule or standard exemption, the authorization must be obtained within 120 days of the filing of the letter of intent. If the commission denies the requested authorization, within 45 days of receiving notice of the commission's denial, the facility shall file a corrective action plan to reduce emissions from the excessive emissions events.

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

inadequate to meet the goal of preventing or minimizing emissions and emissions events. The implementation schedule shall be enforceable by the commission.

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

(f) The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1)-(6).

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

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

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

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's compliance history.
Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.

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

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

(2) as requested or directed by the commission.

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

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

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

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

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

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

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

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

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

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

from the source.

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

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

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

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

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

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

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

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

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

(b) This section does not limit or restrict the authority or

powers granted to the commission under Sections 382.018 and 382.021.

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

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

(1) is designed primarily for residential use; and

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

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

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

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

Added by Acts 2005, 79th Leg., Ch. 59 (H.B. 965), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 1, eff. May 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 2, eff. May 8, 2007.

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

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

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

Sec. 382.029. HEARING POWERS. The commission may call and hold hearings, administer oaths, receive evidence at a hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to a hearing, and make findings of fact and decisions relating to administering this chapter or the rules, orders, or other actions of the commission. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

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

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

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

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

date.

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

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

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

(1) one or more commission members;

(2) the executive director; or

(3) one or more commission employees.

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

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

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

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

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

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

Sec. 382.031. NOTICE OF HEARINGS. (a) Notice of a hearing under this chapter shall be published at least once in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest

to the location or proposed location of the facility. The notice must be published not less than 30 days before the date set for the hearing.

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

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

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

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

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

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

(b) The petition must be filed within 30 days after the date

of the commission's or executive director's action or, in the case of a ruling, order, or decision, within 30 days after the effective date of the ruling, order, or decision. If 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), 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.

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, contract labor, and other costs.

(e) The commission may authorize the use of overtime or contract labor to process expedited applications. The overtime 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,

or contract labor used to implement this section.

(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.

Sec. 382.0516. NOTICE TO STATE SENATOR, STATE REPRESENTATIVE, AND CERTAIN LOCAL OFFICIALS. (a) On receiving an application for a construction permit or an amendment to a construction permit, a special permit, or an operating permit for a facility that may emit air contaminants, the commission shall send notice of the application to the state senator and representative who represent the area in which the facility is or will be located.

(b) In addition to the notice required by Subsection (a), for an application that relates to an existing or proposed concrete batch plant, on receiving an application for a construction permit, an amendment to a construction permit, an operating permit, or an authorization to use a standard permit, the commission shall send notice of the application:

(1) to the county judge of the county in which the facility is or will be located; and

(2) if the facility is or will be located in a municipality or the extraterritorial jurisdiction of a municipality, to the presiding officer of the municipality's governing body.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 382.0511 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.07, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1327, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 5.01, eff. September 1, 2007.

Sec. 382.0517. DETERMINATION OF ADMINISTRATIVE COMPLETION OF APPLICATION. The commission shall determine when an application filed under Section 382.054 or Section 382.0518 is administratively complete. On determination, the commission by mail shall notify the applicant and any interested party who has requested notification. If the number of interested parties who have requested notification makes it impracticable for the commission to notify those parties by mail, the commission shall notify those parties by publication using the method prescribed by Section 382.031(a).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0518. PRECONSTRUCTION PERMIT. (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission.

(b) The commission shall grant within a reasonable time a permit or permit amendment to construct or modify a facility if, from the information available to the commission, including information presented at any hearing held under Section 382.056(k), the commission finds:

(1) the proposed facility for which a permit, permit amendment, or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's compliance history in accordance with the method for using compliance history developed by the commission under Section 5.754, Water Code. In considering an applicant's compliance history under this

subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(d) If the commission finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the commission may not grant the permit, permit amendment, or special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(e) If the person applying for a permit, permit amendment, or special permit makes the alterations in the person's plans and specifications to meet the commission's specific objections, the commission shall grant the permit, permit amendment, or special permit. If the person fails or refuses to alter the plans and specifications, the commission may not grant the permit, permit amendment, or special permit. The commission may refuse to accept a person's new application until the commission's objections to the plans previously submitted by that person are satisfied.

(f) A person may operate a facility or source under a permit issued by the commission under this section if:

(1) the facility or source is not required to obtain a federal operating permit under Section 382.054; and

(2) within the time and in the manner prescribed by commission rule, the permit holder demonstrates that:

(A) the facility complies with all terms of the existing preconstruction permit; and

(B) operation of the facility or source will not violate the intent of this chapter or standards adopted by the commission.

(g) Subsections (a)-(d) do not apply to a person who has executed a contract or has begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971, and who has complied with the requirements of Section 382.060, as it existed on November 30, 1991. To qualify

for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.

(h) Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria defined by commission rule and will not change in character. For a facility affected by Section 382.020, Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the permit amendment is not significant and will not change in character. In this subsection, a finding that a total emissions increase is not significant must be made as provided under Section 382.05196 for a finding under that section.

(i) In considering a permit amendment under this section the commission shall consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.162, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 3, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.25, eff. September 1, 2011.

Sec. 382.05181. PERMIT REQUIRED. (a) Any facility affected by Section 382.0518(g) that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003, if the facility is located in the East Texas region; or

(2) September 1, 2004, if the facility is located in the West Texas region.

(b) Any facility affected by Section 382.0518(g) that has obtained a permit under this chapter, other than a permit under Section 382.054, and has not fully complied with the conditions of the permit pertaining to the installation of emissions controls or reductions in emissions of air contaminants, may not emit air contaminants on or after:

(1) March 1, 2007, if the facility is located in the East Texas region; or

(2) March 1, 2008, if the facility is located in the West Texas region.

(c) The East Texas region:

(1) contains all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio; and

(2) includes Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

(d) The West Texas region includes all counties not contained in the East Texas region.

(e) The commission promptly shall review each application for a permit under this chapter for a facility affected by Section 382.0518(g). If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the commission shall dismiss the application.

(f) The commission shall take final action on an application for a permit under this chapter for a facility affected by Section 382.0518(g) before the first anniversary of the date on which the commission receives an administratively complete application.

(g) An owner or operator of a facility affected by Section

382.0518(g) that does not obtain a permit within the 12-month period may petition the commission for an extension of the time period for compliance specified by Subsection (b). The commission may grant not more than one extension for a facility, for an additional period not to exceed 12 months, if the commission finds good cause for the extension.

(h) A permit application under this chapter for a facility affected by Section 382.0518(g) is subject to the notice and hearing requirements as provided by Section 382.05191.

(i) This section does not apply to a facility eligible for a permit under Section 382.05184.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

(1) the date the facility intends to cease operating;

(2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility affected by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that the facility will use a control method at least as beneficial as that described by Section 382.003(9)(E)(ii), considering the age and the remaining useful life of the facility.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site affected by Section 382.0518(g) and facilities permitted under Section

382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification, and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a) Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 5.135, Water Code, and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(b) Facilities affected by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after March 1, 2008.

(c) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) A permit application under this section is not subject to notice and hearing requirements and is not subject to Chapter 2001, Government Code.

(g) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(b), eff. September 1, 2005.

Sec. 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural-gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under Section 39.264(d), Utilities Code.

(b) A coal-fired electric generating facility that is required to obtain a permit under Section 39.264, Utilities Code:

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulphur dioxide, and, as provided by commission rules, for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) is not considered permitted for criteria pollutants not described by Subsection (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Upon request by the applicant, the commission shall include a permit application under this subsection with the applicant's

pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, is:

(1) a generator that does not generate electric energy for compensation and is used not more than 10 percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons of any air contaminant annually.

(e) Emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission may not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For the purposes of this section, a natural-gas-fired electric generating facility includes a facility that was designed to burn either natural gas or fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05186. PIPELINE FACILITIES PERMITS. (a) This section applies only to reciprocating internal combustion engines that are part of processing, treating, compression, or pumping facilities affected by Section 382.0518(g) connected to or part of

a gathering or transmission pipeline. Pipeline facilities affected by Section 382.0518(g) other than reciprocating internal combustion engines may apply for an existing facility permit or other applicable permit under this chapter other than a pipeline facilities permit.

(b) The commission by rule shall:

(1) provide for the issuance of a single permit for all reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline;

(2) provide for a means for mandatory emissions reductions for facilities permitted under this section to be achieved:

(A) at one source; or

(B) by averaging reductions among more than one reciprocating internal combustion facility connected to or part of a gathering or transmission pipeline; and

(3) allow an owner or operator to apply for separate permits under this section for discrete and separate reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline.

(c) If the mandatory emissions reductions under this section are to be achieved by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline, the average may not include emissions reductions achieved in order to comply with other state or federal law.

(d) If the mandatory emissions reductions under this section are to be achieved at one source, the reduction may include emissions reductions achieved since January 1, 2001, in order to comply with other state or federal law.

(e) The commission shall grant a permit under this section for a facility or facilities located in the East Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require a 50 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require a 50 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of

grams per brake horsepower-hour.

(f) The commission shall grant a permit under this section for facilities located in the West Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require up to a 20 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require up to a 20 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(i) The commission may adopt rules as necessary to implement and administer this section.

(j) A reciprocating internal combustion engine that is subject to this section and to a mass emissions cap as established by commission rule is considered permitted under this section with respect to all air contaminants if the facility is:

(1) located in an area designated nonattainment for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1023, Sec. 3, eff. June 20, 2003.

Sec. 382.051865. STATIONARY NATURAL GAS ENGINES USED IN COMBINED HEATING AND POWER SYSTEM. (a) In this section, "natural gas engine" includes a natural gas internal combustion engine, natural gas stationary internal combustion reciprocating engine, and natural gas turbine. The term does not include a natural gas engine that powers a motor vehicle as defined by Section 382.003(9-a), Health and Safety Code.

(b) This section applies only to a stationary natural gas

engine used in a combined heating and power system.

(c) The commission shall issue a standard permit or permit by rule for stationary natural gas engines used in a combined heating and power system that establishes emission limits for air contaminants released by the engines.

(d) The commission in adopting a standard permit or permit by rule under this section may consider:

(1) the geographic location in which a stationary natural gas engine may be used, including the proximity to an area designated as a nonattainment area;

(2) the total annual operating hours of a stationary natural gas engine;

(3) the technology used by a stationary natural gas engine;

(4) the types of fuel used to power a stationary natural gas engine; and

(5) other emission control policies of the state.

(e) The commission in adopting a standard permit or permit by rule under this section may not distinguish between the end-use functions powered by a stationary natural gas engine.

(f) The commission must provide for the emission limits for stationary natural gas engines subject to this section to be measured in terms of air contaminant emissions per unit of total energy output. The commission shall consider both the primary and secondary functions when determining the engine's emissions per unit of energy output.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1175 (H.B. 3268), Sec. 1, eff. June 17, 2011.

Sec. 382.051866. EMISSIONS REDUCTIONS INCENTIVES ACCOUNT. (a) In this section, "affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with another person.

(b) The comptroller of public accounts shall establish an account within the clean air account to be known as the emissions reductions incentives account.

(c) The emissions reductions incentives account consists of

money from:

(1) gifts, grants, or donations to the account for a designated or general use;

(2) money from any other source the legislature designates; and

(3) the interest earned on money in the emissions reductions incentives account.

(d) Money in the emissions reductions incentives account may be appropriated only to pay for emissions reduction project incentives under a program developed under Section 382.051867 and administrative expenses associated with providing the incentives or the incentive program established under that section.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1346, Sec. 3, eff. June 15, 2007.

(f) The emissions reductions incentives account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1023, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 3, eff. June 15, 2007.

Sec. 382.0519. VOLUNTARY EMISSIONS REDUCTION PERMIT. (a) Before September 1, 2001, the owner or operator of an existing, unpermitted facility not subject to the requirement to obtain a permit under Section 382.0518(g) may apply for a permit to operate that facility under this section.

(b) The commission shall grant within a reasonable time a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment:

(1) the commission finds that the facility will use an air pollution control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility, except as provided by Subdivision (2); or

(2) for a facility located in a near-nonattainment or nonattainment area for a national ambient air quality standard, the commission finds that the facility will use the more stringent of:

(A) a control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility; or

(B) a control technology that the commission finds is demonstrated to be generally achievable for facilities in that area of the same type that are permitted under this section, considering the age and remaining useful life of the facility.

(c) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(d) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before work is begun on the construction of the modification.

(e) A permit issued by the commission under this section may defer the implementation of the requirement of reductions in the emissions of certain air contaminants only if the applicant will make substantial emissions reductions in other specific air contaminants. The deferral shall be based on a prioritization of air contaminants by the commission as necessary to meet local, regional, and statewide air quality needs.

(f) The commission shall give priority to the processing of applications for the issuance, amendment, or renewal of a permit for those facilities authorized under Section 382.0518(g) that are located less than two miles from the outer perimeter of a school, child day-care facility, hospital, or nursing home.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05191. EMISSIONS REDUCTION PERMITS: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a permit under Section 382.05183, 382.05185(c) or (d), or 382.05186 may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.04, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(c), eff. September 1, 2005.

Sec. 382.05192. REVIEW AND RENEWAL OF EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05183, 382.05185(c) or (d), 382.05186, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.05, eff. Sept. 1, 2001.

Sec. 382.05193. EMISSIONS PERMITS THROUGH EMISSIONS REDUCTION. (a) The commission may issue a permit under Section 382.0519 for a facility:

(1) that makes a good faith effort to make equipment improvements and emissions reductions necessary to meet the

requirements of that section;

(2) that, in spite of the effort, cannot reduce the facility's emissions to the degree necessary for the issuance of the permit; and

(3) the owner or operator of which acquires a sufficient number of emissions reduction credits to offset the facility's excessive emissions under the program established under Subsection (b).

(b) The commission by rule shall establish a program to grant emissions reduction credits to a facility if the owner or operator conducts an emissions reduction project to offset the facility's excessive emissions. To be eligible for a credit to offset a facility's emissions, the emissions reduction project must reduce emissions in the airshed, as defined by commission rule, in which the facility is located.

(c) The commission by rule shall provide that an emissions reduction project must reduce net emissions from one or more sources in this state in an amount and type sufficient to prevent air pollution to a degree comparable to the amount of the reduction in the facility's emissions that would be necessary to meet the permit requirement. Qualifying emissions reduction projects must include:

(1) generation of electric energy by a low-emission method, including:

(A) wind power;

(B) biomass gasification power; and

(C) solar power;

(2) the purchase and destruction of high-emission automobiles or other mobile sources;

(3) the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit;

(4) a carpooling or alternative transportation program for the owner's or operator's employees;

(5) a telecommuting program for the owner's or operator's employees; and

(6) conversion of a motor vehicle fleet operated by

the owner or operator to a low-sulphur fuel or an alternative fuel approved by the commission.

(d) A permit issued under Section 382.0519 for a facility participating in the program established under this section must be conditioned on the successful and timely completion of the project or projects for which the facility owner or operator acquires the credits.

(e) To renew the permit of a facility permitted under Section 382.0519 with credits acquired under the program established under this section, the commission shall require the owner or operator of the facility to have:

(1) made equipment improvements and emissions reductions necessary to meet the permit requirements under that section for a new permit; or

(2) acquired additional credits under the program as necessary to meet the permit requirements under that section for a new permit.

(f) Emissions reduction credits acquired under the program established under this section are not transferrable.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05194. MULTIPLE PLANT PERMIT. (a) The commission may issue a multiple plant permit for multiple plant sites that are owned or operated by the same person or persons under common control if the commission finds that:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing unpermitted facilities not subject to the requirement to obtain a preconstruction authorization under Section 382.0518(g) or for facilities authorized under Section 382.0519, the rates that would be authorized under Section 382.0519; and

(2) there is no indication that the emissions from the facilities will contravene the intent of this chapter, including protection of the public's health and physical property.

(b) A permit issued under this section may not authorize emissions from any of the facilities authorized under the permit that exceed the facility's highest historic annual rate or the levels authorized in the facility's most recent permit. In the absence of records extending back to the original construction of the facility, best engineering judgment shall be used to demonstrate the facility's highest historic annual rate to the commission.

(c) Emissions control equipment previously installed at a facility permitted under this section may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

(d) The commission by rule shall establish the procedures for application and approval for the use of a multiple plant permit.

(e) For a multiple plant permit that applies only to existing facilities for which an application is filed before September 1, 2001, the issuance, amendment, or revocation by the commission of the permit is not subject to Chapter 2001, Government Code.

(f) The commission may adopt rules as necessary to implement and administer this section and may delegate to the executive director under Section 382.061 the authority to issue, amend, or revoke a multiple plant permit.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 935, Sec. 1, eff. June 14, 2001.

Sec. 382.05195. STANDARD PERMIT. (a) The commission may issue a standard permit for new or existing similar facilities if the commission finds that:

(1) the standard permit is enforceable;

(2) the commission can adequately monitor compliance with the terms of the standard permit; and

(3) for permit applications for facilities subject to Sections 382.0518(a)-(d) filed before September 1, 2001, the facilities will use control technology at least as effective as

that described in Section 382.0518(b). For permit applications filed after August 31, 2001, all facilities permitted under this section will use control technology at least as effective as that described in Section 382.0518(b).

(b) The commission shall publish notice of a proposed standard permit in the Texas Register and in one or more statewide or regional newspapers designated by the commission by rule that will, in the commission's judgment, provide reasonable notice throughout the state. If the standard permit will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require additional notice to be given. The notice must include an invitation for written comments by the public to the commission regarding the proposed standard permit and must be published not later than the 30th day before the date the commission issues the standard permit.

(c) The commission shall hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection as part of the notice described in Subsection (b) not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission shall issue a written response to the comments at the same time the commission issues or denies the permit. The response must be made available to the public, and the commission shall mail the response to each person who made a comment.

(e) The commission by rule shall establish procedures for the amendment of a standard permit and for an application for, the issuance of, the renewal of, and the revocation of an authorization to use a standard permit.

(f) A facility authorized to emit air contaminants under a standard permit shall comply with an amendment to the standard permit beginning on the date the facility's authorization to use the standard permit is renewed or the date the commission otherwise provides. Before the date the facility is required to comply with the amendment, the standard permit, as it read before the

amendment, applies to the facility.

(g) The adoption or amendment of a standard permit or the issuance, renewal, or revocation of an authorization to use a standard permit is not subject to Chapter 2001, Government Code.

(h) The commission may adopt rules as necessary to implement and administer this section.

(i) The commission may delegate to the executive director the authority to issue, amend, renew, or revoke an authorization to use a standard permit.

(j) If a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(1) the date new construction, expansion, or modification of a facility begins; or

(2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

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.

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.

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.

Sec. 382.05199. STANDARD PERMIT FOR CERTAIN CONCRETE BATCH PLANTS: NOTICE AND HEARING. (a) A person may not begin construction of a permanent concrete plant that performs wet batching, dry batching, or central mixing under a standard permit

issued under Section 382.05198 unless the commission authorizes the person to use the permit as provided by this section. The notice and hearing requirements of Subsections (b)-(g) apply only to an applicant for authorization to use a standard permit issued under Section 382.05198. An applicant for a permit for a concrete plant that does not meet the requirements of a standard permit issued under Section 382.05198 must comply with:

(1) Section 382.058 to obtain authorization to use a standard permit issued under Section 382.05195 or a permit by rule adopted under Section 382. 05196; or

(2) Section 382.056 to obtain a permit issued under Section 382.0518.

(b) An applicant for an authorization to use a standard permit under Section 382.05198 must publish notice under this section not later than the earlier of:

(1) the 30th day after the date the applicant receives written notice from the executive director that the application is technically complete; or

(2) the 75th day after the date the executive director receives the application.

(c) The applicant must publish notice at least once in a newspaper of general circulation in the municipality in which the plant is proposed to be located or in the municipality nearest to the proposed location of the plant. If the elementary or middle school nearest to the proposed plant provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant must also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the plant is proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice.

(d) The notice must include:

(1) a brief description of the proposed location and nature of the proposed plant;

(2) a description, including a telephone number, of the manner in which the executive director may be contacted for

further information;

(3) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(4) the location and hours of operation of the commission's regional office at which a copy of the application is available for review and copying; and

(5) a brief description of the public comment process, including the time and location of the public hearing, and the mailing address and deadline for filing written comments.

(e) The public comment period begins on the first date notice is published under Subsection (b) and extends to the close of the public hearing.

(f) Section 382.056 of this code and Chapter 2001, Government Code, do not apply to a public hearing held under this section. A public hearing held under this section is not an evidentiary proceeding. Any person may submit an oral or written statement concerning the application at the public hearing. The applicant may set reasonable limits on the time allowed for oral statements at the public hearing.

(g) The applicant, in cooperation with the executive director, must hold the public hearing not less than 30 days and not more than 45 days after the first date notice is published under Subsection (b). The public hearing must be held in the county in which the plant is proposed to be located.

(h) Not later than the 35th day after the date the public hearing is held, the executive director shall approve or deny the application for authorization to use the standard permit. The executive director shall base the decision on whether the application meets the requirements of Section 382.05198. The executive director shall consider all comments received during the public comment period and at the public hearing in determining whether to approve the application. If the executive director denies the application, the executive director shall state the reasons for the denial and any modifications to the application that are necessary for the proposed plant to qualify for the authorization.

(i) The executive director shall issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time as or as soon as practicable after the executive director grants or denies the application. Issuance of the response after the granting or denial of the application does not affect the validity of the executive director's decision to grant or deny the application. The executive director shall:

(1) mail the response to each person who filed a comment; and

(2) make the response available to the public.

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.

Sec. 382.052. PERMIT TO CONSTRUCT OR MODIFY FACILITY WITHIN 3,000 FEET OF SCHOOL. In considering the issuance of a permit to construct or modify a facility within 3,000 feet of an elementary, junior high, or senior high school, the commission shall consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors from the facility on the individuals attending the school facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.163, eff. Sept. 1, 1995.

Sec. 382.053. PROHIBITION ON ISSUANCE OF CONSTRUCTION PERMIT FOR LEAD SMELTING PLANT AT CERTAIN LOCATIONS. (a) The commission may not grant a construction permit for a lead smelting plant at a site:

(1) located within 3,000 feet of an individual's residence; and

(2) at which lead smelting operations have not been conducted before August 31, 1987.

(b) This section does not apply to:

(1) a modification of a lead smelting plant in operation on August 31, 1987;

(2) a lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead each hour; or

(3) a lead smelting plant that, when the plant began operation, was located more than 3,000 feet from the nearest residence.

(c) In this section, "lead smelting plant" means a facility operated as a smeltery for processing lead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.164, eff. Sept. 1, 1995.

Sec. 382.054. FEDERAL OPERATING PERMIT. Subject to Section 382.0511(c), a person may not operate a federal source unless the person has obtained a federal operating permit from the commission under Section 382.0541, 382.0542, or 382.0543.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.09, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 10, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.165, eff. Sept. 1, 1995.

Sec. 382.0541. ADMINISTRATION AND ENFORCEMENT OF FEDERAL OPERATING PERMIT. (a) The commission may:

(1) require a federal source to obtain a permit under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.);

(2) require an existing facility or source to use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(3) require facilities or federal sources that are new or modified and are subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412) to use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions from the proposed facility or federal source; or

(B) any applicable maximum achievable control technology (MACT), including any MACT developed pursuant to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412);

(4) establish maximum achievable control technology

requirements in accordance with Section 112(j) of the federal Clean Air Act (42 U.S.C. Section 7412);

(5) issue initial permits with terms not to exceed five years for federal sources under Title V of the federal Clean Air Act, with terms not to exceed five years for all subsequently issued or renewed permits;

(6) administer the use of emissions allowances under Section 408 of the federal Clean Air Act (42 U.S.C. Section 7651g);

(7) reopen and revise an affected federal operating permit if:

(A) the permit has a term of three years or more remaining in order to incorporate requirements under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) adopted after the permit is issued;

(B) additional requirements become applicable to an affected source under the acid rain program;

(C) the federal operating permit contains a material mistake;

(D) inaccurate statements were made in establishing the emissions standards or other terms or conditions of the federal operating permit; or

(E) a determination is made that the permit must be reopened and revised to assure compliance with applicable requirements;

(8) incorporate a federal implementation plan as a condition of a permit issued by the commission;

(9) exempt federal sources from the obligation to obtain a federal operating permit;

(10) provide that all representations in an application for a permit under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) are binding on the applicant until issuance or denial of the permit;

(11) provide that all terms and conditions of any federal operating permit required under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) shall be a complete and segregable section of the federal operating permit; and

(12) issue initial permits with fixed terms of five

years for federal sources under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) with fixed five-year terms for all subsequently issued or renewed permits.

(b) The commission by rule shall provide for objection by the administrator to the issuance of any operating or general permit subject to Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and shall authorize the administrator to revoke and reissue, terminate, reopen, or modify a federal operating permit.

(c) This section does not affect the permit requirements of Section 382.0518, except that the commission may consolidate with an existing permit issued under this section a permit required by Section 382.0518.

(d) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(e) Subsections (a)(3) and (4) do not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 11, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.166, eff. Sept. 1, 1995.

Sec. 382.0542. ISSUANCE OF FEDERAL OPERATING PERMIT; APPEAL OF DELAY. (a) A federal source is eligible for a permit required by Section 382.054 if from the information available to the commission, including information presented at a hearing held under Section 382.0561, the commission finds that:

(1) the federal source will use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(2) for a federal source that is new or modified and subject to Section 112(g) of the federal Clean Air Act (42 U.S.C.

Section 7412), the federal source will use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions from the proposed federal source; or

(B) any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency; and

(3) the federal source will comply with the following requirements, if applicable:

(A) Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and the regulations adopted under that title;

(B) each standard or other requirement provided for in the applicable implementation plan approved or adopted by rule of the United States Environmental Protection Agency under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515) that implements the relevant requirements of that Act, including any revisions to the plan;

(C) each term or condition of a preconstruction permit issued by the commission or the United States Environmental Protection Agency in accordance with rules adopted by the commission or the United States Environmental Protection Agency under Part C or D, Title I of the federal Clean Air Act (42 U.S.C. 7401-7515);

(D) each standard or other requirement established under Section 111 of the federal Clean Air Act (42 U.S.C. Section 7411), including Subsection (d) of that section;

(E) each standard or other requirement established under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) including any requirement concerning accident prevention under Subsection (r)(7) of that section;

(F) each standard or other requirement of the acid rain program established under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) or the regulations adopted under that title;

(G) each requirement established under Section 504(b) or Section 114(a)(3) of the federal Clean Air Act (42 U.S.C. Section 7661c or 7414);

(H) each standard or other requirement governing solid waste incineration established under Section 129 of the federal Clean Air Act (42 U.S.C. Section 7429);

(I) each standard or other requirement for consumer and commercial products established under Section 183(e) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(J) each standard or other requirement for tank vessels established under Section 183(f) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(K) each standard or other requirement of the program to control air pollution from outer continental shelf sources established under Section 328 of the federal Clean Air Act (42 U.S.C. Section 7627);

(L) each standard or other requirement of regulations adopted to protect stratospheric ozone under Title VI of the federal Clean Air Act (42 U.S.C. Sections 7671-7671q) unless the administrator has determined that the standard or requirement does not need to be contained in a Title V permit; and

(M) each national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470-7492), but only as the standard, increment, or requirement would apply to a temporary source permitted under Section 504(e) of the federal Clean Air Act (42 U.S.C. Section 7661c).

(b) The commission shall:

(1) take final action on an application for a permit, permit revision, or permit renewal within 18 months after the date on which the commission receives an administratively complete application;

(2) under an interim program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective

date of the interim program;

(3) under the fully approved program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the program; and

(4) take final action on a permit reopening not later than 18 months after the adoption of the requirement that prompted the reopening.

(c) If the commission fails to take final action as required by Subsection (b)(1) or (4), a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action. A reviewing court may order the commission to act on the application without additional delay if it finds that the commission's failure to act is arbitrary or unreasonable.

(d) Subsection (a)(2) does not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1). Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 12, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.0543. REVIEW AND RENEWAL OF FEDERAL OPERATING PERMIT. (a) In accordance with Section 382.0541(a)(5), a federal operating permit issued or renewed by the commission is subject to review at least every five years after the date of issuance to determine whether the authority to operate should be renewed.

(b) The commission by rule shall establish:

(1) the procedures for notifying a permit holder that the permit is scheduled for review in accordance with this section;

(2) a deadline by which the holder of a permit must submit an application for renewal of the permit that is between the date six months before expiration of the permit and the date 18 months before expiration of the permit;

(3) the general requirements for an application; and

(4) the procedures for reviewing and acting on a renewal application.

(c) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(d) The commission shall take final action on a renewal application for a federal operating permit within 18 months after the date an application is determined to be administratively complete. If the commission does not act on an application for permit renewal within 18 months after the date on which the commission receives an administratively complete application, a person who participated in the public participation process or a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action.

(e) In determining whether and under which conditions a permit should be renewed, the commission shall consider:

(1) all applicable requirements in Section 382.0542(a)(3); and

(2) whether the federal source is in compliance with this chapter and the terms of the existing permit.

(f) The commission shall impose as terms and conditions in a renewed federal operating permit any applicable requirements under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The terms or conditions of the renewed permit must provide for compliance with any applicable requirement under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Section 382.0541.

(g) If the applicant submits a timely and complete application for federal operating permit renewal, but the commission fails to issue or deny the renewal permit before the end

of the term of the previous permit:

(1) all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied; and

(2) the applicant may continue to operate until the permit renewal application is issued or denied, if the applicant submits additional information that is requested in writing by the commission that the commission needs to process the application on or before the time specified in writing by the commission.

(h) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 13, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.055. REVIEW AND RENEWAL OF PRECONSTRUCTION PERMIT. (a) A preconstruction permit issued or renewed by the commission is subject to review to determine whether the authority to operate should be renewed according to the following schedule:

(1) a preconstruction permit issued before December 1, 1991, is subject to review not later than 15 years after the date of issuance;

(2) a preconstruction permit issued on or after December 1, 1991, is subject to review:

(A) every 10 years after the date of issuance; or

(B) on the filing of an application for an amendment to the permit, if:

(i) the applicant is subject to Section 382.056;

(ii) the application is filed with the commission not more than three years before the date the permit is scheduled to expire; and

(iii) the applicant does not object to having the permit subjected to review at that time; and

(3) for cause, a preconstruction permit issued on or after December 1, 1991, for a facility at a nonfederal source may contain a provision requiring the permit to be renewed at a period

of between five and 10 years.

(b) The commission by rule shall establish:

(1) a deadline by which the holder of a preconstruction permit must submit an application to renew the permit;

(2) the general requirements for an application for renewal of a preconstruction permit; and

(3) the procedures for reviewing and acting on renewal applications.

(c) Not less than 180 days before the date on which the renewal application is due, the commission shall provide written notice to the permit holder, by registered or certified mail or as provided by Subsection (c-1), that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a renewal application and the information to be included in the application.

(c-1) A notice under Subsection (c) may be sent by electronic communication if the commission develops a system that reliably replaces registered or certified mail as a means of verifying receipt of the notice.

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) the performance of the owner or operator of the facility according to the method developed by the commission under Section 5.754, Water Code; and

(2) the condition and effectiveness of existing emission control equipment and practices.

(e) The commission shall impose as a condition for renewal of a preconstruction permit only those requirements the commission determines to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area. The commission may not impose requirements more stringent than those of the existing permit unless the commission determines that the requirements are necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality

control requirements. The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Sections 382.0518 and 382.0541.

(f) On or before the 180th day after the date on which an application for renewal is filed, the commission shall renew the permit or, if the commission determines that the facility will not meet the requirements for renewing the permit, shall:

(1) set out in a report to the applicant the basis for the commission's determination; and

(2) establish a schedule, to which the applicant must adhere in meeting the commission's requirements, that:

(A) includes a final date for meeting the commission's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the commission's requirements in accordance with the schedule, the commission shall renew the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's permit is effective until:

(1) the final date specified by the commission's report to the applicant;

(2) the existing permit is renewed; or

(3) the date specified by a commission order issued following a contested case proceeding held under this section.

(h) If the holder of a preconstruction permit to whom the commission has mailed or otherwise sent notice under this section does not apply for renewal of that permit by the date specified by the commission under this section, the permit shall expire at the end of the period described in Subsection (a).

(i) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 14, eff. June 9, 1993;

Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 1, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.14, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 168 (S.B. 1673), Sec. 1, eff. May 22, 2007.

Acts 2017, 85th Leg., R.S., Ch. 381 (H.B. 4181), Sec. 1, eff. September 1, 2017.

Sec. 382.056. NOTICE OF INTENT TO OBTAIN PERMIT OR PERMIT REVIEW; HEARING. (a) Except as provided by Section 382.0518(h), an applicant for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055 shall publish notice of intent to obtain the permit, permit amendment, or permit review not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under Section 382.054 to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice. The commission by rule shall prescribe alternative

procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by Section 5.135, Water Code, and will not have a significant effect on air quality. The alternative procedures must be cost-effective while ensuring adequate notice. Notice required to be published under this section shall only be required to be published in the United States.

(b) The notice must include:

(1) a description of the location or proposed location of the facility or federal source;

(2) the location at which a copy of the application is available for review and copying as provided by Subsection (d);

(3) a description, including a telephone number, of the manner in which the commission may be contacted for further information;

(4) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, that includes a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission;

(6) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(7) the time and location of any public meeting to be held under Subsection (e); and

(8) any other information the commission by rule requires.

(c) At the site of a facility, proposed facility, or federal source for which an applicant is required to publish notice under this section, the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the commission may be

contacted for further information. The commission shall adopt any rule necessary to carry out this subsection.

(d) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility or federal source is located or proposed to be located.

(e) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility or federal source is located or proposed to be located in order to inform the public about the application and obtain public input.

(f) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(g) If, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person requests during the period provided by commission rule that the commission hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, the applicant shall publish notice of the preliminary decision in a newspaper, and the commission shall seek public comment on the preliminary decision. The commission shall consider the request for public hearing under the procedures provided by Subsections (i)-(n). The commission may not seek further public comment or hold a public hearing under the procedures provided by Subsections (i)-(n) in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(g-1) The notice of intent required by Subsection (a) and the notice of the preliminary decision described by Subsection (g) may be consolidated into one notice if:

(1) not later than the 15th day after the date the application for which the notice is required is received, the commission determines the application to be administratively complete; and

(2) the preliminary decision and draft permit related

to the application are available at the time of the commission's determination under Subdivision (1).

(h) If, in response to the notice published under Subsection (a) for a permit under Section 382.054, a person requests during the public comment period provided by commission rule that the commission hold a public hearing, the commission shall consider the request under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n).

(i) The commission by rule shall establish the form and content of the notice, the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Subsection (b);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (j);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted; and

(5) any other information the commission by rule requires.

(j) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(k) During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(k-1) A permit applicant or the applicant's designated representative is required to attend a public meeting held under this section and must make a reasonable effort to respond to questions relevant to the permit application at the meeting.

(l) The executive director, in accordance with procedures

adopted by the commission by rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment period.

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action; and

(4) any person who timely filed a request for a public hearing in response to the notice published under Subsection (a).

(n) Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a public hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(p) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for public hearing to the extent necessary to satisfy a requirement to obtain or maintain delegation or approval of a federal program.

(q) The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(r) This section does not apply to:

(1) the relocation or change of location of a portable

facility to a site where a portable facility has been located at the proposed site at any time during the previous two years;

(2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3) a facility described by Section 382.065(c), unless that facility is in a county with a population of 3.3 million or more or in a county adjacent to such a county.

(s) For any permit application subject to this section, the measurement of distances to determine compliance with any location or distance restriction required by this chapter shall be taken toward structures that are in use as of the date that the application is filed with the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 15, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 2, eff. May 19, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.42, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(c), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1350, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 935, Sec. 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 2.02, 16.15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 226, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1054, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(e), eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 809 (S.B. 1472), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.26, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 45, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 394 (S.B. 1045), Sec. 1, eff. September 1, 2017.

Sec. 382.0561. FEDERAL OPERATING PERMIT: HEARING. (a) Public hearings on applications for issuance, revision, reopening, or renewal of a federal operating permit shall be conducted under this section only and not under Chapter 2001, Government Code.

(b) On determination that an application for a federal operating permit under Sections 382.054-382.0542 or a renewal of a federal operating permit under Section 382.0543 is administratively complete and before the beginning of the public comment period, the commission or its designee shall prepare a draft permit.

(c) The commission or its designee shall hold a public hearing on a federal operating permit, a reopening of a federal operating permit, or renewal application before granting the permit or renewal if within the public comment period a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing. The commission or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(d) The following shall be available for public inspection in at least one location in the general area where the facility is located:

(1) information submitted by the application, subject to applicable confidentiality laws;

(2) the executive director's analysis of the proposed action; and

(3) a copy of the draft permit.

(e) The commission or its designee shall hold a public comment period on a federal operating permit application, a federal operating permit reopening application, or a federal operating permit renewal application under Sections 382.054-382.0542 or 382.0543. Any person may submit a written statement to the commission during the public comment period. The commission or its designee shall receive public comment for 30 days after the date on which notice of the public comment period is published. The commission or its designee may extend or reopen the comment period

if the executive director finds an extension or reopening to be appropriate.

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with Section 382.056.

(g) Any person may submit an oral or written statement concerning the application at the hearing. The individual holding the hearing may set reasonable limits on the time allowed for oral statements at the hearing. The public comment period extends to the close of the hearing and may be further extended or reopened if the commission or its designee finds an extension or reopening to be appropriate.

(h) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision of the commission or its designee to issue or deny a permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(i) The commission or its designee shall consider all comments received during the public comment period and at the public hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 16, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.168, eff. Sept. 1, 1995.

Sec. 382.0562. NOTICE OF DECISION. (a) The commission or its designee shall send notice of a proposed final action on a federal operating permit by first-class mail or electronic communication to the applicant and all persons who comment during the public comment period or at the public hearing. The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change.

(b) The notice required by Subsection (a) shall:

(1) state that any person affected by the decision of

the commission or its designee may petition the administrator in accordance with Section 382.0563 and rules adopted under that section;

(2) state the date by which the petition must be filed; and

(3) explain the petition process.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 17, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 381 (H.B. 4181), Sec. 2, eff. September 1, 2017.

Sec. 382.0563. PUBLIC PETITION TO THE ADMINISTRATOR. (a) The commission by rule may provide for public petitions to the administrator in accordance with Section 505 of the federal Clean Air Act (42 U.S.C. Section 7661d).

(b) The petition for review to the administrator under this section does not affect:

(1) a permit issued by the commission or its designee; or

(2) the finality of the commission's or its designee's action for purposes of an appeal under Section 382.032.

(c) The commission or its designee shall resolve any objection that the United States Environmental Protection Agency makes and terminate, modify, or revoke and reissue the permit in accordance with the objection not later than the 90th day after the date the commission receives the objection.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 18, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES. The commission by rule may allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits prepared under

Sections 382.054-382.0543.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 19, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a) The United States Department of Energy may specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. If the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen project, as defined by Section 5.001, Water Code, that equal not more than:

(1) one percent of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10 percent of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units of energy produced at the component; and

(4) 0.005 pounds of particulate matter per million British thermal units of energy produced at the component.

(b) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) When acting under a rule adopted under Subsection (b), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 3, eff. June 18, 2005.

Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE. (a) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(b) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend the deadline set out in this subsection up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent the commission from meeting the deadline imposed by this subsection without creating an extraordinary burden on the resources of the commission.

(c) The permit process authorized by this section is subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code, as applicable.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.

Sec. 382.0567. PROOF THAT TECHNOLOGY IS COMMERCIALLY FEASIBLE NOT REQUIRED; CONSIDERATION OF TECHNOLOGY TO BE ACHIEVABLE FOR CERTAIN PURPOSES PROHIBITED. (a) An applicant for a permit under this chapter for a project in connection with which advanced clean energy technology, federally qualified clean coal technology, or another technology is proposed to be used is not

required to prove, as part of an analysis of whether the project will use the best available control technology or reduce emissions to the lowest achievable rate, that the technology proposed to be used has been demonstrated to be feasible in a commercial operation.

(b) The commission may not consider any technology or level of emission reduction to be achievable for purposes of a best available control technology analysis or lowest achievable emission rate analysis conducted by the commission under another provision of this chapter solely because the technology is used or the emission reduction is achieved by a facility receiving an incentive as an advanced clean energy project or new technology project, as described by Section 391.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 4, eff. September 1, 2009.

Sec. 382.057. EXEMPTION. (a) Consistent with Section 382.0511, the commission by rule may exempt from the requirements of Section 382.0518 changes within any facility if it is found on investigation that such changes will not make a significant contribution of air contaminants to the atmosphere. The commission by rule shall exempt from the requirements of Section 382.0518 or issue a standard permit for the installation of emission control equipment that constitutes a modification or a new facility, subject to such conditions restricting the applicability of such exemption or standard permit that the commission deems necessary to accomplish the intent of this chapter. The commission may not exempt any modification of an existing facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission shall adopt rules specifically defining

the terms and conditions for an exemption under this section in a nonattainment area as defined by Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.14, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 20, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 406, Sec. 6, eff. Aug. 30, 1999.

Sec. 382.058. NOTICE OF AND HEARING ON CONSTRUCTION OF CONCRETE PLANT UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION. (a) A person may not begin construction on any concrete plant that performs wet batching, dry batching, or central mixing under a standard permit under Section 382.05195 or a permit by rule adopted by the commission under Section 382.05196 unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

(b) This section does not apply to a concrete plant located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

(c) For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected.

(d) If the commission considers air dispersion modeling information in the course of adopting an exemption under Section 382.057 for a concrete plant that performs wet batching, dry batching, or central mixing, the commission may not require that a person who qualifies for the exemption conduct air dispersion modeling before beginning construction of a concrete plant, and evidence regarding air dispersion modeling may not be submitted at a hearing under Section 382.056.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 391, Sec. 1, 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 7, eff. Aug. 30, 1999; Acts 2001,

77th Leg., ch. 1420, Sec. 10.002, eff. Sept. 1, 2001.

For expiration of this section, see Subsection (g).

Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This section applies to a permit amendment application submitted solely to allow an electric generating facility to reduce emissions and comply with a requirement imposed by Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to use applicable maximum achievable control technology. A permit amendment application shall include a condition that the applicant is required to complete the actions needed for compliance by the time allowed under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(b) The commission shall provide an opportunity for a public hearing and the submission of public comment on the application in the manner provided by Section 382.0561.

(c) Not later than the 45th day after the date the application is received, the executive director shall issue a draft permit.

(d) Not later than the 30th day after the date of issuance of the draft permit under Subsection (c), parties may submit to the commission any legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the maximum achievable control technology required under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) and may request a contested case hearing before the commission. If a party requests a contested case hearing under this subsection, the commission shall conduct a contested case hearing and issue a final order issuing or denying the permit amendment not later than the 120th day after the date of issuance of the draft permit under Subsection (c).

(e) The commission shall send notice of a decision on an application for a permit amendment under this section in the manner provided by Section 382.0562.

(f) A person affected by a decision of the commission to issue or deny a permit amendment may move for rehearing and is entitled to judicial review under Section 382.032.

(g) This section expires on the sixth anniversary of the date the administrator adopts standards for existing electric generating facilities under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412), unless a stay of the rules is granted.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.27, eff. September 1, 2011.

Sec. 382.0591. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY FORMER OR CURRENT EMPLOYEES. (a) The commission shall deny an application for the issuance, amendment, renewal, or transfer of a permit and may not issue, amend, renew, or transfer the permit if the commission determines that:

(1) a former employee participated personally and substantially as an employee in the commission's review, evaluation, or processing of the application before leaving employment with the commission; and

(2) after leaving employment with the commission, that former employee provided assistance to the applicant for the issuance, amendment, renewal, or transfer of the permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) The commission or the executive director may not issue a federal operating permit for a solid waste incineration unit if a member of the commission or the executive director is also responsible in whole or in part for the design and construction or the operation of the unit.

(c) The commission shall provide an opportunity for a hearing to an applicant before denying an application under this section.

(d) Action taken under this section does not prejudice any application other than an application in which the former employee provided assistance.

(e) In this section, "former employee" means a person:

(1) who was previously employed by the commission as a supervisory or exempt employee; and

(2) whose duties during employment with the commission included involvement in or supervision of the commission's review, evaluation, or processing of applications.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 140, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 22, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.170, eff. Sept. 1, 1995.

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. (a) The commission may delegate to the executive director the powers and duties under Sections 382.051-382.0563 and 382.059, except for the adoption of rules.

(b) An applicant or a person affected by a decision of the executive director may appeal to the commission any decision made by the executive director, with the exception of a decision regarding a federal operating permit, under Sections 382.051-382.055 and 382.059.

(c) Any person, including the applicant, affected by a decision of the executive director regarding federal operating permits may:

(1) petition the administrator in accordance with rules adopted under Section 382.0563; or

(2) file a petition for judicial review under Section 382.032.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.16, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 23, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.171, eff. Sept. 1, 1995.

Sec. 382.062. APPLICATION, PERMIT, AND INSPECTION FEES. (a) The commission shall adopt, charge, and collect a fee for:

(1) each application for:

(A) a permit or permit amendment, revision, or modification not subject to Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.);

(B) a renewal review of a permit issued under Section 382.0518 not subject to Title IV or V of the federal Clean

Air Act;

(2) inspections of a federal source performed to enforce this chapter or rules adopted by the commission under this chapter until the federal source is required to obtain an operating permit under Section 382.054; and

(3) inspections performed to enforce this chapter or rules adopted by the commission under this chapter at a facility not required to obtain an operating permit under Section 382.054.

(b) The commission may adopt rules relating to charging and collecting a fee for an exemption, for a permit, for a permit by rule, for a voluntary emissions reduction permit, for a multiple plant permit, or for a standard permit and for a variance.

(c) For purposes of the fees, the commission shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than $25 or more than $75,000.

(e) The commission by rule shall establish the fees to be collected under Subsection (a) in amounts sufficient to recover:

(1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and

(2) not less than 50 percent of the commission's actual annual expenditures to:

(A) review and act on permits or special permits;

(B) amend and review permits;

(C) inspect permitted, exempted, and specially permitted facilities; and

(D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter, excluding rules and orders adopted and permits required under Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.18, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 24, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.172, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 8, eff. Aug. 30, 1999.

Sec. 382.0621. OPERATING PERMIT FEE. (a) The commission shall adopt, charge, and collect an annual fee based on emissions for each source that either:

(1) is subject to permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549); or

(2) is based on plant operations, and the rate of emissions at the time the fee is due would be subject to the permitting requirements if the requirements were in effect on that date.

(b) Fees imposed under this section shall be at least sufficient to cover all reasonably necessary direct and indirect costs of developing and administering the permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), including the reasonable costs of:

(1) reviewing and acting on any application for a Title IV or V permit;

(2) implementing and enforcing the terms and conditions of a Title IV or V permit, excluding any court costs or other costs associated with any enforcement action;

(3) emissions and ambient monitoring;

(4) preparing generally applicable regulations or guidance;

(5) modeling, analyses, and demonstrations; and

(6) preparing inventories and tracking emissions.

(c) The commission by rule may provide for the automatic annual increase of fees imposed under this section by the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year 1989. For purposes of this subsection:

(1) the consumer price index for any calendar year is

the average of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year; and

(2) the revision of the consumer price index that is most consistent with the consumer price index for calendar year 1989 shall be used.

(d) Except as provided by this section, the commission may not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) in excess of 4,000 tons per year from any source. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.

(e) This section does not restrict the authority of the commission under Section 382.062 to impose fees on sources not subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(f) The commission may impose fees for emissions of greenhouse gas only to the extent the fees are necessary to cover the commission's additional reasonably necessary direct costs of implementing Section 382.05102.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.19, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.173, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 9, eff. Aug. 30, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 3, eff. June 14, 2013.

Sec. 382.0622. CLEAN AIR ACT FEES. (a) Clean Air Act fees consist of:

(1) fees collected by the commission under Sections 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided by law;

(2) $2 from the portion of each fee collected for inspections of vehicles other than mopeds and remitted to the state under Sections 548.501 and 548.503, Transportation Code; and

(3) fees collected that are required under Section 185 of the federal Clean Air Act (42 U.S.C. Section 7511d).

(b) Except as provided by Subsection (b-1), Clean Air Act fees shall be deposited in the state treasury to the credit of the clean air account and shall be used to safeguard the air resources of the state.

(b-1) Fees collected under Section 382.0621(a) on or after September 1, 2003, shall be deposited in the state treasury to the credit of the operating permit fees account. Fees collected under Section 382.0621(a) may not be commingled with any fees in the clean air account or with any other money in the state treasury.

(b-2) Money in the operating permit fees account established under Subsection (b-1) may be appropriated to the commission only to cover the costs of developing and administering the federal permit programs under Title IV or V of the federal Clean Air Act (42 U.S.C. Section 7651 et seq. and Section 7661 et seq.).

(b-3) Section 403.095, Government Code, does not apply to the operating permit fees account established under Subsection (b-1), and any balance remaining in the operating permit fees account at the end of a fiscal year shall be left in the account and used in the next or subsequent fiscal years only for the purposes stated in Subsection (b-2).

(c) The commission shall request the appropriation of sufficient money to safeguard the air resources of the state, including payments to the Public Safety Commission for incidental costs of administering the vehicle emissions inspection and maintenance program, except that after the date of delegation of the state's permitting program under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661 et seq.), fees collected under Section 382.0621(a) may be appropriated only to cover costs of developing and administering the federal permit program under

Titles IV and V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

(d)(1) Through the option of contracting for air pollution control services, including but not limited to compliance and permit inspections and complaint response, the commission may utilize appropriated money to purchase services from units of local government meeting each of the following criteria:

(A) the unit of local government received federal fiscal year 1990 funds from the United States Environmental Protection Agency pursuant to Section 105 of the federal Clean Air Act (42 U.S.C. Section 7405) for the operation of an air pollution program by formal agreement;

(B) the local unit of government is in a federally designated nonattainment area subject to implementation plan requirements, including automobile emission inspection and maintenance programs, under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515); and

(C) the local unit of government has not caused the United States Environmental Protection Agency to provide written notification that a deficiency in the quality or quantity of services provided by its air pollution program is jeopardizing compliance with a state implementation plan, a federal program delegation agreement, or any other federal requirement for which federal sanctions can be imposed.

(2) The commission may request appropriations of sufficient money to contract for services of local units of government meeting the eligibility criteria of this subsection to ensure that the combination of federal and state funds annually available for an air pollution program is equal to or greater than the program costs for the operation of an air quality program by the local unit of government. The commission is encouraged to fund an air pollution program operated by a local unit of government meeting the eligibility criteria of this subsection in a manner the commission deems an effective means of addressing federal and state requirements. The services to be provided by an eligible local unit of government under a contractual arrangement under this subsection shall be at least equal in quality and quantity to the services the

local unit of government committed to provide in agreements under which it received its federal 1990 air pollution grant. The commission and the local units of government meeting the eligibility criteria of this subsection may agree to more extensive contractual arrangements.

(3) Nothing in this subsection shall prohibit a local unit of government from voluntarily discontinuing an air pollution program and thereby relinquishing this responsibility to the state.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(1), eff. June 8, 2007.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.20, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.174, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.209, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 74, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1075, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 203, Sec. 2, eff. June 10, 2003; Acts 2003, 78th Leg., ch. 552, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.02, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(1), eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 11, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 5, eff. March 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 21, eff. September 1, 2015.

Sec. 382.063. ISSUANCE OF EMERGENCY ORDER BECAUSE OF CATASTROPHE. (a) The commission may issue an emergency order because of catastrophe under Section 5.515, Water Code.

(b) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather,

explosions, fire, or similar occurrences beyond the reasonable control of the operator that makes a facility or its functionally related appurtenances inoperable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.175, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 44, eff. Sept. 1, 1997.

Sec. 382.064. INITIAL APPLICATION DATE. An application for a federal operating permit is not required to be submitted to the commission before the approval of the Title V permitting program by the United States Environmental Protection Agency.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 26, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.176, eff. Sept. 1, 1995.

Sec. 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the operation of a concrete crushing facility within 440 yards of a building in use as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the facility at a site near the residence, school, or place of worship is filed with the commission. The measurement of distance for purposes of this subsection shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place of worship that is nearest the concrete crushing facility.

(b) Subsection (a) does not apply to a concrete crushing facility:

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001;

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the

authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility; or

(3) that:

(A) uses a concrete crusher:

(i) in the manufacture of products that contain recycled materials; and

(ii) that is located in an enclosed building; and

(B) is located:

(i) within 25 miles of an international border; and

(ii) in a municipality with a population of not less than 6,100 but not more than 20,000.

(c) Except as provided by Subsection (d), Subsection (a) does not apply to a concrete crushing facility that:

(1) is engaged in crushing concrete and other materials produced by the demolition of a structure at the location of the structure and the concrete and other materials are being crushed primarily for use at that location;

(2) operates at that location for not more than 180 days;

(3) the commission determines will cause no adverse environmental or health effects by operating at that location; and

(4) complies with conditions stated in commission rules, including operating conditions.

(d) Notwithstanding Subsection (c), Subsection (a) applies to a concrete crushing facility in a county with a population of 3.3 million or more or in a county adjacent to such a county.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.07, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1054, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1089 (S.B. 1250), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 46,

eff. September 1, 2011.

Sec. 382.066. SHIPYARD FACILITIES. (a) In this section, "shipyard" means a shipbuilding or ship repair operation.

(b) In determining whether to issue, or in conducting a review of, a permit or other authorization issued or adopted under this chapter for a shipyard, the commission:

(1) may not require and may not consider air dispersion modeling results predicting ambient concentrations of noncriteria pollutants over coastal waters of the state; and

(2) shall determine compliance with noncriteria ambient air pollutant standards and guidelines according to the land-based off-property concentrations of air contaminants.

(c) This section does not limit the commission's authority to take an enforcement action in response to a condition that constitutes a nuisance.

Added by Acts 2001, 77th Leg., ch. 1166, Sec. 1, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 382.065 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(94), eff. Sept. 1, 2003.

Sec. 382.068. POULTRY FACILITY ODOR; RESPONSE TO COMPLAINTS. (a) In this section, "poultry facility" and "poultry litter" have the meanings assigned by Section 26.301, Water Code.

(b) The commission shall respond and investigate not later than 18 hours after receiving:

(1) a second complaint against a poultry facility concerning odor associated with:

(A) the facility; or

(B) the application of poultry litter to land by the poultry facility; or

(2) a complaint concerning odor from a poultry facility at which the commission has substantiated odor nuisance conditions in the previous 12 months.

(c) If after the investigation the commission determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue a notice of violation.

(d) The commission by rule or order shall require the owner or operator of a poultry facility for which the commission has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with the commission. The compliance agreement must include an odor control plan that the executive director determines is sufficient to control odors.

(e) The owner or operator of a new poultry facility shall complete a poultry facility training course on the prevention of poultry facility odor nuisances from the poultry science unit of the Texas AgriLife Extension Service not later than the 90th day after the date the facility first accepts poultry to raise. The owner or operator of a new poultry facility shall maintain records of the training and make the records available to the commission for inspection.

(f) The poultry science unit of the Texas AgriLife Extension Service may charge an owner or operator of a poultry facility a training fee to offset the direct cost of providing the training.

Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 1, eff. September 1, 2009.

SUBCHAPTER D. PENALTIES AND ENFORCEMENT

Sec. 382.085. UNAUTHORIZED EMISSIONS PROHIBITED. (a) Except as authorized by a commission rule or order, a person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.

(b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.180, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 45, eff. Sept. 1, 1997.

SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

Sec. 382.111. INSPECTIONS; POWER TO ENTER PROPERTY. (a) A local government has the same power and is subject to the same restrictions as the commission under Section 382.015 to inspect the air and to enter public or private property in its territorial jurisdiction to determine if:

(1) the level of air contaminants in an area in its territorial jurisdiction and the emissions from a source meet the levels set by:

(A) the commission; or

(B) a municipality's governing body under Section 382.113; or

(2) a person is complying with this chapter or a rule, variance, or order issued by the commission.

(b) A local government shall send the results of its inspections to the commission when requested by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.112. RECOMMENDATIONS TO COMMISSION. A local government may make recommendations to the commission concerning a rule, determination, variance, or order of the commission that affects an area in the local government's territorial jurisdiction. The commission shall give maximum consideration to a local government's recommendations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.113. AUTHORITY OF MUNICIPALITIES. (a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

(1) abate a nuisance; and

(2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the commission's rules and orders and may not make unlawful a condition or act approved or authorized

under this chapter or the commission's rules or orders.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.115. COOPERATIVE AGREEMENTS. A local government may execute cooperative agreements with the commission or other local governments:

(1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to a party to the agreement; and

(2) for the transfer of money or property from a party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid, and education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.189, eff. Sept. 1, 1995.

SUBCHAPTER G. VEHICLE EMISSIONS

Sec. 382.201. DEFINITIONS. In this subchapter:

(1) "Affected county" means a county with a motor vehicle emissions inspection and maintenance program established under Section 548.301, Transportation Code.

(2) "Commercial vehicle" means a vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(3) "Fleet vehicle" means a motor vehicle operated as one of a group that consists of more than 10 motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(4) "Participating county" means an affected county in which the commissioners court by resolution has chosen to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Section 382.209.

(5) "Retrofit" means to equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing

parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(6) "Retrofit equipment" means emissions-reducing equipment designed to reduce air emissions and improve air quality that is installed after the manufacture of the original engine or exhaust or fuel system.

(7) "Vehicle" includes a fleet vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.202. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. (a) The commission by resolution may request the Public Safety Commission to establish a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The commission by rule may establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) and its subsequent amendments.

(b) The commission by rule may require emissions-related inspection and maintenance of land vehicles, including testing exhaust emissions, examining emission control devices and systems, verifying compliance with applicable standards, and other requirements as provided by federal law or regulation.

(c) If the program is established under this section, the commission:

(1) shall adopt vehicle emissions inspection and maintenance requirements for certain areas as required by federal law or regulation; and

(2) shall adopt vehicle emissions inspection and maintenance requirements for counties not subject to a specific federal requirement in response to a formal request by resolutions adopted by the county and the most populous municipality within the county according to the most recent federal decennial census.

(d) On adoption of a resolution by the commission and after proper notice, the Department of Public Safety of the State of Texas shall implement a system that requires, as a condition of obtaining a passing vehicle inspection report issued under Subchapter C, Chapter 548, Transportation Code, in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F of that chapter, that the vehicle, unless the vehicle is not covered by the system, be annually or biennially inspected under the vehicle emissions inspection and maintenance program as required by the state's air quality state implementation plan. The Department of Public Safety shall implement such a system when it is required by any provision of federal or state law, including any provision of the state's air quality state implementation plan.

(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.

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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1,

eff. September 1, 2009.

Sec. 382.502. RULES. (a) The 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 commission shall ensure that the construction, maintenance, monitoring, and operation of the carbon dioxide repository under this subchapter comply with those requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

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 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 perform the measurement, monitoring, and verification of the permanent storage status of carbon dioxide in the carbon dioxide repository.

(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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

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 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.

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.