

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE D. WATER QUALITY CONTROL

CHAPTER 26. WATER QUALITY CONTROL

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Sec. 26.001. DEFINITIONS. As used in this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(14) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(16) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(17) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(18) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the

Texas Constitution.

(19) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(20) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(22) "Identified state supplement to an NPDES permit" means any part of a permit on which the commission has entered a written designation to indicate that the commission has adopted that part solely in order to carry out the commission's duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

(23) "NPDES" means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act.

(24) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including:

(A) intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances;

(B) extensions, improvements, remodeling,

additions, and alterations of the items in Paragraph (A) of this subdivision;

(C) elements essential to provide a reliable recycled supply such as standby treatment units and clear-well facilities;

(D) any works, including sites and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment;

(E) any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; and

(F) facilities to provide for the collection, control, and disposal of waste heat.

(25) "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

(26) "Affected county" is a county to which Subchapter B, Chapter 232, Local Government Code, applies.

Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, Sec. 1. Renumbered from Sec. 21.003 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 985, ch. 367, Sec. 43, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.064, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 19, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 642, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.068, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 979, Sec. 24, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 404, Sec. 43, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 12.01, eff. Sept. 1, 2001.

Sec. 26.002. OWNERSHIP OF UNDERGROUND WATER. Nothing in this chapter affects ownership rights in underground water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.003. POLICY OF THIS SUBCHAPTER. It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 965, Sec. 1.26, eff. Sept. 1, 2001.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 26.011. IN GENERAL. Except as otherwise specifically provided, the commission shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the commission in the public interest. The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities. This chapter does not apply to discharges of oil covered under Chapter 40, Natural Resources Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.065, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 10, Sec. 4, eff. March 28, 1991.

Sec. 26.012. STATE WATER QUALITY PLAN. The executive director shall prepare and develop a general, comprehensive plan for the control of water quality in the state which shall be used as a flexible guide by the commission when approved by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.065, eff. Sept. 1, 1985.

Sec. 26.013. RESEARCH, INVESTIGATIONS. The executive director shall conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.0135. WATERSHED MONITORING AND ASSESSMENT OF WATER QUALITY. (a) To ensure clean water, the commission shall establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. In order to conserve public funds and avoid duplication of effort, subject to adequate funding under Section [26.0291](#), river authorities shall, to the greatest extent possible and under the supervision of the commission, conduct water quality monitoring and assessments in their own watersheds. Watershed monitoring and assessments involving agricultural or silvicultural nonpoint source pollution shall be coordinated through the State Soil and Water Conservation Board with local soil and water conservation districts. The water quality monitoring and reporting duties under this section apply only to a river authority that has entered into an agreement with the commission to perform those duties. The commission, either directly or through cooperative agreements and contracts with local governments, shall conduct monitoring and assessments of watersheds where a river authority is unable to perform an adequate assessment of its own watershed. The monitoring program shall provide data to identify significant long-term water quality trends, characterize water quality conditions, support the permitting process, and classify unclassified waters. The commission shall consider available monitoring data and assessment results in developing or reviewing wastewater permits and stream standards and in conducting other water quality management activities. The assessment must include a

review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed. The monitoring and assessment required by this section is a continuing duty, and the monitoring and assessment shall be periodically revised to show changes in the factors subject to assessment.

(b) In order to assist in the coordination and development of assessments and reports required by this section, a river authority shall organize and lead a basin-wide steering committee that includes persons paying fees under Section 26.0291, private citizens, the State Soil and Water Conservation Board, representatives from other appropriate state agencies, political subdivisions, and other persons with an interest in water quality matters of the watershed or river basin. Based on committee and public input, each steering committee shall develop water quality objectives and priorities that are achievable considering the available technology and economic impact. The objectives and priorities shall be used to develop work plans and allocate available resources under Section 26.0291. Each committee member shall help identify significant water quality issues within the basin and shall make available to the river authority all relevant water quality data held by the represented entities. A river authority shall also develop a public input process that provides for meaningful comments and review by private citizens and organizations on each basin summary report. A steering committee established by the commission to comply with this subsection in the absence of a river authority or other qualified local government is not subject to Chapter 2110, Government Code.

(c) The purpose of the monitoring and assessment required by this section is to identify significant issues affecting water quality within each watershed and river basin of the state. Each river authority shall submit quality assured data collected in the river basin to the commission. The commission shall use the data to develop the statewide water quality inventory and other assessment reports that satisfy federal reporting requirements. The data and

reports shall also be used to provide sufficient information for the commission, the State Soil and Water Conservation Board, river authorities, and other governmental bodies to take appropriate action necessary to maintain and improve the quality of the state's water resources. The commission shall adopt rules that at a minimum require each river authority to:

(1) develop and maintain a basin-wide water quality monitoring program that minimizes duplicative monitoring, facilitates the assessment process, and targets monitoring to support the permitting and standards process;

(2) establish a watershed and river basin water quality database composed of quality assured data from river authorities, wastewater discharge permit holders, state and federal agencies, and other relevant sources and make the data available to any interested person;

(3) identify water quality problems and known pollution sources and set priorities for taking appropriate action regarding those problems and sources;

(4) develop a process for public participation that includes the basin steering committee and public review and input and that provides for meaningful review and comments by private citizens and organizations in the local watersheds; and

(5) recommend water quality management strategies for correcting identified water quality problems and pollution sources.

(d) As required by commission rules, each river authority shall submit a written summary report to the commission, State Soil and Water Conservation Board, and Parks and Wildlife Department on the water quality assessment of the authority's watershed. The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source of use impairment, and recommended actions the commission may take to address those concerns. The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of

targeted monitoring in assisting the permitting process. A river authority shall submit a summary report after the report has been approved by the basin steering committee and coordinated with the public and the commission. A river authority shall hold basin steering committee meetings and shall invite users of water and wastewater permit holders in the watershed who pay fees under Section 26.0291 to review the draft of the work plans and summary report. A river authority shall inform those parties of the availability and location of the summary report for inspection and shall solicit input from those parties concerning their satisfaction with or suggestions for modification of the summary report for the watershed, the operation or effectiveness of the watershed monitoring and assessment program authorized by this section, and the adequacy, use, or equitable apportionment of the program's costs and funds. A river authority shall summarize all comments received from persons who pay fees under Section 26.0291 and from steering committee members and shall submit the report and the summaries to the governor, the lieutenant governor, and the speaker of the house of representatives not later than the 90th day after the date the river authority submits the summary report to the commission and other agencies.

(e) Each local government within the watershed of a river authority shall cooperate in making the assessment under Subsection (a) of this section and in preparing the report by providing to the river authority all information available to the local government about water quality within the jurisdiction of the local government, including the extraterritorial jurisdiction of a municipality.

(f) If more than one river authority is located in a watershed, all river authorities within the watershed shall cooperate in making the assessments and preparing the reports.

(g) For purposes of this section, solid waste and solid waste management shall have the same meaning as in Chapter 361, Health and Safety Code. Each river authority and local government is authorized and encouraged, but not required, to manage solid waste and to facilitate and promote programs for the collection and disposal of household consumer and agricultural products which

contain hazardous constituents or hazardous substances and which, when disposed of improperly, represent a threat of contamination to the water resources of the state. Such programs may include the establishment of a permanent collection site, mobile collection sites, periodic collection events, or other methods which a river authority or local government may deem effective.

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section. Irrigation water rights, non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to this assessment. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section [26.177](#).

(i) In this section:

(1) "Quality assured data" means data that complies with commission rules for the water quality monitoring program adopted under Subsection (c)(1), including rules governing the methods under which water samples are collected and analyzed and data from those samples is assessed and maintained.

(2) "River authority" means:

(A) a river authority as defined by Section [30.003](#) of this code that includes 10 or more counties; and

(B) any other river authority or special district created under Article III, Section 52, Subsection (b)(1) or (2), or Article XVI, Section [59](#), of the Texas Constitution that is

designated by rule of the commission to comply with this section.

(j) Repealed by Acts 2001, 77th Leg., ch. 965, Sec. 3.06, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 1, eff. June 7, 1991.
Amended by Acts 1993, 73rd Leg., ch. 53, Sec. 1, eff. Sept. 1, 1993;
Acts 1993, 73rd Leg., ch. 316, Sec. 1, eff. Aug. 30, 1993; Acts
1993, 73rd Leg., ch. 564, Sec. 1.01, eff. June 11, 1993; Acts 1993,
73rd Leg., ch. 746, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th
Leg., ch. 76, Sec. 11.293, eff. Sept. 1, 1995; Acts 1995, 74th
Leg., ch. 553, Sec. 1, eff. June 13, 1995; Acts 1997, 75th Leg., ch.
101, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec.
6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1082, Sec. 3, eff.
Sept. 1, 1997; Acts 2001, 77th Leg., ch. 234, Sec. 3, eff. Sept. 1,
2001; Acts 2001, 77th Leg., ch. 965, Sec. 3.05, 3.06, 16.03, 16.04,
eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.24, eff.
September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.24, eff.
September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 6, eff.
September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 373 (H.B. 3618), Sec. 1, eff.
September 1, 2017.

Sec. 26.0136. WATER QUALITY MANAGEMENT. (a) The commission is the agency with primary responsibility for implementation of water quality management functions, including enforcement actions, within the state. Water quality management functions shall be oriented on a watershed basis in consideration of the priorities identified by river authorities and basin steering committees. The commission by rule shall coordinate the water quality responsibilities of river authorities within each watershed and shall, where appropriate, delegate water quality functions to local governments under Section 26.175 of this code. The State Soil and Water Conservation Board shall coordinate and administer all programs for abating agricultural or silvicultural

nonpoint source pollution, as provided by Section [201.026](#), Agriculture Code.

(b) Nothing in this section is intended to enlarge, diminish, or supersede the water quality powers, including enforcement authority, authorized by law for river authorities, the State Soil and Water Conservation Board, and local governments. Nothing in this section is intended to enlarge, diminish, or supersede the responsibilities of the Texas Agricultural Extension Service and the Texas Agricultural Experiment Station to conduct educational programs and research regarding nonpoint source pollution and related water resource and water quality matters.

(c) The commission shall establish rules to make the optimum use of state and federal funding and grant programs related to water quality programs of the commission.

(d) In this section, "river authority" has the meaning assigned by Section [26.0135\(i\)](#) of this code.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 2, eff. June 7, 1991.
Amended by Acts 1993, 73rd Leg., ch. 53, Sec. 2, eff. Sept. 1, 1993;
Acts 1997, 75th Leg., ch. 101, Sec. 2, eff. Sept. 1, 1997.

Sec. 26.014. POWER TO ENTER PROPERTY. The members of the commission and employees and agents of the commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the commission. Members, employees, or agents of the commission and commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and

shall exhibit proper credentials. If any member, employee, commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, Sec. 1. Renumbered from Sec. 21.064 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.067, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 883, Sec. 2, eff. Aug. 28, 1995.

Sec. 26.015. POWER TO EXAMINE RECORDS. The members of the commission and employees and agents of the commission may examine and copy during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste or pollutants into any water in the state, or any other records required to be maintained.

Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, Sec. 1. Renumbered from Sec. 21.065 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.069, eff. Sept. 1, 1985.

Sec. 26.0151. PUBLIC INFORMATION. (a) The commission shall provide for publishing or otherwise releasing on a regular basis as public information:

(1) the results of inspections and investigations conducted under Section 26.014 of this code; and

(2) any other information routinely prepared by the commission relating to compliance with this chapter or with a rule or order adopted under this chapter.

(b) The commission shall establish a procedure by which, in response to a written request, a person or organization will be sent a copy of an inspection, investigation, or compliance report for a specified facility or system or for facilities or systems in a specified area or, on a regular basis, a copy of the information released under Subsection (a) of this section.

(c) The commission shall charge a reasonable fee for each copy sent under Subsection (b) of this section. The fee must be set at an amount that is estimated to recover the full cost of producing and copying and mailing a copy of the report and must be paid in cash or by cashier's check.

(d) A copy of a report shall be sent to the person or organization requesting it not later than the 30th day after the date on which the fee is paid or on which the report is made, whichever is later.

(e) This section does not apply to any information excepted under Subchapter C, Chapter 552, Government Code.

Added by Acts 1985, 69th Leg., ch. 749, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 977, Sec. 21, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(101), eff. Sept. 1, 1995.

Sec. 26.017. COOPERATION. The commission shall:

(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of water in the state;

(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

(3) establish policies and procedures for securing close cooperation among state agencies that have water quality control functions;

(4) cooperate with the governments of the United States and other states and with official or unofficial agencies and organizations with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements, and when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act, as amended, or other federal legislation having a similar purpose, the representation shall include an officer or employee of the

commission; and

(5) with respect to obtaining or administering the NPDES program in lieu of the government of the United States, not enter into any memorandum of agreement or other contractual relationship with or among state agencies or with the government of the United States which imposes any requirements upon the state other than or more stringent than those specifically set forth in Section 402(b) of the Federal Water Pollution Control Act, as amended.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.070, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 310, Sec. 2, eff. Aug. 28, 1995.

Sec. 26.018. CONTRACTS, INSTRUMENTS. With the approval of the commission, the executive director may make contracts and execute instruments that are necessary or convenient to the exercise of the commission's powers or the performance of its duties.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.070, eff. Sept. 1, 1985.

Sec. 26.019. ORDERS. The commission is authorized to issue orders and make determinations necessary to effectuate the purposes of this chapter.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 15, eff. Sept. 1, 1997.

Sec. 26.0191. TEMPORARY OR EMERGENCY ORDER RELATING TO DISCHARGE OF WASTE OR POLLUTANTS. The commission may issue a temporary or emergency order relating to the discharge of waste or pollutants under Section [5.509](#).

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 3150, ch. 828, Sec. 1, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.071, 5.011,

eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 22, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 16, eff. Sept. 1, 1997.

Sec. 26.020. HEARING POWERS. The commission may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this chapter or the rules, orders, or other actions of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.021. DELEGATION OF HEARING POWERS. (a) The commission may authorize the chief administrative law judge of the State Office of Administrative Hearings to call and hold hearings on any subject on which the commission may hold a hearing.

(b) The commission may also authorize the chief administrative law judge to delegate to one or more administrative law judges the authority to hold any hearing the chief administrative law judge calls.

(c) At any hearing called under this section, the chief administrative law judge or the administrative law judge to whom a hearing is delegated may administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 979, ch. 367, Sec. 8, eff. June 10, 1981; Acts 1995, 74th Leg., ch. 106, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 17, eff. Sept. 1, 1997.

Sec. 26.022. NOTICE OF HEARINGS; CONTINUANCE. (a) Except as otherwise provided in Sections [5.501](#), [5.504](#), [5.509](#), and [26.176](#), the provisions of this section apply to all hearings conducted in

compliance with this chapter.

(b) Notice of the hearing shall be published at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, the commission has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for 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 not less than 20 days before the date set for the hearing to the person at his last address known to the commission. If the party is not an individual, the notice may be given to any officer, agent, or legal representative of the party.

(d) The individual or individuals holding the hearing, called 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 a new notice.

(e) If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the person conducting the hearing 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 in Subsection (c) of this section at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1072, Sec. 18, eff. Sept. 1, 1997.

Sec. 26.023. WATER QUALITY STANDARDS. The commission by rule shall set water quality standards for the water in the state and may amend the standards from time to time. The commission has the sole and exclusive authority to set water quality standards for all water in the state. The commission shall consider the existence and effects of nonpoint source pollution, toxic materials, and

nutrient loading in developing water quality standards and related waste load models for water quality. The commission shall develop standards based on all quality assured data obtained by the commission, including the local watershed and river basin database described by Section 26.0135(c)(2). In this section, "quality assured data" has the meaning assigned by Section 26.0135(i).

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.072, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 294, Sec. 3, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 101, Sec. 3, eff. Sept. 1, 1997.

Sec. 26.024. HEARINGS ON STANDARDS; CONSULTATION. Before setting or amending water quality standards, the commission shall:

(1) hold public hearings at which any person may appear and present evidence under oath, pertinent for consideration by the commission; and

(2) consult with the executive administrator to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.072 eff. Sept. 1, 1985.

Sec. 26.025. HEARINGS ON STANDARDS; NOTICE TO WHOM. (a) The commission shall provide notice of a hearing under Section 26.024 of this code by publishing the notice in the Texas Register.

(b) In addition to the requirements of Subsection (a) of this section, the commission shall also provide notice to each of the following that the commission believes may be affected:

(1) each local government whose boundary is contiguous to the water in question or whose boundaries contain all or part of the water, or through whose boundaries the water flows; and

(2) the holders of permits from the commission to discharge waste into or adjacent to the water in question.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.072, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 21, eff. June 19,

1987; Acts 1991, 72nd Leg., ch. 392, Sec. 1, eff. June 6, 1991.

Sec. 26.026. STANDARDS TO BE PUBLISHED. The commission shall publish its water quality standards and amendments and shall make copies available to the public on written request.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.072, eff. Sept. 1, 1985.

Sec. 26.027. COMMISSION MAY ISSUE PERMITS. (a) The commission may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. No permit shall be issued authorizing the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste. The commission may refuse to issue a permit when the commission finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the commission finds that issuance of the permit would interfere with the purpose of this chapter.

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the commission containing all information reasonably required by the commission. The commission shall, at minimum, require an applicant who is an individual to provide:

- (1) the individual's full legal name and date of birth;
- (2) the street address of the individual's place of residence;
- (3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;
- (4) the individual's sex; and
- (5) any assumed business or professional name of the individual filed under Chapter 71, Business & Commerce Code.

(c) A person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.

(d) The commission may not require under this chapter any permit for the placing of dredged or fill materials into or adjacent to water in the state for the purpose of constructing, modifying, or maintaining facilities or structures, but this does not change or limit any authority the commission may have with respect to the control of water quality. The commission may adopt rules and regulations to govern and control the discharge of dredged or fill materials consistent with the purpose of this chapter.

Amended by Acts 1977, 65th Leg., p. 1645, ch. 644, Sec. 7. Renumbered from Sec. 21.079 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.074, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 152, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.40, eff. April 1, 2009.

Sec. 26.0271. PERMITS AUTHORIZING REUSE WATER SYSTEM CONTRIBUTIONS AND DISCHARGES. (a) This section applies only to wastewater treatment facilities operated by an agency of a home-rule municipality with a population of one million or more.

(b) In any permit or amendment to a permit issued under this chapter, at the request of the applicant the commission may authorize a wastewater treatment facility to contribute treated domestic wastewater produced by the facility as reclaimed water to a reuse water system if the commission has approved the use of reclaimed water from the wastewater treatment facility.

(c) In any permit or amendment to a permit issued under this chapter, at the request of the applicant the commission shall authorize, subject to any required approval by the United States Environmental Protection Agency, a wastewater treatment facility to:

(1) contribute reclaimed water into a reuse water system operated by the agency; and

(2) discharge reclaimed water contributed to a reuse water system at any outfall for which a discharge from the reuse water system is authorized in any permit issued for any wastewater

treatment facility operated by the agency.

(d) For an effluent limitation violation occurring at an outfall permitted for reuse water system discharges by more than one wastewater treatment facility, the commission shall attribute the violation to the wastewater treatment facility contributing the reclaimed water causing the violation. For a violation that is not directly attributable to a specific wastewater treatment facility, the commission shall attribute the violation to the wastewater treatment facility contributing the greatest volume of reclaimed water to the reuse water system on the date of the violation.

Added by Acts 2009, 81st Leg., R.S., Ch. 409 (H.B. 1922), Sec. 1, eff. June 19, 2009.

Sec. 26.0272. PERMITS AUTHORIZING DISCHARGES FROM CERTAIN SEAWATER DESALINATION FACILITIES. (a) This section applies only to a facility that generates water treatment residuals from the desalination of seawater solely for use as part of an industrial process.

(b) The commission may issue a permit for the discharge of water treatment residuals from the desalination of seawater into the portion of the Gulf of Mexico inside the territorial limits of the state.

(c) Before issuing a permit under this section, the commission must evaluate the discharge of water treatment residuals from the desalination of seawater into the Gulf of Mexico for compliance with the state water quality standards adopted by the commission, the requirements of the Texas Pollutant Discharge Elimination System program, and applicable federal law.

(d) The commission may issue individual permits or a general permit under this section. If the commission elects to issue individual permits under this section, the commission must establish procedures for the review of an application that, at a minimum, comply with the requirements of Subchapter M, Chapter 5. If the commission elects to issue a general permit under this section, the commission must comply with the requirements of Section 26.040.

Added by Acts 2015, 84th Leg., R.S., Ch. 829 (H.B. 4097), Sec. 5,

eff. June 17, 2015.

Sec. 26.028. ACTION ON APPLICATION. (a) Notice of an application for a permit, permit amendment, or permit renewal shall be given to the persons who in the judgment of the commission may be affected by the application, except as provided by this section.

(b) For any application involving an average daily discharge of five million gallons or more, the notice shall be given:

(1) not later than 20 days before the date on which the commission acts on the application; and

(2) to each county judge in the county or counties located within 100 statute miles of the point of discharge who have requested in writing that the commission give that notice and through which water, into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(c) Except as otherwise provided by this section, the commission, on the motion of a commissioner, or on the request of the executive director or any affected person, shall hold a public hearing on the application for a permit, permit amendment, or renewal of a permit.

(d) Notwithstanding any other provision of this chapter, the commission, at a regular meeting without the necessity of holding a public hearing, may approve an application to renew or amend a permit if:

(1) the applicant is not applying to:

(A) increase significantly the quantity of waste authorized to be discharged; or

(B) change materially the pattern or place of discharge;

(2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;

(3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment; and

(4) the commission determines that an applicant's compliance history under the method for using compliance history developed by the commission under Section 5.754 raises no issues regarding the applicant's ability to comply with a material term of its permit.

(e) In considering an applicant's compliance history under Subsection (d)(4), 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.

(f) Notice of an application under Subsection (d) shall be mailed to the mayor and health authorities for the city or town, and the county judge and health authorities for the county in which the waste is or will be discharged, at least 10 days before the commission meeting, and they may present information to the commission on the application.

(g) An application to renew a permit for a confined animal feeding operation which was issued between July 1, 1974, and December 31, 1977, may be set for consideration and may be acted on by the commission at a regular meeting without the necessity of holding a public hearing if the applicant does not seek to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal.

(h) For the purposes of Subsection (c), the commission may act on the application without holding a public hearing if all of the following conditions are met:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge;

(2) not less than 30 days before the date of action on the application by the commission, the applicant has served or mailed the commission's notice of the application to persons who in

the judgment of the commission may be affected, including the county judges as required by Subsection (b). As part of his application the applicant shall submit an affidavit which lists the names and addresses of the persons who may be affected by the application and includes the source of the list;

(3) within 30 days after the date of the newspaper publication of the commission's notice, neither a commissioner, the executive director, nor an affected person who objects to the application has requested a public hearing.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1984, ch. 781, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3156, ch. 828, Sec. 6, eff. June 17, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 5.012, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 795, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 16.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.13, eff. September 1, 2011.

Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider the compliance history of the applicant and its operator under the method for using compliance history developed by the commission under Section [5.754](#). 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 section, "environmental management system" has the meaning assigned by Section [5.127](#).

Added by Acts 1985, 69th Leg., ch. 626, Sec. 1, eff. Aug. 26, 1985.

Amended by Acts 2001, 77th Leg., ch. 965, Sec. 16.06, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.14, eff. September 1, 2011.

Sec. 26.0282. CONSIDERATION OF NEED AND REGIONAL TREATMENT OPTIONS. In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.

Added by Acts 1989, 71st Leg., ch. 757, Sec. 1, eff. Sept. 1, 1989.

Sec. 26.0283. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY CERTAIN FORMER EMPLOYEES. (a) 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.

(b) 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 board determines that a former employee:

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

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

(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 will not prejudice any application other than an application in which the former employee provided assistance.

Added by Acts 1989, 71st Leg., ch. 1175, Sec. 2, eff. Sept. 1, 1989.

Sec. 26.0286. PROCEDURES APPLICABLE TO PERMITS FOR CERTAIN CONCENTRATED ANIMAL FEEDING OPERATIONS. (a) In this section:

(1) "Sole-source surface drinking water supply" means a body of surface water that is designated as a sole-source surface drinking water supply in rules adopted by the commission.

(2) "Protection zone" means an area so designated by commission rule under Subsection (c).

(3) "Liquid waste handling system" means a system in which fresh water or wastewater is used for transporting and land applying waste.

(b) The commission shall process an application for authorization to construct or operate a concentrated animal feeding operation as a specific permit under Section 26.028 subject to the procedures provided by Subchapter M, Chapter 5, if, on the date the commission determines that the application is administratively complete, any part of a pen, lot, pond, or other type of control or retention facility or structure of the concentrated animal feeding operation is located or proposed to be located within the protection zone of a sole-source surface drinking water supply. For the purposes of this subsection, a land application area is not considered a control or retention facility.

(c) For the purposes of this section only, when adopting rules under Section 26.023 to set water quality standards for water in the state, the commission by rule shall designate a surface water body as a sole-source surface drinking water supply if that surface water body is identified as a public water supply in rules adopted by the commission under Section 26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections. At the same time, the commission shall

designate as a protection zone any area within the watershed of a sole-source surface drinking water supply that is:

(1) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;

(2) within two miles of that part of a perennial stream that is:

(A) a tributary of a sole-source surface drinking water supply; and

(B) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(3) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake.

(d) This section does not apply to a poultry operation that does not use a liquid waste handling system.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 3, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 681, Sec. 1, eff. Sept. 1,

2001; Acts 2001, 77th Leg., ch. 966, Sec. 8.01, eff. Sept. 1, 2001;

Acts 2003, 78th Leg., ch. 1276, Sec. 18.005, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 2, eff. September 1, 2005.

Sec. 26.029. CONDITIONS OF PERMIT; AMENDMENT. (a) In each permit, the commission shall prescribe the conditions on which it is issued, including:

(1) the duration of the permit;

(2) the location of the point of discharge of the waste;

(3) the maximum quantity of waste that may be discharged under the permit at any time and from time to time;

(4) the character and quality of waste that may be discharged under the permit; and

(5) any monitoring and reporting requirements prescribed by the commission for the permittee.

(b) After a public hearing, notice of which shall be given to the permittee, the commission may require the permittee, from time to time, for good cause, in conformance with applicable laws, to conform to new or additional conditions.

(c) A permit does not become a vested right in the permittee.

(d) The notice required by Subsection (b) of this section shall be sent to the permittee at his last known address as shown by the records of the commission.

Amended by Acts 1977, 65th Leg., p. 1646, ch. 644, Sec. 8. Renumbered from Sec. 21.081 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 985, ch. 367, Sec. 44, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.075, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1072, Sec. 20, eff. Sept. 1, 1997.

Sec. 26.0291. WATER QUALITY FEE. (a) An annual water quality fee is imposed on:

(1) each wastewater discharge permit holder, including the holder of a permit issued under Section 18.005, for each wastewater discharge permit held; and

(2) each user of water in proportion to the user's water right, through permit or contract, as reflected in the commission's records, provided that the commission by rule shall ensure that no fee shall be assessed for the portion of a municipal or industrial water right directly associated with a facility or operation for which a fee is assessed under Subdivision (1) of this subsection.

(b) The fee is to supplement any other funds available to pay expenses of the commission related to:

(1) inspecting waste treatment facilities; and

(2) enforcing the laws of the state and the rules of the commission governing:

(A) waste discharge and waste treatment facilities, including any expenses necessary to administer the

national pollutant discharge elimination system (NPDES) program;

(B) the water resources of this state, including the water quality management programs under Section 26.0135; and

(C) any other water resource management programs reasonably related to the activities of the persons required to pay a fee under this section.

(c) The fee for each year is imposed on each permit or water right in effect during any part of the year. The commission may establish reduced fees for inactive permits.

(d) Irrigation water rights are not subject to a fee under this section.

(e) The commission by rule shall adopt a fee schedule for determining the amount of the fee to be charged. Beginning September 1, 2009, the maximum amount of a fee under this section is \$100,000. On September 1 of each subsequent year, the commission shall adjust the maximum fee amount as necessary to reflect the percentage change during the preceding year in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published monthly by the United States Bureau of Labor Statistics, or its successor in function. Notwithstanding any adjustment for inflation under this subsection, the amount of the fee may not exceed \$150,000 for each permit or contract and the maximum annual fee under this section for a wastewater discharge or waste treatment facility that holds a water right for the use of water by the facility is \$150,000. In determining the amount of a fee under this section, the commission may consider:

(1) waste discharge permitting factors such as flow volume, toxic pollutant potential, level of traditional pollutant, and heat load;

(2) the designated uses and segment ranking classification of the water affected by discharges from the permitted facility;

(3) the expenses necessary to obtain and administer the NPDES program;

(4) the reasonable costs of administering the water quality management programs under Section 26.0135; and

(5) any other reasonable costs necessary to administer

and enforce a water resource management program reasonably related to the activities of the persons required to pay a fee under this section.

(f) The fees collected under this section shall be deposited to the credit of the water resource management account, an account in the general revenue fund.

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

(h) A fee collected under this section is in addition to any other fee that may be charged under this chapter.

Added by Acts 1989, 71st Leg., ch. 642, Sec. 3. Amended by Acts 1993, 73rd Leg., ch. 746, Sec. 5; Acts 1995, 74th Leg., ch. 310, Sec. 3, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.04, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 157 (H.B. [1433](#)), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. [2031](#)), Sec. 11, eff. June 17, 2015.

Sec. 26.0292. FEES CHARGED TO AQUACULTURE FACILITIES. (a) "Aquaculture facility" means a facility engaged in aquaculture as defined in Section [134.001](#), Agriculture Code.

(b) Notwithstanding Sections [26.0135](#) and [26.0291](#), the combined fees charged to an aquaculture facility under those sections may not total more than \$5,000 in any year.

(c) The commission by rule shall provide that among aquaculture facilities, the fees charged under this section are reasonably assessed according to the pollutant load of the facility.

Added by Acts 1999, 76th Leg., ch. 1239, Sec. 10, eff. Sept. 1, 1999.

Sec. 26.030. PERMIT; EFFECT ON RECREATIONAL WATER. (a) In considering the issuance of a permit to discharge effluent into any body of water having an established recreational standard, the

commission shall consider any unpleasant odor quality of the effluent and the possible adverse effect that it might have on the receiving body of water, and the commission may consider the odor as one of the elements of the water quality of the effluent.

(b) In considering the issuance of a permit to discharge effluent comprised primarily of sewage or municipal waste into any body of water that crosses or abuts any park, playground, or schoolyard within one mile of the point of discharge, the commission shall consider any unpleasant qualities of the effluent, including unpleasant odor, and any possible adverse effects that the discharge of the effluent might have on the recreational value of the park, playground, or schoolyard.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 424, Sec. 1, eff. June 11, 1985.

Sec. 26.0301. WASTEWATER OPERATIONS COMPANY REGISTRATION AND OPERATOR LICENSING. (a) The holders of permits to discharge wastewater from a sewage treatment facility shall employ a treatment plant operator holding a valid license issued by the commission under Chapter 37 for the type of facility being operated.

(b) Every person that is in the business of providing sewage treatment or collection facility services under contract must hold a valid registration issued by the commission under Chapter 37.

(c) A person who performs process control activities at a sewage treatment facility or supervises the maintenance of a sewage collection system must hold a license issued by the commission under Chapter 37.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 5.010, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 400, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 564, Sec. 1.04, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 6, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 6, eff. Sept. 1, 2001.

Sec. 26.0311. STANDARDS FOR CONTROL OF GRAYWATER.

(a) In this section, "graywater" has the meaning provided by Section 341.039, Health and Safety Code.

(b) The commission by rule shall adopt and implement minimum standards for the use of graywater for:

- (1) irrigation and other agricultural purposes;
- (2) domestic use, to the extent consistent with Section 341.039, Health and Safety Code;
- (3) commercial purposes; and
- (4) industrial purposes.

(b-1) The standards adopted by the commission under Subsection (b)(2) must allow the use of graywater for toilet and urinal flushing.

(c) The standards adopted by the commission under Subsection (b) must assure that the use of graywater is not a nuisance and does not damage the quality of surface water and groundwater in this state.

Added by Acts 1987, 70th Leg., ch. 541, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1993, 73rd Leg., ch. 233, Sec. 1, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 689, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 545 (H.B. 1902), Sec. 3, eff. June 16, 2015.

Sec. 26.033. RATING OF WASTE DISPOSAL SYSTEMS. (a) After consultation with the Texas Department of Health, the commission shall provide by rule for a system of approved ratings for municipal waste disposal systems and other waste disposal systems which the commission may designate.

(b) The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the commission on highways approaching or inside the boundaries of the municipality, subject to reasonable restrictions and requirements which may be established by the Texas Department of Transportation.

(c) In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved

rating has the privilege of erecting signs of a design approved by the commission at locations which may be approved or established by the commission, subject to such reasonable restrictions and requirements which may be imposed by any governmental entity having jurisdiction.

(d) If the waste disposal system fails to continue to achieve an approved rating, the commission may revoke the privilege. On due notice from the commission, the owner or operator of the system shall remove the signs.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.080, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 165, Sec. 22(74), eff. Sept. 1, 1995.

Sec. 26.034. APPROVAL OF DISPOSAL SYSTEM PLANS. (a) The commission may, on a case-by-case basis, review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes.

(b) Before beginning construction, every person who proposes to construct or materially alter the efficiency of any treatment works to which this section applies shall submit completed plans and specifications to the commission.

(c) The commission by rule shall adopt standards to determine which plans and specifications the commission will review for approval. If the commission excludes certain plans and specifications from review and approval, the commission shall require that a registered professional engineer submit the plans to the commission and make a finding that the plans and specifications are in substantial compliance with commission standards and that any deviation from those standards is based on the best professional judgment of the registered professional engineer.

(d) Except as provided by Subsection (e), the commission may not require plans and specifications for a sewer system that transports primarily domestic waste to be submitted to the commission from:

(1) a municipality if:

(A) the municipality has its own internal engineering review staff;

(B) the plans and specifications subject to review are prepared by private engineering consultants; and

(C) the review is conducted by a registered professional engineer who is an employee of or consultant to the municipality separate from the private engineering consultant charged with the design of the plans and specifications under review; or

(2) an entity that is required by local ordinance to submit the plans and specifications for review and approval to a municipality.

(e) If the commission finds that a municipality's review and approval process does not provide for substantial compliance with commission standards, the commission shall require all plans and specifications reviewed by the municipality under Subsection (d) to be submitted to the commission for review and approval.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.081, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 397, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 924, Sec. 1, eff. Aug. 28, 1995.

Sec. 26.0345. DISCHARGE FROM AQUACULTURE FACILITIES. (a) In addition to wastewater permit conditions established under the authority of Sections 5.102, 5.103, 5.120, and 26.040, the Texas Natural Resource Conservation Commission, in consultation with the Department of Agriculture and the Parks and Wildlife Department, shall establish permit conditions relating to suspended solids in a discharge permit for an aquaculture facility located within the coastal zone and engaged in shrimp production that are based on levels and measures adequate to prevent:

(1) potential significant adverse responses in aquatic organisms, changes in flow patterns of receiving waters, or untimely filling of bays with settled solids; or

(2) a potential significant adverse response in aquatic plants from attenuation of light by suspended solids in

discharges.

(b) In this section, "coastal zone" has the meaning assigned by Section 33.004, Natural Resources Code.

Added by Acts 1999, 76th Leg., ch. 1239, Sec. 9, eff. Sept. 1, 1999.

Sec. 26.035. FEDERAL GRANTS. The executive director with the approval of the commission or the executive administrator with the approval of the board, as applicable under this code or other laws, may execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the collection, treatment, and disposal of waste or other water quality control activities. The commission or board may accept federal funds for these purposes and for other purposes consistent with the objectives of this chapter and may use the funds as prescribed by law or as provided by agreement.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.081, eff. Sept. 1, 1985.

Sec. 26.036. WATER QUALITY MANAGEMENT PLANS. (a) The executive director shall develop and prepare, and from time to time revise, comprehensive water quality management plans for the different areas of the state, as designated by the commission.

(b) The executive director may contract with local governments, regional planning commissions, planning agencies, other state agencies, colleges and universities in the state, and any other qualified and competent person to assist in developing and preparing, and from time to time revising, water quality management plans for areas designated by the commission.

(c) With funds provided for the purpose by legislative appropriation, the commission may make grants or interest-free loans to, or contract with, local governments, regional planning commissions, and planning agencies to pay administrative and other

expenses of such entities for developing and preparing, and from time to time revising, water quality management plans for areas designated by the commission. The period of time for which funding under this provision may be provided for developing and preparing or for revising a plan may not exceed three consecutive years in each instance. Any loan made pursuant to this subsection shall be repaid when the construction of any project included in the plan is begun.

(d) Any person developing or revising a plan shall, during the course of the work, consult with the commission and with local governments and other federal, state, and local governmental agencies which in the judgment of the commission may be affected by or have a legitimate interest in the plan.

(e) Insofar as may be practical, the water quality management plans shall be reasonably compatible with the other governmental plans for the area, such as area or regional transportation, public utility, zoning, public education, recreation, housing, and other related development plans.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.082, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 194, Sec. 1, eff. May 24, 1999.

Sec. 26.037. APPROVAL OF PLANS. (a) The executive director may approve water quality management plans and revisions after a public participation opportunity has been provided that at a minimum meets federal public participation requirements. Approval of water quality management plans shall be consistent with applicable state and federal requirements. The commission may adopt rules governing approval of water quality management plans. The commission shall provide an opportunity for an interested person to seek commission review of the executive director's decision regarding a water quality management plan approval or revision.

(b) When a water quality management plan has been approved as provided in this section, the plan may be furnished to the Federal Environmental Protection Agency or any other federal

official or agency in fulfillment of any federal water quality management planning requirement specified for any purpose by the federal government.

(c) The board and the commission may use an approved water quality management plan or a plan in progress but not completed or approved in reviewing and making determinations on applications for permits and on applications for financial assistance for construction of treatment works.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.083, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 194, Sec. 2, eff. May 24, 1999.

Sec. 26.038. FISCAL CONTROL ON WATER QUALITY MANAGEMENT PLANNING. In administering the program for making grants and loans to and contracting with local governments, regional planning commissions, and planning agencies as authorized in Subsection (c) of Section 26.036 of this code, the commission shall adopt rules and procedures for the necessary engineering review and supervision, fiscal control, and fund accounting. The fiscal control and fund accounting procedures are supplemental to other procedures prescribed by law.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.084, eff. Sept. 1, 1985.

Sec. 26.039. ACCIDENTAL DISCHARGES AND SPILLS. (a) As used in this section:

(1) "Accidental discharge" means an act or omission through which waste or other substances are inadvertently discharged into water in the state.

(2) "Spill" means an act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run, or otherwise enter water in the state.

(3) "Other substances" means substances which may be useful or valuable and therefore are not ordinarily considered to

be waste, but which will cause pollution if discharged into water in the state.

(b) Except as provided by Subsection (g), whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the commission as soon as possible and not later than 24 hours after the occurrence. The individual's notice to the commission must include the location, volume, and content of the discharge or spill.

(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

(d) The provisions of this section are cumulative of the other provisions in this chapter relating to waste discharges, and nothing in this section exempts any person from complying with or being subject to any other provision of this chapter.

(e) Except as provided by Subsection (g), if an accidental discharge or spill described by Subsection (b) from a wastewater treatment or collection facility owned or operated by a local government may adversely affect a public or private source of drinking water, the individual shall also notify appropriate local government officials and local media.

(f) The commission by rule shall specify the conditions under which an individual must comply with Subsection (e) and prescribe procedures for giving the required notice. The rules must also state the content of the notice and the manner of giving notice. In formulating the rules, the commission shall consider:

- (1) the nature and extent of the discharge or spill;
- (2) the potential effect of the discharge or spill;

and

- (3) regional information about the susceptibility of a

particular drinking water source to a specific type of pollution.

(g) The individual is not required to notify the commission of an accidental discharge or spill of treated or untreated domestic wastewater under Subsection (b) or officials or media under Subsection (e) of a single accidental discharge or spill that:

(1) occurs at a wastewater treatment or collection facility owned or operated by a local government;

(2) has a volume of 1,000 gallons or less;

(3) is not associated with another simultaneous accidental discharge or spill;

(4) is controlled or removed before the accidental discharge or spill:

(A) enters water in the state; or

(B) adversely affects a public or private source of drinking water;

(5) will not endanger human health or safety or the environment; and

(6) is not otherwise subject to local regulatory control and reporting requirements.

(h) The commission by rule shall establish standard methods for calculating the volume of an accidental discharge or spill to be used for the purposes of this section.

(i) The individual shall calculate the volume of an accidental discharge or spill using an established standard method to determine whether the discharge or spill is exempted under Subsection (g) from the notification requirements of this section.

(j) The individual shall submit to the commission at least once each month a summary of accidental discharges and spills described by Subsection (g) that occurred during the preceding month. The commission by rule shall:

(1) consider the compliance history of the individual; and

(2) establish procedures for formatting and submitting a summary, including requirements that a summary include the location, volume, and content of each accidental discharge or spill.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.085, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 208, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 251 (S.B. [912](#)), Sec. 1, eff. September 1, 2015.

Sec. 26.040. GENERAL PERMITS. (a) The commission may issue a general permit to authorize the discharge of waste into or adjacent to waters in the state by category of dischargers in a particular geographical area of the state or in the entire state if the dischargers in the category discharge storm water or:

(1) engage in the same or substantially similar types of operations;

(2) discharge the same types of waste;

(3) are subject to the same requirements regarding effluent limitations or operating conditions;

(4) are subject to the same or similar monitoring requirements; and

(5) are, in the commission's opinion, more appropriately regulated under a general permit than under individual permits based on commission findings that:

(A) the general permit has been drafted to assure that it can be readily enforced and that the commission can adequately monitor compliance with the terms of the general permit; and

(B) the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to water quality.

(b) The commission shall publish notice of a proposed general permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit and in the Texas Register. For a statewide general permit, the commission shall designate one or more newspapers of statewide or regional circulation and shall publish notice of the proposed statewide general permit in each

designated newspaper in addition to the Texas Register. The notice must include an invitation for written comments by the public to the commission regarding the proposed general permit and shall be published not later than the 30th day before the commission adopts the general permit. The commission by rule may require additional notice to be given.

(c) The commission may hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection by publication in the Texas Register not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment relating to issuance of a general permit, the commission may issue the general permit only after responding in writing to the comments. The commission shall issue a written response to comments on the permit at the same time the commission issues or denies the permit. The response is available to the public and shall be mailed to each person who made a comment.

(e) A general permit may provide that a discharger who is not covered by an individual permit may obtain authorization to discharge waste under a general permit by submitting to the commission written notice of intent to be covered by the general permit. A general permit shall specify the deadline for submitting and the information required to be included in a notice of intent. A general permit may authorize a discharger to begin discharging under the general permit immediately on filing a complete and accurate notice of intent, or it may specify a date or period of time after the commission receives the discharger's notice of intent on which the discharger may begin discharging unless the executive director before that time notifies the discharger that it is not eligible for authorization under the general permit.

(f) A general permit may authorize a discharger to discharge without submitting a notice of intent if the commission finds that a notice of intent requirement would be inappropriate.

(g) Authorization to discharge under a general permit does not confer a vested right. After written notice to the discharger, the executive director may suspend a discharger's authority to

discharge under a general permit and may require a person discharging under a general permit to obtain authorization to discharge under an individual permit as required by Section 26.027 or other law.

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger's compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections. A hearing under this subsection is not subject to Chapter 2001, Government Code.

(i) A general permit may be issued for a term not to exceed five years. After notice and comment as provided by Subsections (b)-(d), a general permit may be amended, revoked, or canceled by the commission or renewed by the commission for an additional term or terms not to exceed five years each. A general permit remains in effect until amended, revoked, or canceled by the commission or, unless renewed by the commission, until expired. If before a general permit expires the commission proposes to renew that general permit, that general permit remains in effect until the date on which the commission takes final action on the proposed renewal.

(j) The commission may through a renewal or amendment process for a general permit add or delete requirements or limitations to the permit. The commission shall provide a reasonable time to allow a discharger covered by the general permit to make the changes necessary to comply with the additional requirements.

(k) The commission may impose a reasonable and necessary fee under Section 26.0291 on a discharger covered by a general permit.

(l) The issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit or of authority to discharge under a general permit is not subject to Subchapters C-F, Chapter 2001, Government Code.

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

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.086, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1085, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 16.07, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.15, eff. September 1, 2011.

Sec. 26.0405. GENERAL PERMITS FOR CERTAIN SEWAGE TREATMENT AND DISPOSAL SYSTEMS. (a) To the extent not in conflict with state water quality standards or federal law, the commission shall issue one or more general permits for the discharge of treated sewage into or adjacent to water in this state by a sewage treatment and disposal system if the system:

(1) produces not more than 5,000 gallons of waste each day;

(2) is in a county with a population of 2.8 million or more that is an authorized agent under Chapter [366](#), Health and Safety Code, and that has:

(A) adopted a resolution under Section [7.352](#) that authorizes the county to exercise enforcement power under Subchapter H, Chapter 7; and

(B) entered into an agreement with the commission to inspect, investigate, and otherwise monitor compliance with the permit;

(3) provides sewage treatment and disposal for a single-family residence for which the commission determines a connection to an existing or proposed area-wide or regional waste collection, treatment, and disposal system is not feasible; and

(4) is on a property that:

(A) was subdivided and developed before January 1, 1979; and

(B) is of insufficient size to accommodate on-site disposal of all wastewater in compliance with Chapter [366](#), Health and Safety Code.

(b) A person who discharges under a permit issued under this

section is not required to hold a license or registration under Section 26.0301.

(c) For a permit issued under this section, the commission shall for each system:

(1) specify the design, operation, and maintenance requirements; and

(2) establish the primary and secondary treatment requirements.

(d) A system for which a permit is issued under this section is subject to design criteria established under Chapter 366, Health and Safety Code, and is not subject to design criteria established under Section 26.034.

Added by Acts 1999, 76th Leg., ch. 256, Sec. 1, eff. May 28, 1999.
Amended by Acts 2001, 77th Leg., ch. 880, Sec. 7, eff. Aug. 27, 2001.

Sec. 26.041. HEALTH HAZARDS. The commission may use any means provided by this chapter to prevent a discharge of waste that is injurious to public health.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.086, eff. Sept. 1, 1985.

Sec. 26.042. MONITORING AND REPORTING. (a) The commission may prescribe reasonable requirements for a person making discharges of any waste or of any pollutant to monitor and report on his activities concerning collection, treatment, and disposal of the waste or pollutant.

(b) The commission may, by regulation, order, permit, or otherwise require the owner or operator of any source of a discharge of pollutants into any water in the state or of any source which is an industrial user of a publicly owned treatment works to:

(1) establish and maintain such records;

(2) make such reports;

(3) sample any discharges in accordance with such methods, at such locations, at such intervals, and in such manner as the commission shall prescribe; and

(4) provide such other information relating to discharges of pollutants into any water in the state or to introductions of pollutants into publicly owned treatment works as the commission may reasonably require.

(c) When in the judgment of the commission significant water quality management benefits will result or water quality management needs justify, the commission may also prescribe reasonable requirements for any person or persons making discharges of any waste or of any pollutant to monitor and report on the quality of any water in the state which the commission has reason to believe may be materially affected by the discharges.

Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, Sec. 1. Renumbered from Sec. 21.094 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.088, eff. Sept. 1, 1985.

Sec. 26.043. THE STATE OF TEXAS WATER POLLUTION CONTROL COMPACT. (a) The legislature recognizes that various river authorities and municipal water districts and authorities of the state have signed, and that others are authorized to sign and may sign, a document entitled "The State of Texas Water Pollution Control Compact" (hereinafter called the "compact"), which was approved by Order of the Texas Water Quality Board on March 26, 1971, and which is now on file in the official records of the commission, wherein each of the signatories is by law an official agency of the state, created pursuant to Article XVI, Section 59 of the Texas Constitution and operating on a multiple county or regional basis, and that collectively those signatories constitute an agency of the state authorized to agree to pay, and to pay, for and on behalf of the state not less than 25 percent of the estimated costs of all water pollution control projects in the state, wherever located, for which federal grants are to be made pursuant to Clause (7), Subsection (b), Section 1158, Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1158), or any similar law, in accordance with and subject to the terms and conditions of the compact. The compact provides a method for taking advantage of increased federal grants for water pollution control

projects by virtue of the state payment which will be made from the proceeds from the sale of bonds by the signatories to the compact. The compact is hereby ratified and approved, and it is hereby provided that Section 30.026 of this code shall not constitute a limitation or restriction on any signatory with respect to any contract entered into pursuant to the compact or with respect to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made, and such signatory shall not be required to obtain the consent of any other river authority or conservation and reclamation district which is not a signatory with respect to any such contract or project. Each signatory to the compact is empowered and authorized to do any and all things and to take any and all action and to execute any and all contracts and documents which are necessary or convenient in carrying out the purposes and objectives of the compact and issuing bonds pursuant thereto, with reference to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made.

(b) It is further found, determined, and enacted that all bonds issued pursuant to said compact and all bonds issued to refund or refinance same are and will be for water quality enhancement purposes, within the meaning of Article III, Section 49-d-1, as amended, of the Texas Constitution and any and all bonds issued by a signatory to said compact to pay for all or any part of a project pursuant to the compact and any bonds issued to refund or refinance any such bonds may be purchased by the Texas Water Development Board with money received from the sale of Texas Water Development Board bonds pursuant to said Article III, Section 49-d-1, as amended, of the Texas Constitution. The bonds or refunding bonds shall be purchased directly from any such signatory at such price as is necessary to provide the state payment and any other part of the cost of the project or necessary to accomplish the refunding, and all purchases shall constitute loans for water quality enhancement. The bonds or refunding bonds shall have the characteristics and be issued on such terms and conditions as are acceptable to the board. The proceeds received by any such signatory from the sale of any such bonds shall be used to provide the state payment pursuant to

the compact and any other part of the cost of the project, and the proceeds from the sale of any such refunding bonds to refund any outstanding bonds issued pursuant to the compact shall be used to pay off and retire the bonds being refunded thereby.

(c) This subsection is not intended to interfere in any way with the operation of Article III, Section 49-d-1, as amended, of the Texas Constitution or the enabling legislation enacted pursuant thereto, and the aforesaid compact shall constitute merely a complementary or supplemental method for providing the state payment solely in instances that it is deemed necessary or advisable by the board.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1987, 70th Leg., ch. 977, Sec. 23, eff. June 19, 1987.

Sec. 26.044. DISPOSAL OF BOAT SEWAGE. (a) In this section:

(1) "Boat" means any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on surface water in the state, whether or not capable of self-locomotion, including but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects. The term does not include a vessel subject to inspection under 46 U.S.C. Section 3301.

(2) "Boat pump-out station" means any private or public shoreside, mobile, or floating installation either independent of or in addition to an organized waste collection, treatment, and disposal system used to receive boat sewage.

(3) "Shoreside, mobile, or floating installation" means marinas and other installations servicing boats on surface water in the state.

(4) "Surface water in the state" means all lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico out three nautical miles into the Gulf, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all

watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state, except waters beyond three nautical miles of any shore in the state.

(b) The commission shall issue rules concerning the disposal of sewage from boats located or operated on surface water in the state. The rules of the commission shall include provisions for the establishment of standards for sewage disposal devices, the certification of sewage disposal devices, including shoreside and mobile boat pump-out stations, and the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device and on each shoreside and mobile pump-out device.

(c) The commission may delegate the administration and performance of the certification function to the executive director or to another governmental entity. The commission or delegated authority shall collect the following fees from applicants for certification:

Boat Pump-out Station (biennial):

Initial Certificates for Pump-out \$35

Pump-out Renewal \$25

Marine Sanitation Device (biennial):

Boat over 26 Feet or Houseboat \$15

Boat 26 Feet or less with Permanent Device \$15

All certification fees shall be paid to the commission or delegated authority performing the certification function. All fees collected by any state agency shall be deposited to the credit of the water resource management account for use by the commission or delegated authority.

(d) Before issuing any rules under Subsection (b), the commission or any person authorized by it under Section 26.021 on request may hold hearings on those rules in Austin and in five other locations in the state in order to provide the best opportunity for all citizens of the state to appear and present evidence to the commission.

(e) Notice of the hearing in Austin shall be published at least once in one or more newspapers having general circulation in

the state. Notice of each of the other hearings shall be published at least once in one or more newspapers having general circulation in the region in which each hearing is to be held.

(f) Copies of each rule issued by the commission under this section shall be filed in the offices of the commission in Austin, in the office of the Secretary of State in Austin, and posted on the commission's Internet website. The commission shall provide for publication of notice of each rule issued under this section in at least one newspaper of general circulation in each county of the state and shall furnish the county judge of each county of the state a copy of the rules.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 239, Sec. 79, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 795, Sec. 1.089, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 24, eff. June 19, 1987; Acts 1997, 75th Leg., ch. 333, Sec. 10, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 579 (S.B. [2445](#)), Sec. 1, eff. September 1, 2009.

Sec. 26.045. PUMP-OUT FACILITIES FOR BOAT SEWAGE.

(a) In this section "boat," "boat pump-out station," "shoreside, mobile, or floating installation," and "surface water in the state" have the meanings assigned by Section [26.044](#).

(b) After a public hearing and after making every reasonable effort to bring about the establishment of an adequate number of boat pump-out stations on surface water in the state, the commission may enter an order requiring the establishment of boat pump-out stations by a local government that has any jurisdiction over at least a portion of the surface water in the state or over land immediately adjacent to the water.

(c) If a local government is authorized to issue authorization for the operation of shoreside, mobile, or floating installations, the local government may require the installation and operation of boat pump-out stations where necessary. The local government shall require the installation and operation of boat pump-out stations if required by the commission.

(d) A local government responsible for establishing boat pump-out stations may issue bonds or may use general revenue funds from normal operations to finance the construction and operation of the pump-out facilities. Pump-out stations established as a result of this section will be self-sustaining with respect to costs and revenues collected from users of said facilities, and local governments are authorized to levy reasonable, appropriate charges or fees to recover cost of installation and operation of the pump-out stations. Nothing in this section is to be construed to require any local government to rebate to the State of Texas funds collected pursuant to this program.

(e) The hearings required by this section and other acts of the commission in carrying out the provisions of this section shall be handled as provided in the rules of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.090, eff. Sept. 1, 1985.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 579 (S.B. [2445](#)), Sec. 2, eff. September 1, 2009.

Sec. 26.046. HEARINGS ON PROTECTION OF EDWARDS AQUIFER FROM POLLUTION. (a) As used in this section, "Edwards Aquifer" means that portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, and Hays counties, respectively, and as defined in the most recent rules of the commission for the protection of the quality of the potable underground water in those counties.

(b) Annually, the commission shall hold a public hearing in Kinney, Uvalde, Medina, Bexar, Kendall, Comal, or Hays County, and a hearing in any other of those counties whose commissioners court requests that a hearing be held in its county, to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution. Notice of the public hearing shall be given and the hearing shall be conducted in accordance with the

rules of the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 961, ch. 367, Sec. 1, eff. June 10, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.091, eff. Sept. 1, 1985.

Sec. 26.0461. FEES FOR EDWARDS AQUIFER PLANS. (a) The commission may impose fees for processing plans or amendments to plans that are subject to review and approval under the commission's rules for the protection of the Edwards Aquifer and for inspecting the construction and maintenance of projects covered by those plans.

(b) The plans for which fees may be imposed are:

- (1) water pollution abatement plans;
- (2) plans for sewage collection systems;
- (3) plans for hydrocarbon storage facilities or hazardous substance storage facilities; and
- (4) contributing zone plans.

(c) The commission by rule shall adopt a fee schedule for fees that it may impose under this section.

(d) Except as provided by Subsection (d-1), a fee imposed under this section may not be less than \$100 or more than \$6,500.

(d-1) A fee imposed under this section may not be more than \$13,000 if the fee is for a water pollution abatement or contributing zone plan for a development of more than 40 acres.

(e) A fee charged under this section must be based on the following criteria:

- (1) if a pollution abatement or contributing zone plan, the area or acreage covered by the plan;
- (2) if a sewage collection systems plan, the number of linear feet of pipe or line;
- (3) if a hydrocarbon storage facility or hazardous substance storage facility plan, the number of tanks; and
- (4) the type of activity subject to regulation.

(f) The executive director shall charge and collect a fee imposed under this section and shall record the time at which the fee is due and render an account to the person charged with the fee.

(g) A fee imposed under this section is a separate charge in addition to any other fee that may be provided by law or rules of the commission.

(h) A fee collected under this section shall be deposited in the State Treasury to the credit of a special program to be used only for administering the commission's Edwards Aquifer program, including:

(1) monitoring surface water, stormwater, and groundwater quality in the Edwards Aquifer program area; and

(2) developing geographic information systems (GIS) data layers for the Edwards Aquifer program.

Added by Acts 1987, 70th Leg., ch. 417, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1993, 73rd Leg., ch. 564, Sec. 1.05, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 7, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 743, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1088 (H.B. [3098](#)), Sec. 1, eff. September 1, 2007.

Sec. 26.047. PERMIT CONDITIONS AND PRETREATMENT STANDARDS CONCERNING PUBLICLY OWNED TREATMENT WORKS. (a) The commission shall impose as conditions in permits for the discharge of pollutants from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into such treatment works.

(b) The commission is authorized to impose as conditions in permits for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder.

(c) The commission is authorized to apply, and to enforce pursuant to Subchapter D of this chapter, against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the introduction into such treatment

works of pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works.

Added by Acts 1977, 65th Leg., p. 1646, ch. 644, Sec. 9. Renumbered from Sec. 21.099 and amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.092, eff. Sept. 1, 1985.

Sec. 26.048. PROHIBITION OF DISCHARGE TO A PLAYA FROM A CONCENTRATED ANIMAL FEEDING OPERATION. (a) Except as provided by Subsections (b) and (c) of this section, the commission may adopt rules under this section to prohibit:

(1) the discharge of agricultural waste from a concentrated animal feeding operation into a playa; or

(2) the use of a playa as a wastewater retention facility for agricultural waste.

(b) A concentrated animal feeding operation authorized to discharge agricultural waste into a playa or to use a playa as a wastewater retention facility for agricultural waste under this chapter before the adoption of rules under this section may continue that discharge into the playa or use of the playa for the retention of agricultural waste after the adoption of those rules. The operator of a concentrated animal feeding operation that uses a playa as a wastewater retention facility annually shall collect a water sample from each well providing water for the facility and shall have the sample analyzed for chlorides and nitrates. The operator shall provide copies of the analysis to the commission. If the results of an analysis when compared with analysis of water collected at an earlier date from the same well indicate a significant increase in the levels of chlorides or nitrates, the commission shall require that an investigation be made to determine the source of the contamination. If it is determined that contamination is occurring as a result of use of the playa as a retention facility for the waste from the concentrated feeding operation, the commission shall require action to correct the problem.

(c) The authorization for a concentrated animal feeding operation to use a playa for agricultural waste discharge or retention under Subsection (b) of this section is not affected by

the expansion of a concentrated animal feeding operation, a permit amendment, permit renewal, transfer of ownership or operation of a concentrated animal feeding operation, or by a suspension for not more than five years of operations at a concentrated animal feeding operation.

(d) Subsections (b) and (c) of this section do not restrict the application of commission rules that regulate concentrated animal feeding operations for the purpose of protecting water quality and that are not in conflict with those subsections.

(e) As used in this section:

(1) "Concentrated animal feeding operation" means a concentrated, confined livestock or poultry facility that is operated for meat, milk, or egg production or for growing, stabling, or housing livestock or poultry in pens or houses, in which livestock or poultry are fed at the place of confinement and crop or forage growth or feed is not produced in the confinement area.

(2) "Playa" means a flat-floored, clayey bottom of an undrained basin that is located in an arid or semi-arid part of the state, is naturally dry most of the year, and collects runoff from rain but is subject to rapid evaporation.

Added by Acts 1993, 73rd Leg., ch. 1040, Sec. 1, eff. Sept. 1, 1993.

Sec. 26.049. SANITARY SEWER OVERFLOWS. (a) The commission may not adopt a rule governing sanitary sewer overflows, issue a permit regarding sanitary sewer overflows, or initiate any enforcement action related to a sanitary sewer overflow or a threatened overflow that:

(1) is stricter than the national policy for sewer overflows; or

(2) seeks compliance in a manner that exceeds the minimum requirements of that policy.

(b) If the commission adopts a rule governing sanitary sewer overflows, the commission shall:

(1) employ the maximum flexibility allowed under the national policy for sewer overflows;

(2) allow alternative strategies for the control of

sanitary sewer overflows;

(3) consider the financial conditions and constraints of local governments that own separate sanitary sewer systems; and

(4) allow local governments that own separate sanitary sewer systems sufficient time to design and develop cost-effective methods for controlling sanitary sewer overflows before the commission begins an enforcement action to control sanitary sewer overflows.

(c) Until a national policy for separate sanitary sewer system overflows is finally adopted and if the commission adopts a rule governing sewer overflows, the commission may use the national combined sewer overflow policy as the basis for working with local governments to develop cost-effective programs to control sewer overflows. Implementation schedules developed may be based on the national combined sewer overflow policy.

(d) The commission may require a local government that substantially complies with the national policy for sewer overflows to provide additional controls only if the commission documents a water quality problem attributable to the local government that threatens human health, safety, or the environment.

(e) In this section:

(1) "National combined sewer overflow policy" means the Combined Sewer Overflow Control Policy of the United States Environmental Protection Agency dated April 8, 1994, and published April 19, 1994, as amended or superseded.

(2) "National policy for sewer overflows" means the Combined Sewer Overflow Control Policy of the United States Environmental Protection Agency dated April 8, 1994, and published April 19, 1994, as amended or superseded, or another national policy that is finally adopted by the United States Environmental Protection Agency after September 1, 1995, governing separate sanitary sewer system overflows.

(3) "Separate sanitary sewer system" means a wastewater collection system, separate and distinct from a storm sewer system, that conveys domestic, municipal, commercial, or industrial wastewaters to a publicly owned treatment plant.

(4) "Sanitary sewer overflow" means a discharge of

wastewater, stormwater that has entered a separate sanitary sewer system, or a combination of wastewater and stormwater from a separate sanitary sewer system at a point or points before the water enters a publicly owned treatment plant.

(f) Notwithstanding any other provision of this section, the commission shall establish criteria for evaluating whether to initiate an enforcement action related to sanitary sewer overflows that occur as the result of a blockage due to grease. The criteria shall include consideration of whether the discharge:

- (1) could reasonably have been prevented;
- (2) was minimized; and
- (3) was reported and the notice required by Section [26.039\(e\)](#) was given.

(g) The adoption and enforcement by a separate sanitary sewer system of model standards for grease management recognized by the executive director shall be considered by the commission to be evidence tending to show that reasonable measures have been taken to prevent or minimize sanitary sewer overflows that occur as a result of blockage due to grease.

(h) When a home-rule municipality has a plan to control or minimize sanitary sewer overflows, Section [552.901](#), Local Government Code, does not limit the power of a home-rule municipality, in exercising its home-rule powers under Section 5, Article XI, Texas Constitution, to maintain, repair, relocate, or replace a water or sanitary sewer lateral or service line on private property without making an assessment against the property or a person.

Added by Acts 1995, 74th Leg., ch. 925, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 1086, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 3.77(31), eff. April 1, 2009.

Sec. 26.0491. MODEL STANDARDS TO PREVENT DISCHARGE OF UNTREATED WASTEWATER FROM SANITARY SEWERS. (a) In this section, "separate sanitary sewer system" has the meaning assigned by

Section 26.049.

(b) The commission shall adopt model standards for use by an operator of a separate sanitary sewer system that are designed to prevent the discharge of untreated wastewater from a separate sanitary sewer system as a result of blockage due to grease.

(c) The model standards shall include the following elements:

(1) a requirement that grease be completely removed from grease traps on a regular basis;

(2) a minimum schedule for cleaning of grease traps by a grease trap operator that is sufficient to prevent blockages in the collection system resulting from grease;

(3) an opportunity to receive an exception from the cleaning schedule;

(4) a requirement that new commercial and industrial facilities properly install and use grease traps;

(5) a requirement that, at a commercial or industrial facility where a grease trap has previously been installed, a grease trap be properly used;

(6) a requirement that alternative treatment methods be supported by scientific data determined by the commission to show that the method will prevent blockages in the collection system caused by grease and will not affect the performance of the system's treatment plant;

(7) a uniform manifest system; and

(8) a schedule of penalties.

Acts 2003, 78th Leg., ch. 1086, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 22.002, eff. September 1, 2005.

Sec. 26.050. DIGITAL COPIES OF BOUNDARY LINES. The commission shall make available to the public digital copies of the Recharge, Transition, and Contributing Zone boundary lines, when they become available.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 10.02, eff. Sept. 1, 2001.

Sec. 26.052. LIMITED LIABILITY FOR AQUATIC HERBICIDE APPLICATION. (a) In this section, "commercially licensed aquatic herbicide applicator" means a person who holds a commercial applicator license issued by the Department of Agriculture under Chapter 76, Agriculture Code, to apply aquatic herbicides.

(b) Except as provided by Chapter 12, Parks and Wildlife Code, a commercially licensed aquatic herbicide applicator working under contract with a river authority organized pursuant to Section 59, Article XVI, Texas Constitution, is not liable for damages in excess of \$2 million for each occurrence of personal injury, property damage, or death resulting directly or indirectly from the application of aquatic herbicide in compliance with such contract, applicable law, and the license terms or permit.

(c) The control and elimination of noxious weeds, grasses, and vegetation in the rivers, tributaries, impoundments, and reservoirs of the state through the application by river authorities or their agents, employees, or contractors, in compliance with applicable law, licenses, and permits, of aquatic herbicides are essential governmental functions, and except to the extent provided in Chapter 101, Civil Practice and Remedies Code, nothing herein shall be deemed or construed to waive, limit, or restrict the governmental immunity of river authorities in the performance of such governmental functions.

(d) The limited liability provided by this section does not apply to a commercially licensed aquatic herbicide applicator if the applicator uses the wrong aquatic herbicide, fails to follow manufacturers' warnings, instructions, and directions for the application of the aquatic herbicide, fails to follow the directions of the river authority concerning the application of the aquatic herbicide, or applies the aquatic herbicide in a manner that violates federal or state law, rules, or regulations.

Added by Acts 2001, 77th Leg., ch. 966, Sec. 7.01, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 26.050 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(144), eff. Sept. 1, 2003.

Sec. 26.053. DON'T MESS WITH TEXAS WATER PROGRAM. (a) The

commission by rule shall establish a program to prevent illegal dumping that affects the surface waters of this state by placing signs on major highway water crossings that notify drivers of a toll-free number to call to report illegal dumping.

(b) The commission shall establish a toll-free number hotline that will forward calls to the appropriate law enforcement agency.

(c) A local government may work with the commission to participate in the program. A local government that participates in the program may contribute to the cost of operating the toll-free number hotline.

(d) The Texas Department of Transportation shall cooperate with the commission in the placement of signs described by Subsection (a).

(e) The Texas Department of Transportation shall post a sign that complies with program requirements at a major highway water crossing at the time a previously posted sign identifying the crossing or prohibiting dumping at the crossing is scheduled to be replaced.

Added by Acts 2011, 82nd Leg., R.S., Ch. 232 (H.B. 451), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. REGIONAL AND AREA-WIDE SYSTEMS

Sec. 26.081. REGIONAL OR AREA-WIDE SYSTEMS; GENERAL POLICY. (a) The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

(b) Within any standard metropolitan statistical area in the state, the commission is authorized to implement this policy in the manner and in accordance with the procedure provided in Sections 26.081 through 26.086 of this code.

(c) In those portions of the state which are not within a

standard metropolitan statistical area, the commission shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems. The commission may not use the procedure specified in Sections 26.081 through 26.086 of this code in these areas to implement this policy. However, this does not affect or diminish any authority which the commission may otherwise have and exercise under other provisions of this chapter.

(d) The term "standard metropolitan statistical area," as used in this section, means an area consisting of a county or one or more contiguous counties which is officially designated as such by the United States Office of Management and Budget or its successor in this function.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.093, eff. Sept. 1, 1985.

Sec. 26.082. HEARING TO DEFINE AREA OF REGIONAL OR AREA-WIDE SYSTEMS. (a) Whenever it appears to the commission that because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the commission may hold a public hearing in or near the area to determine whether the policy stated in Section 26.081 of this code should be implemented in that area.

(b) Notice of the hearing shall be given to the local governments which in the judgment of the commission may be affected.

(c) If after the hearing the commission finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the commission may enter an order defining the area in which such a system or systems are necessary or desirable.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.094, eff.

Sept. 1, 1985.

Sec. 26.083. HEARING TO DESIGNATE SYSTEMS TO SERVE THE AREA DEFINED; ORDER; ELECTION; ETC. (a) At the hearing held under Section 26.082 of this code or at a subsequent hearing held in or near an area defined under Section 26.082 of this code, the commission may consider whether to designate the person to provide a regional or area-wide system or systems to serve all or part of the waste collection, treatment, or disposal needs of the area defined.

(b) Notice of the hearing shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the commission may be affected.

(c) If after the hearing the commission finds that there is an existing or proposed system or systems then capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of all or part of the area defined and that the owners or operators of the system or systems are agreeable to providing the services, the commission may enter an order designating the person to provide the waste collection, treatment, or disposal system or systems to serve all or part of the area defined.

(d) After the commission enters an order under Subsection (c) of this section and if the commission receives a timely and sufficient request for an election as provided in Section 26.087, the commission shall designate a presiding judge for an election, to determine whether the proposed regional or area-wide system or systems operated by the designated regional entity should be created.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.094, eff. Sept. 1, 1985.

Sec. 26.084. ACTIONS AVAILABLE TO COMMISSION AFTER DESIGNATIONS OF SYSTEMS. (a) After the commission has entered an order as authorized in Section 26.083 of this code, the commission

may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the commission may be affected, take any one or more of the following actions:

(1) enter an order requiring any person discharging or proposing to discharge waste into or adjacent to the water in the state in an area defined in an order entered under Section 26.082 of this code to use a regional or area-wide system designated under Section 26.083 of this code for the disposal of his waste;

(2) refuse to grant any permits for the discharge of waste or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system in an area defined in an order entered under Section 26.082 of this code unless the permits or plans comply and are consistent with any orders entered under Sections 26.081 through 26.086 of this code; or

(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Section 26.082 of this code.

(b) Before exercising the authority granted in this section, the commission shall find affirmatively:

(1) that there is an existing or proposed regional or area-wide system designated under Section 26.083 of this code which is capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of the person or persons who are the subject of an action taken by the commission under this section;

(2) that the owner or operator of the designated regional or area-wide system is agreeable to providing the service;

(3) that it is feasible for the service to be provided on the basis of waste collection, treatment, and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenue from any existing or proposed waste collection, treatment, or disposal systems in which the person or persons who are the subject of an action taken under this section have an interest;

(4) that inclusion of the person or persons who are the subject of an action taken by the commission under this section will

not suffer undue financial hardship as a result of inclusion in a regional or area-wide system; and

(5) that a majority of the votes cast in any election held under Section 26.087 of this code favor the creation of the regional or area-wide system or systems operated by the designated regional entity.

(c) An action taken by the commission under Section 26.085 of this code, excluding any person or persons from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system, shall be subject to a review at a later time determined by the commission in accordance with the criteria set out in this section, not to exceed three years from the date of exclusion.

(d) If a person or persons excluded from a regional or area-wide system fail to operate the excluded facilities in a manner that will comply with its permits, the permits shall be subject to cancellation after review by the commission, and the facilities may become a part of the regional or area-wide system.

Amended by Acts 1977, 65th Leg., p. 255, ch. 121, Sec. 2, eff. Aug. 29, 1977. Renumbered from Sec. 21.204 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.095, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 26, eff. June 19, 1987.

Sec. 26.085. INCLUSION AT A LATER TIME. Any person or persons who are the subject of an action taken by the commission under Section 26.084 of this code and who are excluded from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system may be added to the system at a later time under the provisions of Section 26.084 of this code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.086. RATES FOR SERVICES BY DESIGNATED SYSTEMS. (a) On motion of any interested party and after a public hearing, the

commission may set reasonable rates for the furnishing of waste collection, treatment, or disposal services to any person by a regional or area-wide system designated under Section 26.083 of this code.

(b) Notice of the hearing shall be given to the owner or operator of the designated regional or area-wide system, the person requesting the hearing, and any other person who in the judgment of the commission may be affected by the action taken by the commission as a result of the hearing.

(c) After the hearing, the commission shall enter an order setting forth its findings and the rates which may be charged for the services by the owner or operator of the designated regional or area-wide system.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.087. ELECTION FOR APPROVAL OF REGIONAL OR AREA-WIDE SYSTEM OR SYSTEMS. (a) After the commission under Sections 26.082 and 26.083 of this code, enters an order: defining an area for a regional or area-wide system or systems; designating a regional entity to operate the regional or area-wide system or systems; and appointing a presiding judge for the election, an election shall be held within the boundaries of the proposed regional or area-wide system or systems to be operated by the designated regional entity upon the filing of a timely and sufficient request for an election except as provided in Subsection (i) of this section.

(b) Any person located within the boundaries of the proposed regional or area-wide system or systems requesting an election for the approval of the proposed regional or area-wide system or systems to be operated by the designated regional entity shall file a written request with the commission within 30 days of the date the commission enters an order under Section 26.083 of this code. The request shall include a petition signed by 50 persons holding title to the land within the proposed regional or area-wide system or systems, as indicated by the county tax rolls.

(c) Notice of the election shall state the day and place or places for holding the election, and the proposition to be voted on.

The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which the regional or area-wide system or systems is to be located. The first publication of the notice shall be at least 14 days before the day set for the election. Notice of the election shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the commission may be affected.

(d) Absentee balloting in the election shall begin 10 days before the election and shall end as provided in the Texas Election Code. The ballots for the election shall be printed to provide for voting for or against the regional or area-wide system to be operated by the designated regional entity.

(e) Immediately after the election, the presiding judge shall make returns of the result to the executive director. The executive director shall canvass the returns and report to the commission his findings of the results at the earliest possible time.

(f) If a majority of the votes cast in the election favor the creation of the regional or area-wide system or systems operated by the designated regional entity, then the commission shall declare the regional system is created and enter the results in its minutes. If a majority of the votes cast in the election are against the creation of the regional or area-wide system or systems operated by the designated regional entity, then the commission shall declare that the regional system was defeated and enter the result in its minutes.

(g) The order canvassing the results of the confirmation election shall contain a description of the regional system's boundaries and shall be filed in the deed records of the county or counties in which the regional system is located.

(h) The legislature, through the General Appropriations Act, may provide funds for the conduct of elections required under this section. If no funds are appropriated for this purpose, the costs of conducting the election shall be assessed by the commission.

(i) This subsection applies to regional or area-wide system

or systems and regional entities which have been designated prior to the effective date of this Act. An election to approve creation of a regional or area-wide system or systems and the designation of a regional entity to operate those systems as provided in this section shall not be required for those regional systems or entities to which this subsection applies.

Added by Acts 1977, 65th Leg., p. 256, ch. 121, Sec. 3, eff. Aug. 29, 1977. Renumbered from Sec. 21.206 and amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.096, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 977, Sec. 27, eff. June 19, 1987.

SUBCHAPTER D. PROHIBITION AGAINST POLLUTION; ENFORCEMENT

Sec. 26.121. UNAUTHORIZED DISCHARGES PROHIBITED. (a)

Except as authorized by the commission, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the discharge complies with a person's:

(A) certified water quality management plan approved by the State Soil and Water Conservation Board as provided by Section [201.026](#), Agriculture Code; or

(B) water pollution and abatement plan approved by the commission; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, the Department of Agriculture, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the

state of existing technology, economic feasibility, and the water quality needs of the water that might be affected. This subdivision does not apply to any NPDES activity.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any permit or order of the commission.

(d) Except as authorized by the commission, no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.

(e) No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the commission.

Amended by Acts 1977, 65th Leg., p. 1643, ch. 644, Sec. 2. Renumbered from Sec. 21.251 and amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.098, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 642, Sec. 4, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 54, Sec. 4, eff. April 29, 1993; Acts 1997, 75th Leg., ch. 1010, Sec. 4.44, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 456, Sec. 8, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 10, eff. June 18, 1999.

Sec. 26.1211. PRETREATMENT EFFLUENT STANDARDS.

Text of section effective upon delegation of NPDES permit authority

(a) The commission is authorized to administer a program for the regulation of pretreatment of pollutants which are introduced into publicly owned treatment works.

(b) The commission is authorized to adopt regulations for the administration of this program consistent with 33 U.S.C. Section 1317 and rules adopted thereunder by the Environmental

Protection Agency.

Added by Acts 1989, 71st Leg., ch. 642, Sec. 5, eff. Aug. 28, 1989.

Sec. 26.127. COMMISSION AS PRINCIPAL AUTHORITY. (a) The commission is the principal authority in the state on matters relating to the quality of the water in the state. The executive director has the responsibility for establishing a water quality sampling and monitoring program for the state. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the commission.

(b) The executive director may, on behalf of and with the consent of the commission, enter into contracts or other agreements with the Department of Agriculture for purposes of obtaining laboratory services for water quality testing.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.102, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 456, Sec. 9, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, Sec. 11, eff. June 18, 1999.

Sec. 26.128. GROUNDWATER QUALITY. The executive director shall have investigated all matters concerning the quality of groundwater in the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.129. DUTY OF PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Department and its authorized employees shall enforce the provisions of this chapter to the extent that any violation affects aquatic life and wildlife as provided in Section [7.109](#).

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. [1303](#)), Sec. 26.003, eff. September 1, 2011.

Sec. 26.130. DUTY OF DEPARTMENT OF HEALTH. The Texas

Department of Health shall continue to apply the authority vested in it by Chapter 341, Health and Safety Code, in the abatement of nuisances resulting from pollution not otherwise covered by this chapter. The Texas Department of Health shall investigate and make recommendations to the commission concerning the health aspects of matters related to the quality of the water in the state.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.102, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(70), eff. Sept. 1, 1991.

Text of section effective until delegation of RCRA authority to
Railroad Commission of Texas

Sec. 26.131. DUTIES OF RAILROAD COMMISSION. (a) Except as provided by this section, the Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from:

(1) activities associated with the exploration, development, and production of oil or gas or geothermal resources, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Railroad Commission of Texas;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons"

and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(2) except to the extent the activities are regulated by the Texas Department of Health under Chapter 401, Health and Safety Code, activities associated with uranium exploration consisting of the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of uranium ore; and

(3) any other activities regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.

(b) Except as provided by Subsection (d), the Railroad Commission of Texas may issue permits for the discharge of waste resulting from the activities described by Subsection (a), and the discharge of waste into water in this state resulting from those activities must meet the water quality standards established by the commission.

(c) The term "waste" as used in this section does not include any waste that results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(d) The commission may issue permits for the discharge into water in this state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described by Subsection (a) on delegation to the commission of NPDES authority for those discharges. The discharge of produced water, hydrostatic test water, and gas plant effluent into water in this state under this subsection must meet the water quality standards established

by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 395, ch. 185, Sec. 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 413, ch. 171, Sec. 2, eff. May 20, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 921, Sec. 1, eff. June 15, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(89), eff. Sept. 1, 1991.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1140 (H.B. [2771](#)), Sec. 1, eff. September 1, 2019.

Text of section effective upon delegation of RCRA authority to
Railroad Commission of Texas

Sec. 26.131. DUTIES OF RAILROAD COMMISSION. (a) Except as provided by this section, the Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from:

(1) activities associated with the exploration, development, and production of oil or gas or geothermal resources, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Railroad Commission of Texas;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section [91.173](#), Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons"

and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(2) except to the extent the activities are regulated by the Texas Department of Health under Chapter 401, Health and Safety Code, activities associated with uranium exploration consisting of the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of uranium ore; and

(3) any other activities regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.

(b) Except as provided by Subsection (c), the Railroad Commission of Texas may issue permits for the discharge of waste resulting from the activities described by Subsection (a), and the discharge of waste into water in this state resulting from those activities must meet the water quality standards established by the commission.

(c) The commission may issue permits for the discharge into water in this state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described by Subsection (a) on delegation to the commission of NPDES authority for those discharges. The discharge of produced water, hydrostatic test water, and gas plant effluent into water in this state under this subsection must meet the water quality standards established by the commission.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 395, ch. 185, Sec. 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 413, ch. 171, Sec. 2, eff. May 20, 1981; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 921, Sec. 1, eff. June 15, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(89), eff. Sept. 1, 1991.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1140 (H.B. 2771), Sec. 2, eff. September 1, 2019.

Sec. 26.1311. DUTY OF STATE SOIL AND WATER CONSERVATION BOARD. The State Soil and Water Conservation Board and its authorized agents are responsible for the abatement and prevention of pollution resulting from agricultural or silvicultural nonpoint source pollution as provided by Section 201.026, Agriculture Code. Added by Acts 1993, 73rd Leg., ch. 54, Sec. 5, eff. April 29, 1993.

Sec. 26.132. EVAPORATION PITS REQUIREMENTS. (a) In this section, "evaporation pit" means a pit into which water, including rainwater or storm water runoff, is or has been placed and retained for the purpose of collecting, after the water's evaporation, brine water or residual minerals, salts, or other substances present in the water, and for the purpose of storing brine water and minerals.

(b) This section applies only to evaporation pits:

(1) operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater; and

(2) that are not regulated by the Railroad Commission of Texas.

(c) The owner or operator of an evaporation pit shall ensure that the pit is lined as provided by this subsection and rules adopted under this subsection. An evaporation pit must have a liner designed by an engineer who holds a license issued under Chapter 1001, Occupations Code, to minimize surface water and groundwater pollution risks. The liner must meet standards at least as stringent as those adopted by the commission for a Type I landfill managing Class I industrial solid waste.

(d) An owner or operator may not place or permit the placement of groundwater or on-site storm water runoff into an evaporation pit if the pit does not comply with this section or with rules adopted or orders issued under this section.

(e) The owner or operator of an evaporation pit shall ensure that:

(1) storm water runoff is diverted away from or

otherwise prevented from entering the evaporation pit; and

(2) all berms and other structures used to manage storm water are properly constructed and maintained in a manner to prevent the threat of water pollution from the evaporation pit.

(f) The owner or operator of an evaporation pit may not by act or omission cause:

(1) water pollution from the evaporation pit; or

(2) a discharge from the evaporation pit into or adjacent to water in the state.

(g) The owner or operator of an evaporation pit shall ensure that the pit is located so that a failure of the pit or a discharge from the pit does not result in an adverse effect on water in the state.

(h) The owner or operator of an evaporation pit shall provide the commission with proof that the owner or operator has financial assurance adequate to ensure satisfactory closure of the pit.

(i) The owner or operator of an evaporation pit shall provide the commission with proof that the owner or operator of the pit has a third party pollution liability insurance policy that:

(1) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of "A-" or better;

(2) covers bodily injury and property damage to third parties caused by accidental sudden or nonsudden occurrences arising from operations at the pit; and

(3) is in an amount of not less than \$3 million.

(j) The commission shall adopt rules as necessary to protect surface water and groundwater quality from the risks presented by commercial evaporation pits and as necessary to administer and enforce this section, including rules:

(1) governing the location, design, construction, capacity, operations, maintenance, and closure of evaporation pits;

(2) ensuring that the owner or operator of an evaporation pit has adequate financial assurance; and

(3) requiring an owner or operator of an evaporation

pit to obtain a permit from the commission for the operation of the pit.

(k) The commission shall impose against the owners of evaporation pits fees in amounts necessary to recover the costs of administering this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 536 (S.B. 1037), Sec. 1, eff. September 1, 2007.

Sec. 26.135. EFFECT ON OTHER LAWS. (a) Nothing in this chapter affects the powers and duties of the commission and the Railroad Commission of Texas with respect to injection wells as provided in Chapter 27 of this code.

(b) The commission shall continue to exercise the authority granted to it in Chapter 1901, Occupations Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.294, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.847, eff. Sept. 1, 2003.

Sec. 26.137. COMMENT PERIOD FOR EDWARDS AQUIFER PROTECTION PLANS. The commission shall provide for a 30-day comment period in the review process for Edwards Aquifer Protection Plans in the Contributing Zone of the Edwards Aquifer as provided in 30 T.A.C. Section 213.4(a)(2).

Added by Acts 2001, 77th Leg., ch. 965, Sec. 10.04, eff. Sept. 1, 2001.

SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

Sec. 26.171. INSPECTION OF PUBLIC WATER. A local government may inspect the public water in its area and determine whether or not:

(1) the quality of the water meets the state water quality standards adopted by the commission;

(2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction

have obtained permits for discharge of the effluent; and

(3) persons who have permits are making discharges in compliance with the requirements of the permits.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985.

Sec. 26.172. RECOMMENDATIONS TO COMMISSION. A local government may make written recommendations to the commission as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985.

Sec. 26.173. POWER TO ENTER PROPERTY. (a) A local government has the same power as the commission has under Section 26.014 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the commission.

(b) When requested by the executive director, the result of any inspection or investigation made by the local government shall be transmitted to the commission for its consideration.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.103, eff. Sept. 1, 1985.

Sec. 26.175. COOPERATIVE AGREEMENTS. (a) A local government may execute cooperative agreements with the commission or other local governments:

(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any

party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.

(b) When in the opinion of the executive director it would facilitate and enhance the performance by a local government of its water quality management, inspection, and enforcement functions pursuant to a cooperative agreement between the local government and the commission as authorized in Subsection (a) of this section, the executive director may assign and delegate to the local government during the period of the agreement such of the pertinent powers and functions vested in the commission under this chapter as in the judgment of the executive director may be necessary or helpful to the local government in performing those management, inspection, and enforcement functions.

(c) At any time and from time to time prior to the termination of the cooperative agreement, the executive director may modify or rescind any such assignment or delegation.

(d) The executive director shall notify immediately a local government to whom it assigns or delegates any powers and functions pursuant to Subsections (b) and (c) of this section or as to when it modifies or rescinds any such assignment or delegation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.104, eff. Sept. 1, 1985.

Sec. 26.176. DISPOSAL SYSTEM RULES. (a) Every local government which owns or operates a disposal system is empowered to and shall, except as authorized in Subsection (c) of this section, enact and enforce rules, ordinances, orders, or resolutions, referred to in this section as rules, to control and regulate the type, character, and quality of waste which may be discharged to the disposal system and, where necessary, to require pretreatment of waste to be discharged to the system, so as to protect the health and safety of personnel maintaining and operating the disposal system and to prevent unreasonable adverse effects on the disposal system.

(b) The local government in its rules may establish the charges and assessments which may be made to and collected from all persons who discharge waste to the disposal system or who have conduits or other facilities for discharging waste connected to the disposal system, referred to in this subsection as "users." The charges and assessments shall be equitable as between all users and shall correspond as near as can be practically determined to the cost of making the waste disposal services available to all users and of treating the waste of each user or class of users. The charges and assessments may include user charges, connection fees, or any other methods of obtaining revenue from the disposal system available to the local government. In establishing the charges and assessments, the local government shall take into account:

(1) the volume, type, character, and quality of the waste of each user or class of users;

(2) the techniques of treatment required;

(3) any capital costs and debt retirement expenses of the disposal system required to be paid for from the charges and assessments;

(4) the costs of operating and maintaining the system to comply with this chapter and the permits, rules, and orders of the commission; and

(5) any other costs directly attributable to providing the waste disposal service under standard, accepted cost-accounting practices.

(c) A local government may apply to the commission for an exception from the requirements of Subsections (a) and (b) of this section or for a modification of those requirements. The application shall contain the exception or modifications desired, the reasons the exception or modifications are needed, and the grounds authorized in this subsection on which the commission should grant the application. A public hearing on the application shall be held in or near the territorial area of the local government, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the volume, type, character, and quality of the waste of the users of the system or of a particular user or class of

users of the system do not warrant the enactment and enforcement of rules containing the requirements prescribed in Subsections (a) and (b) of this section or that the enactment and enforcement of the rules would be impractical or unreasonably burdensome on the local government in relation to the public benefit to be derived, then the commission in its discretion may enter an order granting an exception to those requirements or modifying those requirements in any particular in response to circumstances shown to exist.

(d) At any time and from time to time as circumstances may require, the commission may amend or revoke any order it enters pursuant to Subsection (c) of this section. Before the commission amends or revokes such an order, a public hearing shall be held in or near the territorial area of the local government in question, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the circumstances on which it based the order have changed significantly or no longer exist, the commission may revoke the order or amend it in any particular in response to the circumstances then shown to exist.

(e) In the event of any conflict between the provisions of this section and any other laws or parts of laws, the provisions of this section shall control.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.105, eff. Sept. 1, 1985.

Sec. 26.177. WATER POLLUTION CONTROL DUTIES OF CITIES. (a) A city may establish a water pollution control and abatement program for the city. If the watershed water quality assessment reports required by Section [26.0135](#) or other commission assessments or studies identify water pollution that is attributable to non-permitted sources in a city that has a population of 10,000 or more, the commission, after providing the city a reasonable time to correct the problem and after holding a public hearing, may require the city to establish a water pollution control and abatement program. The city shall employ or retain an adequate number of personnel on either a part-time or full-time basis as the needs and

circumstances of the city may require, who by virtue of their training or experience are qualified to perform the water pollution control and abatement functions required to enable the city to carry out its duties and responsibilities under this section.

(b) The water pollution control and abatement program of a city shall encompass the entire city and, subject to Section 26.179 of this code, may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the commission;

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to Subdivision (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the commission, and whether they should be covered by a permit from the commission;

(4) in cooperation with the commission, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings;

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater; and

(6) any additional services, functions, or other

requirements as may be prescribed by commission rule.

(c) The water pollution control and abatement program required by Subsections (a) and (b) of this section must be submitted to the commission for review and approval. The commission may adopt rules providing the criteria for the establishment of those programs and the review and approval of those programs.

(d) Any person affected by any ruling, order, decision, ordinance, program, resolution, or other act of a city relating to water pollution control and abatement outside the corporate limits of such city adopted pursuant to this section or any other statutory authorization may appeal such action to the commission or district court. An appeal must be filed with the commission within 60 days of the enactment of the ruling, order, decision, ordinance, program, resolution, or act of the city. The issue on appeal is whether the action or program is invalid, arbitrary, unreasonable, inefficient, or ineffective in its attempt to control water quality. The commission or district court may overturn or modify the action of the city. If an appeal is taken from a commission ruling, the commission ruling shall be in effect for all purposes until final disposition is made by a court of competent jurisdiction so as not to delay any permit approvals.

(e) The commission may adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section.

(f) A city may contract with a river authority or another political subdivision to perform any or all services and functions that are part of a water pollution control and abatement program established under this section.

(g) The commission may assist cities in identifying and obtaining funds and technical assistance that may be available to assist a city, or a river authority or other political subdivision with whom a city has contracted, in performing any or all of the services or functions that are part of a water pollution control and abatement program established under this section.

(h) Property subject to a permit or plat in the extraterritorial jurisdiction of a municipality may not be

subjected to new or additional water pollution regulations if the property is transferred to another municipality's extraterritorial jurisdiction, and all provisions of Chapter 245, Local Government Code, shall apply to the property. If the release of extraterritorial jurisdiction for the purpose of transferring it to another municipality results in property not being subject to any municipality's water pollution regulations on the date of release, the releasing municipality retains its jurisdiction to enforce its water pollution regulations until the property is included in the extraterritorial jurisdiction of the receiving municipality.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, Sec. 1.106, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 983, Sec. 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 411, Sec. 1, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 975, Sec. 2, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 101, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 11.01, eff. Sept. 1, 2001.

Sec. 26.178. FINANCIAL ASSISTANCE DEPENDENT ON WATER QUALITY PROGRAMS. All financial assistance from the board to a city having a population of 5,000 or more inhabitants shall be conditioned on the city submitting to the commission for review and in accordance with rules and submission schedules promulgated by the commission a water pollution control and abatement program as required by Section 26.177 of this code. The board may award grants from the research and planning fund of the water assistance fund to river authorities seeking such funds for purposes of performing regional water quality assessments described in Section 26.0135 of this code.

Added by Acts 1991, 72nd Leg., ch. 294, Sec. 5, eff. June 7, 1991.

Sec. 26.179. DESIGNATION OF WATER QUALITY PROTECTION ZONES IN CERTAIN AREAS. (a) In this section, "water quality protection" may be achieved by:

- (1) maintaining background levels of water quality in waterways; or
- (2) capturing and retaining the first 1.5 inches of

rainfall from developed areas.

(b) For the purpose of Subsection (a)(1), "maintaining background levels of water quality in waterways" means maintaining background levels of water quality in waterways comparable to those levels which existed prior to new development as measured by the following constituents: total suspended solids, total phosphorus, total nitrogen, and chemical and biochemical oxygen demand. Background levels shall be established either from sufficient data collected from water quality monitoring at one or more sites located within the area designated as a water quality protection zone or, if such data are unavailable, from calculations performed and certified by a registered professional engineer utilizing the concepts and data from the National Urban Runoff Program (NURP) Study or other studies approved by the Texas Natural Resource Conservation Commission (commission) for the constituents resulting from average annual runoff, until such data collected at the site are available. Background levels for undeveloped sites shall be verified based on monitoring results from other areas of property within the zone prior to its development. The monitoring shall consist of a minimum of one stage (flow) composite sample for at least four storm events of one-half inch or more of rainfall that occur at least one month apart. Monitoring of the four constituents shall be determined by monitoring at four or more locations where runoff occurs. A minimum of four sample events per year for each location for rainfall events greater than one-half inch shall be taken. Monitoring shall occur for three consecutive years after each phase of development occurs within the Water Quality Protection Zone. Each new phase of development, including associated best management practices, will require monitoring for a three-year period. The results of the monitoring and a description of the best management practices being used throughout the zone shall be summarized in a technical report and submitted to the commission no later than April 1 of each calendar year during development of the property, although the commission may determine that monitoring is no longer required. The commission shall review the technical report. If the performance monitoring and best management practices indicate that background levels were not

maintained during the previous year, the owner or developer of land within the water quality protection zone shall:

(1) modify water quality plans developed under this section for future phases of development in the water quality protection zone to the extent reasonably feasible and practical; and

(2) modify operational and maintenance practices in existing phases of the water quality protection zone to the extent reasonably feasible and practical.

Water quality monitoring shall not be required in areas using the methodology described by Subsection (a)(2).

(c) This section applies only to those areas within the extraterritorial jurisdiction, outside the full-purpose corporate limits of a municipality with a population greater than 10,000, and in which the municipality either:

(1) has enacted or attempted to enforce three or more ordinances or amendments thereto attempting to regulate water quality or control or abate water pollution in the area within the five years preceding the effective date of this Act, whether or not such ordinances or amendments were legally effective upon the area; or

(2) enacts or attempts to enforce three or more ordinances or amendments thereto attempting to regulate water quality or control or abate water pollution in the area in any five-year period, whether or not such ordinances or amendments are legally effective upon the area.

(d) The owner or owners of a contiguous tract of land in excess of 1,000 acres that is located within an area subject to this section may designate the tract as a "water quality protection zone." Upon prior approval of the Commission, the owner of a contiguous tract of land containing less than 1,000 acres, but not less than 500 acres, that is located within an area subject to this section may also designate the tract as a "water quality protection zone." The tract shall be deemed contiguous if all of its parts are physically adjacent, without regard to easements, rights-of-way, roads, streambeds, and public or quasi-public land, or it is part of an integrated development under common ownership or control. The

purpose of a water quality protection zone is to provide for the consistent protection of water quality in the zone without imposing undue regulatory uncertainty on owners of land in the zone.

(e) A water quality protection zone designated under this section shall be described by metes and bounds or other adequate legal description. The designation shall include a general description of the proposed land uses within the zone, a water quality plan for the zone, and a general description of the water quality facilities and infrastructure to be constructed for water quality protection in the zone.

(f) Creation of a water quality protection zone shall become immediately effective upon recordation of the designation in the deed records of the county in which the land is located. The designation shall be signed by the owner or owners of the land, and notice of such filing shall be given to the city clerk of the municipality within whose extraterritorial jurisdiction the zone is located and the clerk of the county in which the property is located.

(g) A water quality protection zone designation may be amended and a designation may specify the party or parties authorized to execute amendments to the zone designation and the zone's water quality plan. Land may be added to or excluded from a zone by amending the zone designation. An amendment to a zone designation adding land to or excluding land from a zone must describe the boundaries of the zone as enlarged or reduced by metes and bounds or other adequate legal description. An amendment to a zone designation is effective on its filing in the deed records of the county in which the land is located. On application by all owners of land in a zone, or by each party authorized by the zone designation or an amendment to the zone designation to amend the zone designation, the commission may terminate a zone on reasonable terms and conditions specified by the commission.

(h) The water quality plan for a zone, including the determination of background levels of water quality, shall be signed and sealed by a registered professional engineer acknowledging that the plan is designed to achieve the water quality protection standard defined in this section. On

recordation in the deed records, the water quality plan shall be submitted to and accepted by the commission for approval, and the commission shall accept and approve the plan unless the commission finds that implementation of the plan will not reasonably attain the water quality protection as defined in this section. A water quality plan may be amended from time to time on filing with the commission, and all such amendments shall be accepted by the commission unless there is a finding that the amendment will impair the attainment of water quality protection as defined in this section. The commission shall adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section. The commission's review and approval of a water quality plan shall be performed by the commission staff that is responsible for reviewing pollution abatement plans in the county where the zone is located. The review and approval of the plan or any amendment to the plan shall be completed within 120 days of the date it is filed with the commission. A public hearing on the plan shall not be required, and acceptance, review, and approval of the water quality plan or water quality protection zone shall not be delayed pending the adoption of rules. The commission shall have the burden of proof for the denial of a plan or amendments to a plan, and any such denial shall be appealable to a court of competent jurisdiction. The water quality plan, or any amendment thereto, shall be effective upon recordation of the plan or the amendment in the deed records and shall apply during the period of review and approval by the commission or appeal of the denial of the plan or any amendment. New development under a plan may not proceed until the plan or amendment to the plan, as appropriate, has been approved by the commission.

(i) The water quality plan for a zone shall be a covenant running with the land.

(j) A municipality may not enforce in a zone any of its ordinances, land use ordinances, rules, or requirements including, but not limited to, the abatement of nuisances, pollution control and abatement programs or regulations, water quality ordinances, subdivision requirements, other than technical review and inspections for utilities connecting to a municipally owned water

or wastewater system, or any environmental regulations which are inconsistent with the land use plan and the water quality plan or which in any way limit, modify, or impair the ability to implement and operate the water quality plan and the land use plan within the zone as filed; nor shall a municipality collect fees or assessments or exercise powers of eminent domain within a zone until the zone has been annexed for the municipality. A water quality protection zone may be annexed by a municipality only after the installation and completion of 90 percent of all facilities and infrastructure described in the water quality plan for the entire zone as being necessary to carry out such plan or the expiration of 20 years from the date of designation of the zone, whichever occurs first.

(k) Subdivision plats within a water quality protection zone shall be approved by the municipality in whose extraterritorial jurisdiction the zone is located and the commissioners court of the county in which the zone is located if:

(1) the plat complies with the subdivision design regulations of the county; and

(2) the plat is acknowledged by a registered professional engineer stating that the plat is in compliance with the water quality plan within the water quality protection zone.

(l) A water quality protection zone implementing a water quality plan which meets the requirements of this section shall be presumed to satisfy all other state and local requirements for the protection of water quality; provided, however, that:

(1) development in the zone shall comply with all state laws and commission rules regulating water quality which are in effect on the date the zoning is designated; and

(2) nothing in this section shall supersede or interfere with the applicability of water quality measures or regulations adopted by a conservation and reclamation district comprising more than two counties and which apply to the watershed area of a surface lake or surface reservoir that impounds at least 4,000 acre-feet of water.

(m)(1) One or more of the provisions of this section may be waived by the owner or owners of property that is or becomes subject to an agreement entered into after the effective date of this Act

between the owner or owners of land within the zone and the municipality. The agreement shall be in writing, and the parties may agree:

(A) to guarantee continuation of the extraterritorial status of the zone and its immunity from annexation by the municipality for a period not to exceed 15 years after the effective date of the agreement;

(B) to authorize certain land uses and development within the zone;

(C) to authorize enforcement by the municipality of certain municipal land use and development regulations within the zone, in the same manner such regulations are enforced within the municipality's boundaries, as may be agreed by the landowner and the municipality;

(D) to vary any watershed protection regulations;

(E) to authorize or restrict the creation of political subdivisions within the zone; and

(F) to such other terms and considerations the parties consider appropriate, including, but not limited to, the continuation of land uses and zoning after annexation of the zone, the provision of water and wastewater service to the property within the zone, and the waiver or conditional waiver of provisions of this section.

(2) An agreement under this section shall meet the requirements of and have the same force and effect as an agreement entered into pursuant to Section [42.046](#), Local Government Code.

(n) In addition to the requirements of Subsections (a)(1) and (a)(2), the commission may require and enforce additional water quality protection measures to comply with mandatory federal water quality requirements, standards, permit provisions, or regulations.

(o) This section does not apply to an area within the extraterritorial jurisdiction of a municipality with a population greater than 900,000 that has extended to the extraterritorial jurisdiction of the municipality an ordinance whose purpose is to prevent the pollution of an aquifer which is the sole or principal

drinking water source for the municipality.

(p) If a municipality's action results in part of a zone being located outside the municipality's extraterritorial jurisdiction, the entire zone is removed from the municipality's extraterritorial jurisdiction. A zone removed from a municipality's extraterritorial jurisdiction may not be brought into the municipality's extraterritorial jurisdiction before the 20th anniversary of the date on which the zone was designated.

(q) In addition to the fees authorized under Subsection (h), the commission shall adopt and assess reasonable and necessary fees adequate to recover the commission's costs in monitoring water quality associated with water quality protection zones.

Added by Acts 1995, 74th Leg., ch. 975, Sec. 1, eff. June 16, 1995.

Amended by Acts 1997, 74th Leg., ch. 21, Sec. 1, eff. April 25, 1997; Acts 1999, 76th Leg., ch. 225, Sec. 1, eff. May 24, 1999; Acts 1999, 76th Leg., ch. 1543, Sec. 1, eff. June 19, 1999.

Sec. 26.180. NONPOINT SOURCE WATER POLLUTION CONTROL PROGRAMS OF CERTAIN MUNICIPALITIES. (a) This section applies to a municipality to which Section 42.903, Local Government Code, applies.

(b) The municipality shall exercise the powers granted under state law to a municipality to adopt ordinances to control and abate nonpoint source water pollution or to protect threatened or endangered species.

(c) The municipality by ordinance shall adopt a nonpoint source water pollution control and abatement program for the municipality and its extraterritorial jurisdiction before the municipality adopts a resolution or ordinance creating an extraterritorial jurisdiction under Section 42.903, Local Government Code. The municipality shall submit the ordinance creating the program to the commission. Notwithstanding any other law requiring the adoption of an ordinance creating an extraterritorial jurisdiction and approval by the commission, the ordinance creating the program becomes effective and is enforceable by the municipality on the 90th day after the date the municipality submits the ordinance unless the ordinance is disapproved by the

commission during the 90-day period.

(d) If the commission disapproves a program submitted under Subsection (c) of this section, the commission shall make recommendations to the municipality. The municipality shall adopt and incorporate the commission's recommendations in the program.

(e) The nonpoint source water pollution controls of the municipality that had extraterritorial jurisdiction over an area before the area was included in the extraterritorial jurisdiction of another municipality under Section 42.903, Local Government Code, are effective during the 90-day period that the program is pending before the commission or until an amended program satisfactory to the commission is adopted. The municipality, including the area in its extraterritorial jurisdiction under Section 42.903, Local Government Code, shall enforce the controls during the 90-day period.

(f) If a nonpoint source water pollution control and abatement program is adopted by a river authority that has boundaries that encompass the extraterritorial jurisdiction of the municipality, the standards under the program adopted by the municipality must meet or exceed the standards under the program adopted by the river authority.

(g) The municipality may not grant a waiver to its nonpoint source water pollution control and abatement program unless granting the waiver would demonstrably improve water quality.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.01(b), eff. Aug. 26, 1991. Renumbered from Water Code Sec. 26.178 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(52), eff. Sept. 1, 1995. Renumbered from Water Code Sec. 26.179 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(75), eff. Sept. 1, 1997.

SUBCHAPTER F. CRIMINAL PROSECUTION

Sec. 26.215. PEACE OFFICERS. For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. These agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose

shall have the powers and duties of peace officers as set forth in the Code of Criminal Procedure, 1965, as amended.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977.

Sec. 26.2171. VENUE. An offense under this subchapter may be prosecuted in a county in which an element of the offense was committed or a county to which or through which the discharge, waste, or pollutant was transported.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.26(b), eff. Sept. 1, 1991.

SUBCHAPTER G. OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND CONTROL

Sec. 26.261. SHORT TITLE. This subchapter may be cited as the Texas Hazardous Substances Spill Prevention and Control Act.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4204, ch. 669, Sec. 1, eff. Sept. 1, 1983.

Sec. 26.262. POLICY AND CONSTRUCTION. It is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay. This subchapter shall be construed to conform with Chapter 40, Natural Resources Code.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4204, ch. 669, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 930, Sec. 1, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 10, Sec. 6, eff. March 28, 1991.

Sec. 26.263. DEFINITIONS. As used in this subchapter:

(1) "Discharge or spill" means an act or omission by which hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in this state or by which those substances are deposited

where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in this state. The term "discharge" or "spill" under this subchapter shall not include any discharge to which Subchapter C, D, E, F, or G, Chapter 40, Natural Resources Code, applies or any discharge which is authorized by a permit issued pursuant to federal law or any other law of this state or, with the exception of spills in coastal waters, regulated by the Railroad Commission of Texas.

(2) "Account" means the Texas spill response account.

(3) "Harmful quantity" means that quantity of hazardous substance the discharge or spill of which is determined to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare by the administrator of the Environmental Protection Agency pursuant to federal law and by the executive director.

(4) "Hazardous substance" means any substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.), regulated pursuant to Section 311 of the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.), or designated by the commission.

(5) "Person" includes an individual, firm, corporation, association, and partnership.

(6) "Person responsible" or "responsible person" means:

(A) the owner, operator, or demise charterer of a vessel from which a spill emanates;

(B) the owner or operator of a facility from which a spill emanates;

(C) any other person who causes, suffers, allows, or permits a spill or discharge.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4204, ch. 669, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 930, Sec. 2, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 99, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 10, Sec. 7, eff. March 28, 1991; Acts

1997, 75th Leg., ch. 333, Sec. 12, eff. Sept. 1, 1997.

Sec. 26.264. ADMINISTRATIVE PROVISIONS. (a) Except as provided in Chapter 40, Natural Resources Code, the commission shall be the state's lead agency in spill response, shall conduct spill response for the state, and shall otherwise administer this subchapter. The commission shall conduct spill response and cleanup for spills and discharges of hazardous substances other than oil in or threatening coastal waters. The commission shall cooperate with other agencies, departments, and subdivisions of this state and of the United States in implementing this subchapter. In the event of a discharge or spill and after reasonable effort to obtain entry rights from each property owner involved, if any, the executive director may enter affected property to carry out necessary spill response actions.

(b) The commission may issue rules necessary and convenient to carry out the purposes of this subchapter.

(c) The executive director shall enforce the provisions of this subchapter and any rules given effect pursuant to Subsection (b) of this section.

(d) The executive director with the approval of the commission may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

(e) The executive director shall solicit the assistance of and cooperate with local governments, the federal government, other agencies and departments of this state, and private persons and other entities to develop regional contingency plans for prevention and control of hazardous substance spills and discharges. The executive director may solicit the assistance of spill cleanup experts in determining appropriate measures to be taken in cleaning up a spill or discharge. The executive director shall develop a list of spill cleanup experts to be consulted, but shall not be limited to that list in seeking assistance. No person providing such assistance shall be held liable for any acts or omissions of the executive director which may result from soliciting such assistance.

(f) The commission and the Texas Department of

Transportation, in cooperation with the governor, the United States Coast Guard, and the Environmental Protection Agency, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the Texas Department of Transportation may be diverted and utilized for spill and discharge cleanup as provided for in this subchapter. Under the agreement, the following conditions shall be met:

(1) the commission and the Texas Department of Transportation shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose;

(2) personnel, equipment, and materials may be diverted only with the approval of the commission and the Texas Department of Transportation, acting through their designated agents, or by action of the governor;

(3) all expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the account, subject to reimbursement as provided in this subchapter; and

(4) subsequent to such activities, a full report of all expenditures and significant actions shall be prepared and submitted to the governor and the Legislative Budget Board, and shall be reviewed by the commission.

(g) The executive director shall develop and revise from time to time written action and contractual plans with the designated on-scene coordinator provided for by federal law.

(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities under this subchapter, the commission shall recognize the authority of the predesignated federal on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills that are undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.), and the national contingency plan authorized by the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.).

(2) Nothing in this subchapter shall require the

state-designated on-scene coordinator to defer to federal authority, unless preempted by federal law, if remedial action is unduly delayed or is ineffective.

(3) Nothing in this subchapter shall prevent the executive director from appointing a state-designated on-scene coordinator and acting independently if no on-scene federal coordinator is present or no action is being taken by an agency of the federal government.

(4) If an incident under this subchapter is eligible for federal funds, the commission shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies and restoration of land and aquatic resources held in trust or owned by the state.

(5) The commission may enter into contracts or cooperative agreements under Section 104(c) and (d) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.) or Section 311 of the federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.) to undertake authorized removal actions under this subchapter.

(i) The executive director shall after appropriate investigation prepare a report on state-funded cleanup of a discharge or spill, and this report shall provide the following information:

(1) a description of the incident, including location, amount, and characteristics of the material discharged or spilled and the prevailing weather conditions;

(2) the time and duration of discharge or spill and the time and method by which the discharge or spill was reported;

(3) the action taken, and by whom, to contain and clean up the discharge or spill;

(4) an assessment of both the short-term and long-term environmental impact of the accidental discharge or spill;

(5) the cost of cleanup operations incurred by the state;

(6) an evaluation of the principal causes of the

discharge or spill and an assessment of how similar incidents might be prevented in the future; and

(7) a description of any legal action being taken to levy penalties or collect damages.

(j) This subchapter is cumulative of all other powers of the commission.

(k) In the event that a discharge or spill presents or threatens to present an occurrence of disaster proportions, the governor shall utilize the authority granted him under Chapter 418, Government Code, to make available and bring to bear all resources of the state to prevent or lessen the impact of such a disaster.

(l) To the extent practicable and in lieu of the provisions of this subchapter, for facilities permitted under Chapter 361, Health and Safety Code to store, process, or dispose of hazardous waste, the department shall use procedures established under existing hazardous waste permits to abate or remove discharges or spills.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4207, ch. 669, Sec. 2, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 795, Sec. 1.107, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 930, Sec. 3, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 99, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 584, Sec. 105, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 10, Sec. 8, eff. March 28, 1991; Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 165, Sec. 22(75), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 13, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.004, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 26.005, eff. September 1, 2011.

Sec. 26.265. TEXAS SPILL RESPONSE ACCOUNT. (a) The Texas spill response account is an account in the general revenue fund. This account shall not exceed \$5 million, exclusive of fines and penalties received under this subchapter.

(b) The account shall consist of money appropriated to it by the legislature and any fines, civil penalties, or other reimbursement to the account provided for under this subchapter.

(c) The commission may expend money in the account only for the purposes of:

(1) response to and investigation of spills and discharges;

(2) obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills; and

(3) the assessment of damages to and the restoration of land and aquatic resources held in trust or owned by the state.

(d) In addition to any cause of action under Chapter 40, Natural Resources Code, the state has a cause of action against any responsible person for recovery of:

(1) expenditures out of the account; and

(2) costs that would have been incurred or paid by the responsible person if the responsible person had fully carried out the duties under Section 26.266 of this code, including:

(A) reasonable costs of reasonable and necessary scientific studies to determine impacts of the spill on the environment and natural resources and to determine the manner in which to respond to spill impacts;

(B) costs of attorney services;

(C) out-of-pocket costs associated with state agency action;

(D) reasonable costs incurred by the state in cleanup operations, including costs of personnel, equipment, and supplies and restoration of land and aquatic resources held in trust or owned by the state; and

(E) costs of remediating injuries proximately caused by reasonable cleanup activities.

(e) The state's right to recover under Subsection (d) of this section arises whether or not expenditures have actually been made out of the account.

(f) It is the intent of the legislature that the state attempt to recover the costs of cleanup according to the following priority:

(1) a responsible person; and

(2) the federal government to the extent that recovery from a responsible person is insufficient to pay the costs of cleanup.

(g) In a suit brought under Subsection (d) of this section, any responsible person who, after reasonable notice has been given by the executive director, has failed, after a reasonable period, to carry out his duties under Section 26.266 of this code is liable to the state for twice the costs incurred by the state under this subchapter in cleaning up the spill or discharge. Reasonable notice under this subsection must include a statement as to the basis for finding the person to whom notice is sent to be a responsible person. Any responsible person held liable under this subsection or Subsection (d) of this section has the right to recover indemnity or contribution from any third party who caused, suffered, allowed, or permitted the spill or discharge. Liability arising under this subsection or Subsection (d) of this section does not affect any rights the responsible person has against a third party whose acts caused or contributed to the spill or discharge.

(h) Notwithstanding Subsection (g), a responsible person who enters into a settlement agreement with the state that resolves all liability of the person to the state for a site subject to Subchapter F, Chapter 361, Health and Safety Code, is released from liability to a person described by Section 361.344(a), Health and Safety Code, for contribution or indemnity under this code regarding a matter addressed in the settlement agreement.

(i) A settlement agreement does not discharge the liability of a nonsettling person to the state unless the agreement provides otherwise.

(j) Notwithstanding Subsection (i), a settlement agreement reduces the potential liability to the state of the nonsettling persons by the amount of the settlement.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4204, ch. 669, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 795, Sec. 1.108, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 930, Sec. 4, eff. Sept. 1,

1985; Acts 1989, 71st Leg., ch. 99, Sec. 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 10, Sec. 9, eff. March 28, 1991; Acts 1993, 73rd Leg., ch. 746, Sec. 3, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 19, eff. Sept. 1, 1997.

Sec. 26.266. REMOVAL OF SPILL OR DISCHARGE. (a) Any owner, operator, demise charterer, or person in charge of a vessel or of any on-shore facility or off-shore facility shall immediately undertake all reasonable actions to abate and remove the discharge or spill subject to applicable federal and state requirements, and subject to the control of the federal on-scene coordinator.

(b) In the event that the responsible person is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of the responsible person is inadequate, the commission may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

(c) Any discharge or spill of a hazardous substance, the source of which is unknown, occurring in or having a potentially harmful effect on waters in this state or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter waters in this state may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the commission's approval, from the account, subject to the authority of the commission to seek reimbursement from an agency of the federal government, and from the responsible person if the identity of that person is discovered.

(d) Deleted by Acts 1989, 71st Leg., ch. 99, Sec. 4, eff. Sept. 1, 1989.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4209, ch. 669, Sec. 3, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 795, Sec. 1.109, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 930, Sec. 5, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 99, Sec. 4, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 333, Sec. 15, eff. Sept. 1, 1997.

Sec. 26.267. EXEMPTIONS. (a) No person shall be held liable under this subchapter for any spill or discharge resulting from an act of God, act of war, third party negligence, or an act of government.

(b) Nothing in this subchapter shall in any way affect or limit the liability of any person to any other person or to the United States, or to this state.

(c) Notwithstanding any other provision of this subchapter, the state or the commission shall utilize any and all procedures relating to releases or threatened releases of solid wastes contained in Chapter 361, Health and Safety Code prior to utilizing the provisions of this subchapter with respect to such releases or threatened releases.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 930, Sec. 6, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 29, eff. June 19, 1987; Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 16, Sec. 18.01, eff. Aug. 26, 1991.

SUBCHAPTER H. POULTRY OPERATIONS

Sec. 26.301. DEFINITIONS. In this subchapter:

(1) "Poultry" means chickens or ducks being raised or kept on any premises in the state for profit.

(2) "Poultry carcass" means the carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(3) "Poultry facility" means a facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(4) "Poultry litter" includes poultry excrement, bedding, and feed waste.

(5) "Liquid waste handling system" has the meaning assigned by Section 26.0286.

Added by Acts 1997, 75th Leg., ch. 1074, Sec. 1, eff. March 1, 1998.

Amended by:

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 3, eff. September 1, 2005.

Sec. 26.302. REGULATION OF POULTRY FACILITIES. (a) A person who owns or operates a poultry facility shall ensure that the facility has adequate means or is adequately equipped to handle and dispose of poultry carcasses, poultry litter, and other poultry waste regardless of whether the person owns the poultry.

(b) A person who owns or operates a poultry facility shall implement and maintain a water quality management plan for the facility that is certified by the State Soil and Water Conservation Board under Section 201.026, Agriculture Code.

(b-1) The State Soil and Water Conservation Board may certify a water quality management plan for a poultry facility that:

(1) does not use a liquid waste handling system; and

(2) is required to obtain a permit or other authorization from the commission.

(b-2) The State Soil and Water Conservation Board in consultation with the Texas Commission on Environmental Quality by rule shall establish criteria to determine the geographic, seasonal, and agronomic factors that the board will consider to determine whether a persistent nuisance odor condition is likely to occur when assessing the siting and construction of new poultry facilities.

(b-3) The State Soil and Water Conservation Board may not certify a water quality management plan for a poultry facility located less than one-half of one mile from a business, off-site permanently inhabited residence, or place of worship if the presence of the facility is likely to create a persistent odor nuisance for such neighbors, unless the poultry facility provides an odor control plan the executive director determines is sufficient to control odors. This subsection does not apply to:

(1) a revision of a previously certified and existing water quality management plan unless the revision is necessary

because of an increase in poultry production of greater than 50 percent than the amount included in the existing certified water quality management plan for the facility; or

(2) any poultry facility located more than one-half of one mile from a surrounding business, permanently inhabited off-site residence, or place of worship established before the date of construction of the poultry facility.

(c) The commission may bring a cause of action to remedy or prevent a violation of this section.

(d) This section does not affect the authority of the commission to investigate or take enforcement action against an unauthorized discharge under Section 26.121.

Added by Acts 1997, 75th Leg., ch. 1074, Sec. 1, eff. March 1, 1998.

Amended by Acts 2001, 77th Leg., ch. 277, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 2, eff. September 1, 2009.

Sec. 26.303. HANDLING AND DISPOSAL OF POULTRY CARCASSES.

(a) Except as provided by Subsection (a-1), the commission by rule shall adopt requirements for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses. The rules must:

(1) specify the acceptable methods for disposal of poultry carcasses, including:

(A) placement in a landfill permitted by the commission to receive municipal solid waste;

(B) composting;

(C) cremation or incineration;

(D) extrusion;

(E) on-farm freezing;

(F) rendering; and

(G) any other method the commission determines to be appropriate;

(2) require poultry carcasses stored on the site of a

poultry facility to be stored in a varmint-proof receptacle to prevent odor, leakage, or spillage;

(3) prohibit the storage of poultry carcasses on the site of a poultry facility for more than 72 hours unless the carcasses are refrigerated or frozen; and

(4) authorize the on-site burial of poultry carcasses only in the event of a major die-off that exceeds the capacity of a poultry facility to handle and dispose of poultry carcasses by the normal means used by the facility.

(a-1) A rule adopted under Subsection (a) may not apply to the disposal of carcasses of poultry that died as a result of a disease, which is governed by Section 161.004, Agriculture Code.

(b) A person must obtain any permit required by other law before disposing of poultry carcasses as provided by Subsection (a)(1).

Added by Acts 1997, 75th Leg., ch. 1074, Sec. 1, eff. March 1, 1998.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1198 (H.B. 1457), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 17, eff. September 1, 2007.

Sec. 26.304. RECORDS OF SALE, PURCHASE, TRANSFER, OR APPLICATION OF POULTRY LITTER. (a) A poultry facility that sells or transfers poultry litter for off-site application must maintain until the second anniversary of the date of sale or transfer a record regarding:

(1) the identity of the purchaser or applicator;

(2) the physical destination of the poultry litter identified by the purchaser or transferee;

(3) the date the poultry litter was removed from the poultry facility; and

(4) the number of tons of poultry litter removed.

(b) A person that purchases or obtains poultry litter for land application must maintain until the second anniversary of the date of application a signed and dated proof of delivery document for every load of poultry litter applied to land. The landowner or

the owner's tenant or agent shall note on the document the date or dates on which the poultry litter was applied to land.

(c) Subsection (b) does not apply to poultry litter that is:

- (1) taken to a composting facility;
- (2) used as a bio-fuel;
- (3) used in a bio-gasification process; or
- (4) otherwise beneficially used without being applied

to land.

Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 3, eff. September 1, 2009.

Sec. 26.305. INSPECTION OF RECORDS. The commission may inspect any record required to be maintained under this subchapter. Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 3, eff. September 1, 2009.

SUBCHAPTER I. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

Sec. 26.341. PURPOSE. (a) The legislature finds that leaking underground tanks storing certain hazardous, toxic, or otherwise harmful substances have caused and continue to pose serious groundwater contamination problems in Texas.

(b) The legislature declares that it is the policy of this state and the purpose of this subchapter to:

(1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources;

(2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy; and

(3) promote the safety of storage vessels as defined in Section 26.3442, by adopting requirements for the design, construction, operation, and maintenance of storage vessels, with the objective of protecting groundwater and surface water resources in the event of accidents and natural disasters.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 228, Sec. 1, eff. May 31, 1989;
Acts 1995, 74th Leg., ch. 315, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 428 (S.B. 900), Sec. 1, eff.
September 1, 2021.

Sec. 26.342. DEFINITIONS. In this subchapter:

(1) "Aboveground storage tank" means a nonvehicular device that is:

(A) made of nonearthen materials;

(B) located on or above the surface of the ground or on or above the surface of the floor of a structure below ground such as a mineworking, basement, or vault; and

(C) designed to contain an accumulation of petroleum.

(2) "Claim" means a demand in writing for a certain sum.

(3) "Corporate fiduciary" means an entity chartered by the Banking Department of Texas, the Department of Savings and Mortgage Lending, the United States comptroller of the currency, or the director of the United States Office of Thrift Supervision that acts as a receiver, conservator, guardian, executor, administrator, trustee, or fiduciary of real or personal property.

(4) "Eligible owner or operator" means a person designated as an eligible owner or operator for purposes of this subchapter by the commission under Section 26.3571(d) of this code.

(5) "Hazardous substance" has the meaning assigned by Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.).

(6) "Hydraulic fluid" means any regulated substance that can be used in a hydraulic lift system.

(7) "Lender" means:

(A) a state or national bank;

(B) a state or federal savings and loan association or savings bank;

(C) a credit union;

(D) a state or federal agency that customarily provides financing; or

(E) an entity that is registered with the Office of Consumer Credit Commissioner pursuant to Chapter 348 or 353, Finance Code, if the entity is regularly engaged in the business of extending credit and if extending credit represents the majority of the entity's total business activity.

(8) "Operator" means any person in day-to-day control of and having responsibility for the daily operation of the underground storage tank system.

(9) "Owner" means a person who holds legal possession or ownership of an interest in an underground storage tank system or an aboveground storage tank. If the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person. A person that has registered as an owner of an underground storage tank system or aboveground storage tank with the commission under Section 26.346 after September 1, 1987, shall be considered the tank system owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the tank system was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Section 26.3514 (Limits on Liability of Lender), Section 26.3515 (Limits on Liability of Corporate Fiduciary), and Section 26.3516 (Limits on Liability of Taxing Unit).

(10) "Person" means an individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.

(11) "Petroleum product" means a petroleum product

that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(12) "Petroleum storage tank" means:

(A) any one or combination of aboveground storage tanks that contain petroleum products and that are regulated by the commission; or

(B) any one or combination of underground storage tanks and any connecting underground pipes that contain petroleum products and that are regulated by the commission.

(13) "Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment.

(14) "Release" means any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground or aboveground storage tank into groundwater, surface water, or subsurface soils.

(15) "Risk-based corrective action" means site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking underground or aboveground storage tank.

(16) "Spent oil" means a regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or

surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

(17) "Underground storage tank" means any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.

(18) "Vehicle service and fueling facility" means a facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 1, eff. May 31, 1989;
Acts 1991, 72nd Leg., ch. 905, Sec. 1, eff. June 16, 1991; Acts
1995, 74th Leg., ch. 315, Sec. 2, eff. Sept. 1, 1995; Acts 1999,
76th Leg., ch. 62, Sec. 7.96, eff. Sept. 1, 1999; Acts 1999, 76th
Leg., ch. 1441, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg.,
ch. 965, Sec. 14.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch.
1135, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. [485](#)), Sec. 2, eff.
September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. [1987](#)), Sec. 2, eff.
September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 6.068,
eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. [2559](#)), Sec. 25, eff.
September 1, 2011.

Sec. 26.343. REGULATED SUBSTANCES. (a) Regulated substances under this subchapter include:

(1) a substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), but does not include a substance regulated as a hazardous waste under the federal Solid

Waste Disposal Act (42 U.S.C. Section 6921 et seq.);

(2) petroleum, including crude oil or a fraction of it, that is liquid at standard conditions of temperature and pressure; and

(3) any other substance designated by the commission.

(b) Standard conditions of temperature and pressure under Subdivision (2) of Subsection (a) of this section are 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.344. EXEMPTIONS. (a) An underground or aboveground storage tank is exempt from regulation under this subchapter if the tank is:

(1) a farm or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;

(2) used for storing heating oil for consumptive use on the premises where stored;

(3) a septic tank;

(4) a surface impoundment, pit, pond, or lagoon;

(5) a storm water or waste water collection system;

(6) a flow-through process tank;

(7) a tank, liquid trap, gathering line, or other facility used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code; or

(8) a transformer or other electrical equipment that contains a regulated substance and that is used in the transmission of electricity, to the extent that such a transformer or equipment is exempted by the United States Environmental Protection Agency under 40 C.F.R. Part 280.

(b) A storage tank is exempt from regulation under this subchapter if the sole or principal substance in the tank is a hazardous substance and the tank is located:

(1) in an underground area, including a basement,

cellar, mineworking, drift, shaft, or tunnel; and

(2) on or above the surface of the floor of that area.

(c) An interstate pipeline facility, including gathering lines, or an aboveground storage tank connected to such a facility is exempt from regulation under this subchapter if the pipeline facility is regulated under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(d) An intrastate pipeline facility or an aboveground storage tank connected to such a facility is exempt from regulation under this subchapter if the pipeline facility is regulated under one of the following state laws:

(1) Chapter 111, Natural Resources Code;

(2) Chapter 117, Natural Resources Code; or

(3) Subchapter E, Chapter 121, Utilities Code.

(e) Except for Section 26.351 of this subchapter, in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and hold less than 100 gallons of hydraulic oil, if exempt by the federal Environmental Protection Agency, are exempt under this subchapter.

(f) An aboveground storage tank that is located at or is part of a petrochemical plant, a petroleum refinery, an electric generating facility, or a bulk facility as that term is defined by Section 26.3574(a) of this code is exempt from regulation under this subchapter but is not exempt for purposes of the fee imposed under Section 26.3574 of this code.

(g) Costs incurred as a result of a release from a storage tank system owned, operated, or maintained by a common carrier railroad are not reimbursable pursuant to the provisions of this section. Common carrier railroads are exempt from the fees collected pursuant to the provisions of this Act.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 228, Sec. 1, eff. May 31, 1989;

Acts 1999, 76th Leg., ch. 62, Sec. 18.64, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 13, eff. September 1, 2013.

Sec. 26.3441. ABOVEGROUND STORAGE TANKS. (a) An aboveground storage tank that is not exempt from regulation under Section 26.344 of this code is subject to the registration requirements of Section 26.346 of this code and to regulation by the commission only to the extent prescribed by this subchapter.

(b) The commission may not develop a regulatory program for aboveground storage tanks that is more extensive than the regulatory program authorized by this subchapter unless additional regulation of aboveground storage tanks is necessary to comply or be in conformity with requirements adopted by the United States Environmental Protection Agency or with federal law.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 2, eff. May 31, 1989.

Sec. 26.3442. PERFORMANCE STANDARDS FOR SAFETY AT STORAGE VESSELS. (a) Definitions:

(1) Storage vessel:

(A) is made of nonearthen materials;

(B) is located on or above the surface of the ground;

(C) has a capacity of 21,000 gallons or more of a regulated substance as defined by Section 26.343, Water Code; and

(D) is located at or is part of a petrochemical plant, a petroleum refinery, or a bulk storage terminal as that term is defined by Subsection (a)(2).

(2) "Bulk storage terminal" means a site in this state, including end-of-line pipeline storage terminals (excluding breakout tanks), refinery storage terminals, for-hire storage terminals, and rail and barge storage terminals.

(3) "National consensus standards" means any performance standard for storage tanks, or a modification thereof, that:

(A) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the commission that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption; and

(B) was formulated in a manner that afforded an

opportunity for diverse views to be considered.

(b) The following tanks, including any pipe that is connected to the tank, are not considered to be storage vessels and are exempt from regulation under the Performance Standards for Safety at Storage Vessels requirements in Sections [26.3442](#), [26.3443](#), and [26.3444](#):

(1) a tank used in or associated with the production or gathering of crude oil or natural gas;

(2) a tank that is part of a stormwater or wastewater collection system;

(3) a flow-through process tank, including a pressure vessel or process vessel and oil and water separators;

(4) a storage vessel operating above 0.5 Pounds per Square Inch Gauge;

(5) heated tanks;

(6) an intermediate bulk container or similar tank that may be moved within a facility;

(7) a tank regulated under the federal Surface Mining Control and Reclamation Act (30 U.S.C. Sec. 1201 et seq.);

(8) a tank used for the storage of products regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.);

(9) a tank, including piping and collection and treatment systems, that is used in the management of leachate, methane gas, or methane gas condensate, unless the tank is used for storage of a regulated substance;

(10) a tank or pressure vessel that is used to store liquefied petroleum gas; and

(11) a tank regulated under the U.S. Department of Transportation's (DOT's) Pipeline and Hazardous Materials Safety Administration (PHMSA) (49 U.S.C. 60101 et seq.).

(c) Not later than September 1, 2023, the commission shall establish a Performance Standards for Safety at Storage Vessels Program as described in this section to provide for the protection of groundwater and surface water resources from a release of substances from a storage vessel in the event of an accident or natural disaster.

(d) In establishing the portion of the Performance Standards for Safety at Storage Vessels Program governed by this subsection, the commission shall, except as provided by Section 26.3443, include all and only those critical safety elements that are applicable to a storage vessel, and that the commission determines to be critical in this state for the protection described by Subsection (c), from the following federal statutes and regulations, ensuring that the correct critical safety elements are applied to the correct types of storage vessels as delineated in the applicability section of each cited federal statute and regulation:

(1) Clean Air Act Risk Management Plan Rule and Maximum Achievable Control Technology/National Emission Standards for Hazardous Air Pollutants program requirements;

(2) Resource Conservation and Recovery Act requirements for Treatment, Storage, and Disposal Facilities (40 C.F.R. Parts 264/265, Subparts A-E);

(3) Spill Prevention, Control, and Countermeasure Regulations (40 C.F.R. Part 112); and

(4) EPA Risk Management Plan Rules regarding accident prevention at facilities that use certain hazardous substances.

(e) In establishing the portion of the Performance Standards for Safety at Storage Vessels Program governed by this subsection, the commission shall, except as provided by Section 26.3443, include all and only those critical safety elements that are applicable to a storage vessel, and that the commission determines to be critical in this state for the protection described by Subsection (c), from the following national consensus standards, ensuring that the correct critical safety elements are applied to the correct types of storage vessels as delineated in the applicability section of each cited national consensus standard:

(1) for in-service storage vessels constructed on or before September 1, 2027:

(A) from American Petroleum Institute (API) Standard 653: Tank Inspection, Repairs, Alteration, and Reconstruction, the commission shall require adherence to the protocol to applicable tanks included in this standard for the

following:

- (i) Section 4.3: Tank Shell Evaluation;
- (ii) Section 4.4: Tank Bottom Evaluation;
- (iii) Section 4.5: Tank Foundation Evaluation;
- (iv) Section 6.2: Inspection Frequency Considerations;
- (v) Section 6.3: Inspections from the Outside of the Tank;
- (vi) Section 6.4: Internal Inspection, if applicable in accordance with Section 6.3;
- (vii) Section 8: Design Considerations for Reconstructed Tanks; and
- (viii) Section 9: Tank Repair and Alteration;

(B) from API Standard 2350 or API Recommended Practices 2350: Overfill Protection for Storage Tanks in Petroleum Facilities, the commission shall include the following critical safety elements for storage vessels included in this standard:

- (i) Section 4: Overfill Prevention Systems, including management systems and operational procedures before and after product receipt as applicable;
- (ii) Section 5: Overfill Prevention Systems, including requirements for manual or automated overfill prevention systems as applicable, including use of remote operated shutoff valves;
- (iii) the requirements referenced in Subparagraphs (i) and (ii) only apply to atmospheric tanks as specified in API Standard 2350; and
- (iv) API 2350 assessment protocol to determine how to manage overfill through engineered controls, administrative controls, and hazard class in applicable quantities; and

(C) from either National Fire Protection Association (NFPA) 30 Ch. 22 or API Recommended Practice 2001, the commission shall require fire suppression systems on storage

vessels subject to the protocol in the applicable standard; and

(2) for in-service storage vessels constructed after September 1, 2027:

(A) all of the standards listed in Subdivision (1); and

(B) API 650: Welded Tanks for Oil Storage and NFPA 30, Chapter 22 location standards; and

(C) NFPA 30, Chapter 22 location standards, except for reconstruction standards at an original storage vessel location.

(f) The applicable standard chosen by the commission under Subsection (e)(1)(C) only applies to material stored at atmospheric pressure with a flashpoint less than or equal to 100 Fahrenheit as defined by OSHA Process Safety Management.

(g) The applicable standard in Subsection (e)(2)(B) only applies to atmospheric storage vessels as defined in API 650.

(h) The commission may require a plan to control spills from atmospheric storage vessels that includes recommended practices in NFPA 30.

(i) An owner or operator of a storage vessel shall register with the commission, assess and report to the commission its current compliance status with the Performance Standards for Safety at Storage Vessels Program no later than September 1, 2027. For storage vessels constructed and brought into service after September 1, 2027, an owner or operator of a storage vessel shall register and certify its compliance status to the commission with the Performance Standards for Safety at Storage Vessels Program no later than 30 days after start of operation.

(j) An owner or operator of a storage vessel shall comply with the Performance Standards for Safety at Storage Vessels Program requirements on completion of the next regularly scheduled out-of-service maintenance of the storage vessel by the owner or operator that occurs after September 1, 2027. However, all facilities must certify compliance status by no later than September 1, 2037. Any modifications or retrofits necessary for compliance with the Performance Standards for Safety at Storage Vessels Program should be made during these out-of-service

maintenance periods as identified by the owner or operator unless the owner or operator makes and records with the commission a demonstration of technical impracticability that the commission approves.

(k) The commission in implementing the Performance Standards for Safety at Storage Vessels Program shall require an owner or operator of a storage vessel or a designated third party as assigned by the owner or operator to certify compliance status every 10 years with the standards referenced in Subsections (d) and (e) as applicable.

(1) The commission shall keep confidential information reported to, obtained by, or otherwise submitted to the commission that:

(1) is subject to restrictions on dissemination under federal law, including off-site consequence analysis information subject to Title 40, Part 1400, C.F.R.; or

(2) may otherwise present a security risk, if disclosed publicly.

(m) The commission shall conduct on-site inspections of the registered/certified facilities at least once every five years to determine compliance with the Performance Standards for Safety at Storage Vessels Program. This subsection does not limit the commission's ability to inspect a facility under other state or federal regulations.

Added by Acts 2021, 87th Leg., R.S., Ch. 428 (S.B. 900), Sec. 2, eff. September 1, 2021.

Sec. 26.3443. CERTAIN COMMISSION EXEMPTIONS AND RULES; AMENDMENTS AND ALTERNATIVE STANDARDS. (a) The commission, in implementing the Performance Standards for Safety at Storage Vessels Program under Section 26.3442, may approve exemption of specific storage vessels otherwise subject to Section 26.3442 from regulation under the program if the legal owner or operator submits a request to the commission demonstrating that the vessel presents a sufficiently low risk of floods, storm surges, hurricanes, accidents, fires, explosions, or other hazards such that it does not warrant regulation under the program.

(b) The commission shall establish through rulemaking the effective date of a federal law or regulation that the commission is implementing under Section 26.3442(d), or a national consensus standard that the commission is implementing under Section 26.3442(e). The commission shall amend through rulemaking changes if a federal law or regulation or national consensus standard is amended in a way that materially conflicts with the commission's current implementation of the Performance Standards for Safety at Storage Vessels Program except to the extent that the commission determines, after a cost-benefit analysis and if not prohibited under federal law, that the program as currently implemented by the commission is sufficiently effective for protection of the health, safety, and welfare of the citizens of this state.

(c) Notwithstanding the requirement of Section 26.3442(e) that the commission include only critical safety elements from specified national consensus standards, the commission may initiate a rulemaking proceeding to determine whether, for certain vessels in certain situations, an alternative national consensus standard would be at least as effective for public health and safety but more cost effective for the persons affected to implement. The commission may by rule apply the alternative national consensus standard in circumstances under which it has determined the alternative standard is as effective for public health and safety but more cost effective.

Added by Acts 2021, 87th Leg., R.S., Ch. 428 (S.B. 900), Sec. 2, eff. September 1, 2021.

Sec. 26.3444. CERTIFICATION FEE. (a) The commission by rule shall establish fees in amounts sufficient to recover the reasonable costs to:

- (1) implement a registration program for affected facilities;
- (2) review initial and ten-year certifications;
- (3) amend certifications;
- (4) inspect certified facilities; and
- (5) enforce compliance with applicable standards of Section 26.3442 and rules and orders adopted under those

subsections.

(b) The certification fee under Subsection (a) shall be deposited to the credit of an account to be named the Performance Standards for Safety at Storage Vessels Program Account.

(c) The commission may use the money in the Performance Standards for Safety at Storage Vessels Program Account to pay:

(1) necessary expenses associated with the administration of the Performance Standards for Safety at Storage Vessels Program; and

(2) expenses associated with the review and amendment of certifications, inspection of certified facilities, and enforcement of the applicable standards of Section 26.3442 and the rules and orders adopted by the Performance Standards for Safety at Storage Vessels Program.

Added by Acts 2021, 87th Leg., R.S., Ch. 428 (S.B. 900), Sec. 2, eff. September 1, 2021.

Sec. 26.345. ADMINISTRATIVE PROVISIONS. (a) The commission shall administer this subchapter and may develop a regulatory program regarding underground and aboveground storage tanks in accordance with this subchapter.

(b) In implementing this subchapter, the commission shall cooperate with:

(1) cities and towns;

(2) agencies, departments, and other political subdivisions of the state; and

(3) the United States and its agencies.

(c) The commission may adopt rules necessary to carry out the purposes of this subchapter.

(d) The commission may authorize the executive director to enter into contracts with a public agency, private person, or other entity for the purpose of implementing this subchapter.

(e) The commission may enter into contracts and cooperative agreements with the federal government to carry out remedial action for releases from underground and aboveground storage tanks as authorized by the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.).

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 3, eff. May 31, 1989.

Sec. 26.346. REGISTRATION REQUIREMENTS. (a) An underground or aboveground storage tank must be registered with the commission unless the tank is exempt from regulation under Section 26.344 of this code or the tank is covered under Subsection (b) of this section. The commission by rule shall establish the procedures and requirements for establishing and maintaining current registration information concerning underground and aboveground storage tanks. The commission shall also require that an owner or operator of an underground storage tank used for storing motor fuels (as defined in commission rule) complete an annual underground storage tank compliance certification form.

(b) An underground storage tank is not required to be registered if the tank:

- (1) does not contain a regulated substance; and
- (2) is not in operation and has not been in operation since January 1, 1974.

(c) The commission shall issue to each person who owns or operates a petroleum storage tank that is registered under this section a registration and compliance confirmation certificate that includes a brief description of:

- (1) the responsibility of the owner or operator under Section 26.3512 of this code;
- (2) the rights of the owner or operator to participate in the petroleum storage tank remediation account and the groundwater protection cleanup program established under this subchapter; and
- (3) the responsibility of the owner or operator of an underground storage tank to accurately complete the part of the registration form pertaining to the certification of compliance with underground storage tank administrative requirements and technical standards if the tank is used for storing motor fuels (as defined in commission rule).

(d) A person who has previously provided notice to the commission of an underground storage tank under Section 9002 of the

federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) is not required to register the tank with the commission under this section.

(e) The owner or operator of an underground or aboveground storage tank installed before December 1, 1995, that is required to be registered under this section and that has not been registered on or before December 31, 1995, is not eligible to receive reimbursement for that tank from the petroleum storage tank remediation account except for:

(1) an owner of a registered facility who discovers an unregistered tank while removing, upgrading, or replacing a tank or while performing a site assessment;

(2) a state or local governmental agency that purchases a right-of-way and discovers during construction an unregistered tank in the right-of-way; or

(3) a property owner who reasonably could not have known that a tank was located on the property because a title search or the previous use of the property does not indicate a tank on the property.

(f) The owner or operator of an underground or aboveground storage tank installed on or after December 1, 1995, must register the tank under this section not later than the 30th day after the date the installation is completed to be eligible for reimbursement for the new tank.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 4, eff. May 31, 1989; Acts 1995, 74th Leg., ch. 315, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1441, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.02, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 2, eff. Sept. 1, 2001.

Sec. 26.3465. FAILURE OR REFUSAL TO PROVIDE PROOF OF REGISTRATION OR CERTIFICATION OF COMPLIANCE. An owner or operator of an underground storage tank who fails or refuses to provide, on request of the commission, proof of registration or certification of compliance for an underground storage tank is

liable for a civil penalty under Subchapter D, Chapter 7.

Added by Acts 1999, 76th Leg., ch. 1441, Sec. 3, eff. Sept. 1, 1999.

Sec. 26.3467. DUTY TO ENSURE CERTIFICATION OF TANK BEFORE DELIVERY. (a) The owner or operator of an underground storage tank into which a regulated substance is to be deposited shall provide the common carrier a copy of the certificate of compliance for the specific underground storage tank into which the regulated substance is to be deposited before accepting delivery of the regulated substance into the underground storage tank. The owner or operator of an underground storage tank may comply with this subsection by obtaining a current copy of the certificate from the commission's Internet website.

(b) An owner or operator of an underground storage tank who violates Subsection (a) commits an offense that is punishable as provided by Section 7.156 for an offense under that section.

(c) A person who sells a regulated substance to a common carrier who delivers the regulated substance to the owner or operator of an underground storage tank into which the regulated substance is deposited, and who does not deliver the regulated substance into the underground storage tank, is not liable under this chapter with respect to that tank.

(d) A person may not deliver any regulated substance into an underground storage tank regulated under this chapter unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346. The commission may impose an administrative penalty against a person who violates this subsection. The commission shall adopt rules as necessary to enforce this subsection.

(e) It is an affirmative defense to the imposition of an administrative penalty for a violation of Subsection (d) that the person delivering a regulated substance into an underground storage tank relied on:

(1) a valid paper delivery certificate presented by the owner or operator of the underground storage tank or displayed at the facility associated with the underground storage tank;

(2) a temporary delivery authorization presented by the owner or operator of the underground storage tank or displayed at the facility associated with the underground storage tank; or

(3) registration and self-certification information for the underground storage tank obtained from the commission's Internet website not more than 30 days before the date of delivery.

Added by Acts 1999, 76th Leg., ch. 1441, Sec. 3, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1283, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.16, eff. September 1, 2011.

Sec. 26.347. TANK STANDARDS. (a) The commission shall adopt performance standards for existing underground storage tanks and underground storage tanks brought into use on or after the effective date of the standards.

(b) The performance standards for underground storage tanks must include design, construction, installation, release detection, and compatibility standards.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 228, Sec. 5, eff. May 31, 1989.

Sec. 26.3475. RELEASE DETECTION REQUIREMENTS; SPILL AND OVERFILL PREVENTION; CORROSION PROTECTION; NOTICE OF VIOLATION; SHUTDOWN. (a) All piping in an underground storage tank system that routinely conveys regulated substances under pressure must comply with commission requirements for pressurized piping release detection equipment.

(b) All piping in an underground storage tank system that routinely conveys regulated substances under suction must comply with commission requirements for suction-type piping release detection equipment.

(c) A tank in an underground storage tank system must comply with commission requirements for:

- (1) tank release detection equipment; and
- (2) spill and overfill equipment.

(d) An underground storage tank system must comply with commission requirements for applicable tank integrity assessment and corrosion protection not later than December 22, 1998.

(e) The commission may issue a notice of violation to the owner or operator of an underground storage tank system that does not comply with this section, informing the owner or operator of the nature of the violation and that the commission may order the noncomplying underground storage tank system placed out of service if the owner or operator does not correct the violation within 30 days after the date the notice is received. If the owner or operator does not correct the violation within the prescribed time, the commission may order the noncomplying underground storage tank system out of service.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 4, eff. Sept. 1, 1995.

Sec. 26.3476. SECONDARY CONTAINMENT REQUIRED FOR TANKS LOCATED OVER CERTAIN AQUIFERS. (a) In this section, "secondary containment" means a method by which a secondary wall or barrier is installed around an underground storage tank system in a manner designed to prevent a release of a regulated substance from migrating beyond the secondary wall or barrier before the release can be detected. A secondary containment system may include an impervious liner or vault surrounding a primary tank or piping system or a double-wall tank or piping system.

(b) An underground storage tank system, at a minimum, shall incorporate a method for secondary containment if the system is located in:

- (1) the outcrop of a major aquifer composed of limestone and associated carbonate rocks of Cretaceous age or older; and

- (2) a county that:

- (A) has a population of at least one million and relies on groundwater for at least 75 percent of the county's water

supply; or

(B) has a population of at least 75,000 and is adjacent to a county described by Paragraph (A).

(c) Section 26.3475(e) applies to an underground storage tank system that is subject to this section as if a violation of this section were a violation of Section 26.3475.

(d) Notwithstanding Section 26.359(b), a political subdivision under this section may adopt standards for the containment of underground storage tank systems.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 13.01, eff. Sept. 1, 2001.

Sec. 26.348. LEAK DETECTION AND RECORD MAINTENANCE. The commission shall adopt standards of performance for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. In addition, the commission shall adopt requirements for maintaining records of any leak detection monitoring that includes inventory control or tank testing system or comparable system.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.349. REPORTING OF RELEASES AND CORRECTIVE ACTION.

(a) The commission shall adopt requirements for the reporting of any releases and corrective action taken in response to a release from an underground or aboveground storage tank.

(b) Repealed by Acts 1997, 75th Leg., ch. 1082, Sec. 12, eff. Sept. 1, 1997.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 228, Sec. 6, eff. May 31, 1989.

Sec. 26.350. TANK CLOSURE REQUIREMENTS. The commission shall adopt requirements for the closure of tanks, including the removal, disposal, or removal and disposal of tanks to prevent future releases of regulated substances into the environment.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.351. CORRECTIVE ACTION. (a) The commission shall use risk-based corrective action for taking corrective action in response to a release from an underground or aboveground storage tank. Corrective action may include:

(1) site cleanup, including the removal, treatment, and disposal of surface and subsurface contamination;

(2) removal of underground or aboveground storage tanks;

(3) measures to halt a release in progress or to prevent future or threatened releases of regulated substances;

(4) well monitoring, taking of soil borings, and any other actions reasonably necessary to determine the extent of contamination caused by a release;

(5) providing alternate water supplies; and

(6) any other action reasonably necessary to protect the public health and safety or the environment from harm or threatened harm due to releases of regulated substances from underground or aboveground storage tanks.

(b) The owner or operator of an underground or aboveground storage tank shall immediately take all reasonable actions to prevent a threatened release of regulated substances from an underground or aboveground storage tank and to abate and remove any releases subject to applicable federal and state requirements. The owner or operator may be ordered to take corrective action under this subchapter.

(c) The commission may undertake corrective action in response to a release or a threatened release if:

(1) the owner or operator of the underground or aboveground storage tank is unwilling to take corrective action;

(2) the owner or operator of the underground or aboveground storage tank cannot be found;

(3) the owner or operator of the underground or aboveground storage tank, in the opinion of the executive director, is unable to take the corrective action necessary to protect the public health and safety or the environment; or

(4) notwithstanding any other provision of this

chapter, the executive director determines that more expeditious corrective action than is provided by this chapter is necessary to protect the public health and safety or the environment from harm.

(c-1) The commission may undertake corrective action to remove an underground or aboveground storage tank that:

- (1) is not in compliance with the requirements of this chapter;
- (2) is out of service;
- (3) presents a contamination risk; and
- (4) is owned or operated by a person who is financially unable to remove the tank.

(c-2) The commission shall adopt rules to implement Subsection (c-1), including rules regarding:

- (1) the determination of the financial ability of the tank owner or operator to remove the tank; and
- (2) the assessment of the potential risk of contamination from the site.

(d) The commission may retain agents to take corrective action it considers necessary under this section. The agents shall operate under the direction of the executive director. Any expenses arising from corrective action taken by the commission or the executive director may be paid from the waste management account.

(e) The commission has the primary regulatory authority to direct the remediation of a release from an underground or aboveground storage tank that contains petroleum if the release does not present an immediate or imminent threat of fire or explosion.

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

- (1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;
- (2) a complete corrective action plan, as determined

by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a corrective action plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to the executive director no later than September 1, 2011. The request must be complete, as judged by the executive director.

(g) For persons regulated under Subsection (f), their failure to comply with any deadline listed in Subsection (f) is a violation of this section and the executive director may enforce such a violation under Chapter 7 of this code. A missed deadline that is the fault of the person, his agent, or contractor shall also eliminate reimbursement eligibility as described at Section 26.3571(b). If it can be established to the executive director's satisfaction that the deadline was not missed at the fault of the person, his agent, or contractor, then reimbursement eligibility is not affected under this subsection.

(h) A person's liability to perform corrective action under this chapter is unrelated to any possible reimbursements the person may be eligible for under Section [26.3571](#).

(i) The commission shall by rule define "risk-based corrective action" for purposes of this section.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 228, Sec. 7, eff. May 31, 1989;

Acts 1997, 75th Leg., ch. 333, Sec. 17, eff. Sept. 1, 1997; Acts

2001, 77th Leg., ch. 965, Sec. 14.03, eff. Sept. 1, 2001; Acts

2001, 77th Leg., ch. 1135, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. [485](#)), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. [1863](#)), Sec. 5.01, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. [1987](#)), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. [3554](#)), Sec. 1, eff. August 27, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.17, eff. September 1, 2011.

Sec. 26.3511. CORRECTIVE ACTION BY THE COMMISSION. (a) Notwithstanding Section [26.351](#)(c) of this code, to the extent that the commission pays from the petroleum storage tank remediation account or from sources other than the waste management account the expenses of the investigations, cleanups, and corrective action measures it performs, the commission may undertake those corrective action measures described in Section [26.351](#) of this code in response to a release or a threatened release from an underground or aboveground storage tank under any circumstances in which the commission considers it necessary to protect the public health and safety or the environment.

(b) The state, the commission, and their agents or employees are not liable for damages arising out of the loss of access to or the use of real property or losses to a business located on the real property if those damages arise out of a delay in procuring services

for corrective action, initiating corrective action, or completing corrective action on the property. This subsection applies only to cases in which the commission undertakes corrective action.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 8, eff. May 31, 1989.

Amended by Acts 1997, 75th Leg., ch. 333, Sec. 18, eff. Sept. 1, 1997.

Sec. 26.3512. OWNER OR OPERATOR RESPONSIBILITY; LIMITATIONS ON ACCOUNT PAYMENTS FOR CORRECTIVE ACTION. (a) The provisions of this subchapter relating to the groundwater protection cleanup program and to the petroleum storage tank remediation account do not limit the responsibility or liability of an owner or operator of a petroleum storage tank required to take corrective action under an order issued in accordance with this subchapter by the commission.

(b) Funds from the petroleum storage tank remediation account may not be used to pay, and the owner or operator of a petroleum storage tank ordered by the commission to take corrective action is responsible for payment of, the following:

(1) the owner or operator contribution described by Subsections (e)-(k);

(2) any expenses for corrective action that exceed the applicable amount specified by Section [26.3573\(m\)](#);

(3) any expenses for corrective action that are not covered by payment from the petroleum storage tank remediation account under the rules or decisions of the commission under this subchapter;

(4) any expenses for corrective action not ordered or agreed to by the commission;

(5) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the commission after December 22, 1998; and

(6) any corrective action expenses for which reimbursement is prohibited under Section [26.3571](#), [26.3573](#), or [26.361](#).

(c) The owner or operator contribution under Subsection (b)(1) of this section may include the costs of site assessment.

(d) Subsection (b)(1) of this section does not prohibit payment from the petroleum storage tank remediation account of expenses incurred by an eligible owner or operator as a result of an order issued by the commission under Section 26.356 of this code if the commission finds that the eligible owner or operator is not responsible for the release from a petroleum storage tank. An eligible owner or operator covered by this subsection is eligible for reimbursement from the petroleum storage tank remediation account for the expenses incurred relating to corrective action that result from the order issued by the commission under Section 26.356 of this code.

(e) If an owner or operator submits a site assessment in accordance with commission rules before December 23, 1996, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first \$10,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first \$5,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first \$2,500; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first \$1,000.

(f) If an owner or operator does not submit a site assessment in accordance with commission rules before December 23, 1996, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first \$20,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first \$10,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first \$5,000; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first \$2,000.

(g) If an owner or operator's corrective action plan is approved by the commission under Section 26.3572 before June 23, 1998, the owner or operator shall pay under Subsection (b)(1) the amount provided by Subsection (e) for the first expenses for corrective action taken for each occurrence.

(h) If an owner or operator's corrective action plan is not approved by the commission under Section 26.3572 before June 23, 1998, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first \$40,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first \$20,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first \$10,000; and

(4) a person who owns or operates fewer than 13 single petroleum storage tanks, the first \$4,000.

(i) If an owner or operator has a corrective action plan approved by the commission under Section 26.3572 and before December 23, 1999, has met the goals specified in the plan to be met by that date, the owner or operator shall pay under Subsection (b)(1) the amount specified by Subsection (e) for the first expenses for corrective action taken for each occurrence.

(j) If an owner or operator does not have a corrective action plan approved by the commission under Section 26.3572 and before December 23, 1999, has not met the goals specified in the plan to be met by that date, the owner or operator shall pay under Subsection (b)(1) the first expenses for corrective action taken for each occurrence as follows:

(1) a person who owns or operates 1,000 or more single petroleum storage tanks, the first \$80,000;

(2) a person who owns or operates not fewer than 100 or more than 999 single petroleum storage tanks, the first \$40,000;

(3) a person who owns or operates not fewer than 13 or more than 99 single petroleum storage tanks, the first \$20,000; and

(4) a person who owns or operates fewer than 13 single

petroleum storage tanks, the first \$8,000.

(k) An owner or operator of a site for which a closure letter has been issued under Section 26.3572 shall pay under Subsection (b)(1) the first \$50,000 of expenses for corrective action for each occurrence.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 8, eff. May 31, 1989.
Amended by Acts 1991, 72nd Leg., ch. 905, Sec. 2, eff. June 16, 1991; Acts 1995, 74th Leg., ch. 315, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 19, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1441, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.04, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 4, eff. Sept. 1, 2001.

Sec. 26.3513. LIABILITY AND COSTS: MULTIPLE OWNERS AND OPERATORS. (a) This section applies at a site where the owner and the operator are different persons or at a site where there is more than one underground storage tank, petroleum storage tank, or a combination of both.

(b) Each owner and operator of an underground storage tank or petroleum storage tank at a site to which this section applies and from which a release or threatened release occurs is responsible for taking all corrective action at the site which may be required under this subchapter; provided that liability for the expenses of corrective action among owners and operators may be apportioned as provided by this section.

(c) All owners and operators of underground storage tanks and petroleum storage tanks at a site to which this section applies shall attempt to negotiate a settlement among themselves as to the apportionment of expenses.

(d) If the owners and operators reach a settlement as to the apportionment of expenses on or before the 30th day from the date on which the commission issues an order requiring corrective action, they shall submit the settlement to the commission for review. If the commission approves the settlement, the parties shall be liable for the expenses of taking corrective action in accordance with the approved settlement. Any action for breach of contract on the settlement agreement shall be to the district court of Travis

County.

(e) If the parties cannot reach a settlement by the 30th day after the commission issues its order, the commission shall file suit in the district court of Travis County. In its petition, the commission:

(1) shall request the court to apportion the expenses of corrective action among the owners and operators; and

(2) may request the court to award recovery of costs as provided by Section 26.355 of this code. In the alternative, the commission may file an action for recovery of costs at a later time.

(f) Where the owner or operator can prove by a preponderance of the evidence that liability for the expenses of taking corrective action in response to a release or threatened release is divisible, that person shall be liable for the expenses only to the extent that the impact to the groundwater, surface water, or subsurface soils is attributable to the release or threatened release from his underground storage tank or petroleum storage tank.

(g) The court may allocate corrective action costs among liable parties, using such equitable factors as the court determines are appropriate if the evidence is insufficient to establish each party's divisible portion of the liability for corrective action under Subsection (f) of this section and joint and several liability would impose undue hardship on the owners and operators.

(h) If the court apportions liability for the expenses of corrective action as provided by Subsection (f) or (g) of this section, cost recovery against the owners and operators shall be based on the apportionment.

(i) The commission may use the petroleum storage tank remediation account to take corrective action at any time before, during, or after the conclusion of apportionment proceedings commenced under this section.

(j) Any owner or operator of a petroleum storage tank at the site may voluntarily undertake such corrective action at the site as the commission may agree to or require. An owner or operator who undertakes corrective action pursuant to this subsection may have

contribution against all other owners and operators with tanks at the site.

(k) Nothing in this section:

(1) prohibits the commission from using the waste management account to take corrective action as provided by this subchapter and having cost recovery for the waste management account; or

(2) affects the assessment of administrative penalties by the commission for violations of this subchapter or rules or orders adopted thereunder.

(1) At the request of the commission, the attorney general shall file suit on behalf of the commission to seek the relief provided by this section.

(m) The commission shall consider the person who is in day-to-day control of a petroleum storage tank system at a site that is in violation of this subchapter to be the:

(1) person primarily responsible for taking corrective action, for corrective action costs, for receiving a notice of violation, or for paying a penalty assessed; and

(2) primary subject of an enforcement action or order under this subchapter.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 8, eff. May 31, 1989.

Amended by Acts 1995, 74th Leg., ch. 315, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 20, eff. Sept. 1, 1997.

Sec. 26.3514. LIMITS ON LIABILITY OF LENDER. (a) This section applies:

(1) to a lender that has a security or lienhold interest in an underground or aboveground storage tank, in real property on which an underground or aboveground storage tank is located, or in any other personal property attached to or located on property on which an underground or aboveground storage tank is located, as security for a loan to finance the acquisition or development of the property, to finance the removal, repair, replacement, or upgrading of the tank, or to finance the performance of corrective action in response to a release of a regulated substance from the tank; or

(2) to situations in which the real or personal property constitutes collateral for a commercial loan.

(b) A lender is not liable as an owner or operator under this subchapter solely because the lender holds indicia of ownership to protect a security or lienhold interest in property as described by Subsection (a) of this section.

(c) A lender that exercises control over a property before foreclosure to preserve the collateral or to retain revenues from the property for the payment of debt, or that otherwise exercises the control of a mortgagee in possession, is not liable as an owner or operator under this subchapter unless that control leads to action that the commission finds is causing or exacerbating contamination associated with the release of a regulated substance from a tank located on the property.

(d) A lender that has a bona fide security or lienhold interest in any real or personal property as described by Subsection (a) of this section and that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of that real or personal property is not liable as an owner or operator under this subchapter if the lender removes from service any underground or aboveground storage tanks on the property in accordance with commission rules and takes and with due diligence completes corrective action in response to any release from those tanks in accordance with commission rules. A lender shall begin removal or corrective action as prescribed by the commission within a reasonable time, as set by the commission, after the date on which the lender becomes the owner of the property, but not to exceed 90 days after that date.

(e) If a lender removes a tank from service or takes corrective action at any time before or after foreclosure, the lender shall perform corrective action in accordance with requirements adopted by the commission under this subchapter.

(f) A lender described by Subsection (a) is not liable as an owner or operator under this subchapter because the lender sells, re-leases, liquidates, or winds up operations and takes measures to preserve, protect, or prepare the secured aboveground or underground storage tank before sale or other disposition of the

storage tank or the property if the lender:

(1) did not participate in the management of an aboveground or underground storage tank or real or personal property described by Subsection (a) before foreclosure or its equivalent on the storage tank or the property; and

(2) establishes, as provided by Subsection (g), that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest.

(g) A lender may establish that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest if, within 12 months after foreclosure, the lender:

(1) lists the aboveground or underground storage tank, or the facility or property on which the tank is located, with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the aboveground or underground storage tank for sale or other disposition, at least monthly, in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the aboveground or underground storage tank being advertised; or

(C) a newspaper of general circulation in the area in which the aboveground or underground storage tank is located.

(h) For purposes of Subsection (g), the 12-month period begins:

(1) when the lender acquires marketable title, if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire marketable title; or

(2) on the date of foreclosure or its equivalent, if the lender does not act diligently to acquire marketable title.

(i) If a lender outbids, rejects, or does not act on an offer of fair consideration for the aboveground or underground storage tank or the facility or property on which the storage tank is located, it is presumed that the lender is not holding the ownership indicia primarily to protect the security interest unless the lender is required, in order to avoid liability under federal or

state law, to make the higher bid, obtain the higher offer, or seek or obtain an offer in a different manner.

Added by Acts 1991, 72nd Leg., ch. 905, Sec. 3, eff. June 16, 1991.

Amended by Acts 1995, 74th Leg., ch. 315, Sec. 7, eff. Sept. 1, 1995.

Sec. 26.3515. LIMITS ON LIABILITY OF CORPORATE FIDUCIARY.

(a) A corporate fiduciary or its agent is not liable in an individual capacity as an owner or operator of an underground or aboveground storage tank under this subchapter solely because:

(1) the corporate fiduciary or its agent has legal title to real or personal property for purposes of administering a trust or estate of which the property is a part; or

(2) the corporate fiduciary or its agent does not have legal title to the real or personal property but operates or manages the property under the terms of an estate or trust of which the property is a part.

(b) Subsection (a) of this section does not relieve a trust, estate, or beneficiary of any liability the trust, estate, or beneficiary may have as an owner or operator under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 905, Sec. 3, eff. June 16, 1991.

Sec. 26.3516. LIMITS ON LIABILITY OF TAXING UNIT. (a) This section applies to a taxing unit that has foreclosed an ad valorem tax lien on real property on which an underground or aboveground storage tank is located, or on any other personal property attached to or located on property on which an underground or aboveground storage tank is located, as security for payment of ad valorem taxes.

(b) A taxing unit is not liable as an owner or operator under this subchapter solely because the taxing unit holds indicia of ownership because of a tax foreclosure sale under the Tax Code.

(c) If a taxing unit removes a tank from service or takes corrective action at any time after foreclosure, the taxing unit shall perform corrective action in accordance with requirements adopted by the commission under this subchapter.

(d) A taxing unit is not liable as an owner or operator under

this subchapter solely because the taxing unit sells, releases, liquidates, or winds up operations and takes measures to preserve, protect, or prepare the secured aboveground or underground storage tank before sale or other disposition of the storage tank or the property if the taxing unit:

(1) did not participate in the management of an aboveground or underground storage tank or real or personal property described by Subsection (a) before foreclosure or an equivalent action on the storage tank or the property; and

(2) establishes, as provided by Subsection (e), that the ownership indicia maintained after foreclosure continue to be held primarily to protect a payment of ad valorem taxes.

(e) A taxing unit may establish that the ownership indicia maintained after foreclosure continue to be held primarily to protect payment of ad valorem taxes if the taxing unit:

(1) lists the aboveground or underground storage tank, or the facility or property on which the tank is located, with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the aboveground or underground storage tank for sale or other disposition in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the aboveground or underground storage tank being advertised; or

(C) a newspaper of general circulation in the area in which the aboveground or underground storage tank is located.

Added by Acts 1999, 76th Leg., ch. 895, Sec. 1, eff. Sept. 1, 1999.

Sec. 26.352. FINANCIAL RESPONSIBILITY. (a) The commission by rule shall adopt requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(b) The rules must require that, after December 22, 1998, the owner or operator of a site for which a closure letter has been issued under Section [26.3572](#) shall have insurance coverage or

evidence of financial responsibility sufficient to satisfy all financial responsibility requirements under federal law or regulations. The rules must require that an owner or operator of a site that has been issued a closure letter and who is eligible to have a portion of any future corrective action costs paid under Section 26.3512 shall have insurance coverage or evidence of financial responsibility sufficient to satisfy the first expenses for corrective action as provided by Section 26.3512(k).

(c) The commission shall seek the assistance of the Texas Department of Insurance in developing the minimum requirements for insurance coverage required under this section.

(d) A registration certificate issued by the commission under Section 26.346:

(1) may be submitted by an owner or operator of an underground storage tank to the United States Environmental Protection Agency as evidence of the owner's or operator's eligibility for funds for any expense for corrective action incurred for confirmed releases initially discovered and reported to the commission on or before December 22, 1998; and

(2) is not acceptable evidence of financial responsibility for:

(A) an underground storage tank that contains a petroleum substance other than:

(i) a petroleum product; or

(ii) spent oil or hydraulic fluid if the tank is located at a vehicle service and fueling facility and is used as part of the operations of that facility; or

(B) any expenses for corrective action for confirmed releases initially discovered and reported to the commission after December 22, 1998.

(e) An owner or operator of an underground storage tank used for storing petroleum products shall submit annually with the compliance certification form required by Section 26.346 proof that the owner or operator maintains evidence of financial responsibility as required by Subsection (a).

(e-1) An insurance company or other entity that provides insurance coverage or another form of financial assurance to an

owner or operator of an underground storage tank for purposes of this section shall notify the commission if the insurance coverage or other financial assurance is canceled or not renewed. The insurance company or other entity shall mail, fax, or e-mail notice not later than the 30th day after the date the coverage terminates. The Texas Department of Insurance shall adopt rules to implement and enforce this subsection.

(e-2) The owner or operator of a tank for which insurance coverage or other financial assurance has terminated shall dispose of any regulated substance in the tank at a properly licensed facility not later than the 90th day after the coverage terminates, unless the owner or operator provides the commission proof that the owner or operator maintains evidence of financial responsibility as required under Subsection (a).

(f) The commission shall enforce this section and may impose administrative and civil penalties on the owners or operators of underground storage tanks if acceptable evidence of financial responsibility is not maintained. The amount of an administrative or civil penalty imposed under this subsection may not be less than the annual cost, as estimated by the commission, of maintaining the minimum insurance coverage required for the tank as determined under Subsection (c).

(g) An owner or operator commits an offense if the owner or operator operates an underground storage tank knowing that acceptable evidence of financial responsibility does not exist and is subject to criminal prosecution as provided by Subchapter F.

(h) The commission may seek injunctive relief in the district courts of Travis County to force the temporary or permanent closure of an underground storage tank for which acceptable evidence of financial responsibility is not maintained.

(i) The commission may order an owner or operator of an underground storage tank that fails to maintain acceptable evidence of financial responsibility to place the tank out of service in the same manner that the commission may issue such an order under Section 26.3475(e).

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 9, eff. May 31, 1989;

Acts 1995, 74th Leg., ch. 315, Sec. 8, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 177 (H.B. 1956), Sec. 1, eff. September 1, 2007.

Sec. 26.354. EMERGENCY ORDERS. The commission may issue an emergency order to an owner or operator of an underground or aboveground storage tank under Section 5.510.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 228, Sec. 11, eff. May 31, 1989; Acts 1997, 75th Leg., ch. 1072, Sec. 22, eff. Sept. 1, 1997.

Sec. 26.355. RECOVERY OF COSTS. (a) If the commission has incurred any costs in undertaking corrective action or enforcement action with respect to the release of regulated substances from an underground or aboveground storage tank, the owner or the operator of the tank is liable to the state for all reasonable costs of those corrective and enforcement actions and for court costs and reasonable attorney's fees.

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

(A) an act of God;

(B) an act of war;

(C) the negligence of the State of Texas or the United States; or

(D) an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

(c) The state's right to recover under this section arises whether or not the commission:

(1) uses funds from the waste management account or the petroleum storage tank remediation account; or

(2) receives or will receive funds from the state, the federal government, or any other source for the purpose of

corrective action or enforcement.

(d) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement and if the costs are recovered under this section, the commission may not recover more than the amount of the applicable owner or operator contribution described by Section 26.3512 of this code from an eligible owner or operator for corrective action for each occurrence. However, this limitation is not applicable to cost recovery actions initiated by the executive director at sites where the executive director has determined that the owner or operator is in violation of Section 26.351(f).

(e) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer the liability imposed under this section from the owner or operator of an underground or aboveground storage tank or from a person who may be liable for a release or threat of release to any other person. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any liability under this section.

(f) This section does not bar a cause of action that an owner or operator or any other person subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(g) At the request of the commission, the attorney general shall initiate court proceedings to recover costs under this section.

(h) Except as provided by Subsection (i) of this section, money recovered in a court proceeding under this section shall be deposited in the State Treasury to the credit of the waste management account.

(i) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement as provided by this subchapter, money recovered in a court proceeding under this section shall be deposited in the state treasury to the credit of the petroleum storage tank remediation account.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 228, Sec. 12, eff. May 31, 1989; Acts 1991, 72nd Leg., ch. 905, Sec. 4, eff. June 16, 1991;

Acts 1997, 75th Leg., ch. 333, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 14.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.02, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 5, eff. September 1, 2005.

Sec. 26.356. INSPECTIONS, MONITORING, AND TESTING. (a) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, an owner or operator of an underground or aboveground storage tank, on the request of the commission, shall:

(1) furnish information relating to the tank, including tank equipment and contents; and

(2) permit a designated agent or employee of the commission at all reasonable times to have access to and to copy all records relating to the tank.

(b) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, the commission, its designated agent, or employee may:

(1) enter at reasonable times an establishment or place in which an underground or aboveground storage tank is located;

(2) inspect and obtain samples of a regulated substance contained in the tank from any person; and

(3) conduct monitoring or testing of the tank, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

(c) The commission may order an owner or an operator of an underground or aboveground storage tank to conduct monitoring and testing if the commission finds that there is reasonable cause to believe that a release has occurred in the area in which the underground or aboveground storage tank is located.

(d) Each inspection made under this section must be begun and completed with reasonable promptness. Before a designated agent or employee of the commission enters private property to carry out a function authorized under this section, the agent or employee must give reasonable notice and exhibit proper identification to the manager or owner of the property or to another appropriate person, as provided by commission rule. The commission's designated agent or employee must observe the regulations of the establishment being inspected, including regulations regarding safety, internal security, and fire protection.

Added by Acts of 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 13, eff. May 31, 1989.

Sec. 26.357. STANDARDS AND RULES. (a) Standards and rules concerning underground storage tanks adopted by the commission under this subchapter must be at least as stringent as the federal requirements under Title VI of the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. Section 6901 et seq.).

(b) The commission may not impose standards or rules more stringent than the federal requirements unless the commission determines that more stringent standards or rules are necessary to protect human health or the environment.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 228, Sec. 14, eff. May 31, 1989.

Sec. 26.3571. ELIGIBLE OWNER OR OPERATOR. (a) The commission by rule shall establish criteria to be met by a person to qualify as an eligible owner or operator.

(b) To be an eligible owner or operator for purposes of this subchapter, a person must not have missed any of the deadlines described in Section [26.351\(f\)](#) and must:

(1) be one of the following:

(A) an owner or operator of a petroleum storage tank that is subject to regulation under this subchapter;

(B) an owner of land that can clearly prove that the land has been contaminated by a release of petroleum products from a petroleum storage tank that is subject to regulation under this subchapter, whether or not the tank is still attached to that land; or

(C) a lender that has a bona fide security or lienhold interest in or mortgage lien on any property contaminated by the release of petroleum products from a petroleum storage tank subject to regulation under this subchapter, or that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of such property;

(2) be in compliance with this subchapter as determined by the commission; and

(3) meet qualifying criteria established by the commission under Subsection (a) of this section.

(c) The commission by rule may prescribe special conditions, consistent with the objective of formulating an overall plan for remediation of an entire contaminated site, for designating as an eligible owner:

(1) a person described by Subsection (b)(1)(B) of this section who owns land contaminated by a release of petroleum products from a tank that was or is located on property the person does not own; or

(2) a lender described by Subsection (b)(1)(C) of this section.

(d) In determining whether an owner or operator is in compliance with this subchapter, the commission may consider such factors as the owner's or operator's compliance with tank registration, release detection and reporting, and corrective action requirements.

(e) The commission shall designate a person as an eligible owner or operator for purposes of this subchapter as provided by this section.

(f) The commission may not establish any requirements for eligibility under this section that are not consistent with this subchapter or with federal law and federal regulations.

(g) An otherwise eligible owner or operator who misses a

deadline referenced in Subsection (b) shall be considered ineligible for reimbursement under this subchapter.

(h) Nothing in this section reduces the liability to perform corrective action created under Section 26.351 and other parts of this subchapter.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 15, eff. May 31, 1989.

Amended by Acts 1991, 72nd Leg., ch. 905, Sec. 5, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 14.06, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 6, eff. Sept. 1, 2001.

Sec. 26.3572. GROUNDWATER PROTECTION CLEANUP PROGRAM. (a) The groundwater protection cleanup program is established, and the commission shall administer that program.

(b) In administering the program, the commission shall:

(1) negotiate with or direct responsible parties in site assessment and remediation matters using risk-based corrective action;

(2) approve site-specific corrective action plans for each site as necessary, using risk-based corrective action;

(3) review and inspect site assessment and remedial activities and reports;

(4) use risk-based corrective action procedures as determined by commission rule to establish cleanup levels;

(5) adopt by rule criteria for assigning a priority to each site using risk-based corrective action and assign a priority to each site according to those criteria;

(6) adopt by rule criteria for:

(A) risk-based corrective action site closures;
and

(B) the issuance of a closure letter to the owner or operator of a tank site on completion of the commission's corrective action requirements; and

(7) process claims for petroleum storage tank remediation account disbursement in accordance with this subchapter.

(c) The commission by rule may approve site assessment methodologies. The commission shall approve or disapprove a site

assessment or corrective action plan, as defined by commission rule, on or before the 30th day after the commission receives the assessment or plan. The commission shall adopt by rule criteria to be used to determine:

- (1) the necessity for site assessment; and
- (2) the nature of the site assessment required.

(d) The commission may not approve a corrective action plan until the commission and the owner or operator of the site by agreement set specific goals in the plan for completing discrete corrective action tasks before specified dates. The owner or operator is responsible for meeting the goals.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 16, eff. May 31, 1989.

Amended by Acts 1995, 74th Leg., ch. 315, Sec. 9, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 14.07, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 7, eff. Sept. 1, 2001.

Sec. 26.3573. PETROLEUM STORAGE TANK REMEDIATION ACCOUNT.

(a) The petroleum storage tank remediation account is an account in the general revenue fund. The commission shall administer the account in accordance with this subchapter.

(b) The petroleum storage tank remediation account consists of money from:

- (1) fees charged under Section [26.3574](#) of this code;
- (2) the interest and penalties for the late payment of the fee charged under Section [26.3574](#) of this code;
- (3) funds received from cost recovery for corrective action and enforcement actions concerning petroleum storage tanks as provided by this subchapter; and
- (4) temporary cash transfers and other transfers from the general revenue fund authorized by Section [403.092\(c\)](#), Government Code.

(c) Interest earned on amounts in the petroleum storage tank remediation account shall be credited to the general revenue fund.

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

- (1) necessary expenses associated with the

administration of the petroleum storage tank remediation account and the groundwater protection cleanup program;

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter;

(3) subject to the conditions of Subsection (f), expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility;

(4) expenses associated with assuring compliance with the commission's applicable underground or aboveground storage tank administrative and technical requirements, including technical assistance and support, inspections, enforcement, and the provision of matching funds for grants; and

(5) expenses associated with investigation, cleanup, or corrective action measures performed under Section [26.351\(c-1\)](#).

(e) To consolidate appropriations, the commission may transfer from the petroleum storage tank remediation account to the waste management account an amount equal to the amounts authorized under Subsections (d)(1) and (4), subject to the requirements of those subsections.

(f) The commission may pay from the account expenses under Subsection (d)(3) of this section, whether or not the hydraulic fluid or spent oil contamination is mixed with petroleum product contamination, but the commission may require an eligible owner or operator to demonstrate that the release of spent oil is not mixed with any substance except:

(1) hydraulic fluid from a hydraulic lift system;

(2) petroleum products from a petroleum storage tank system; or

(3) another substance that was contained in the hydraulic lift system or the spent oil tank owned or operated by the

person claiming reimbursement.

(g) The commission, in accordance with this subchapter and rules adopted under this subchapter, may:

(1) contract directly with a person to perform corrective action and pay the contractor from the petroleum storage tank remediation account;

(2) reimburse an eligible owner or operator from the petroleum storage tank remediation account for the expenses of a corrective action that was:

(A) performed on or after September 1, 1987; and

(B) conducted in response to a confirmed release that was initially discovered and reported to the commission on or before December 22, 1998; or

(3) pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action with funds from the petroleum storage tank remediation account.

(h) The commission shall administer the petroleum storage tank remediation account and by rule adopt guidelines and procedures for the use of and eligibility for that account, subject to the availability of money in that account, as the commission finds necessary to:

(1) make the most efficient use of the money available, including:

(A) establishing priorities for payments from the account; and

(B) suspending payments from the account; and

(2) provide the most effective protection to the environment and provide for the public health and safety.

(i) Consistent with the objectives provided under Subsection (h) of this section and this subchapter, the commission may by rule adopt:

(1) guidelines the commission considers necessary for determining the amounts that may be paid from the petroleum storage tank remediation account; and

(2) guidelines concerning reimbursement for expenses incurred by an eligible owner or operator and covered under Section [26.3512\(d\)](#) of this code.

(j) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

(k) The commission shall hear any complaint regarding the payment of a claim from the petroleum storage tank remediation account arising from a contract between a contractor and an eligible owner or operator. A hearing held under this subsection shall be conducted in accordance with the procedures for a contested case under Chapter 2001, Government Code. An appeal of a commission decision under this subsection shall be to the district court of Travis County and the substantial evidence rule applies.

(l) The commission shall satisfy a claim for payment that is eligible to be paid under this subchapter and the rules adopted under this subchapter made by a contractor, from the petroleum storage tank remediation account as provided by this section and rules adopted by the commission under this section, regardless of whether the commission:

- (1) contracts directly for the goods or services; or
- (2) pays a claim under a contract executed by a petroleum storage tank owner or operator.

(m) The commission may use any amount up to \$1 million from the petroleum storage tank remediation account to pay expenses associated with the corrective action for each occurrence taken in response to a release from a petroleum storage tank.

(n) The petroleum storage tank remediation account may not be used for corrective action taken in response to a release from an underground storage tank if the sole or principal substance in the tank is a hazardous substance.

(o) The petroleum storage tank remediation account may be used to pay for corrective action in response to a release whether the action is taken inside or outside of the boundaries of the property on which the leaking petroleum storage tank is located.

(p) The petroleum storage tank remediation account may not be used to compensate third parties for bodily injury or property damage.

(q) Notwithstanding any other law to the contrary, an owner or operator, or an agent of an owner or operator, is not entitled to and may not be paid interest on any claim for payment from the

petroleum storage tank remediation account.

(r) Except as provided by Subsection (r-1), the petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) In this subsection, "state-lead program" means the petroleum storage tank state-lead program administered by the commission. The executive director shall grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. The petroleum storage tank remediation account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2011. Not later than July 1, 2011, an eligible owner or operator who is granted an extension under this subsection may apply to the commission in writing using a form provided by the commission to have the site subject to corrective action placed in the state-lead program. The eligible owner or operator must agree in the application to allow site access to state personnel and state contractors as a condition of placement in the state-lead program under this subsection. On receiving the application for placement in the state-lead program under this subsection, the executive director by order shall place the site in the state-lead program until the corrective action is completed to the satisfaction of the commission. An eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to the commission for any costs related to the corrective action.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2012.

(t) The commission may prohibit the use of the petroleum storage tank remediation account to pay for corrective action if the action is taken by:

(1) a contractor who is not registered under Section 26.364; or

(2) a supervisor who is not licensed under Section 26.366.

(u) The petroleum storage tank remediation account may not be used to pay for a site remediation that involves the installation

or construction of on-site equipment, structures, or systems used in the extraction or management of wastes, except for soil excavation and landfill disposal or well sampling and monitoring, unless:

(1) the plans and specifications for the equipment, structures, or systems are sealed by an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors; and

(2) the equipment, structures, or systems are constructed under the supervision of an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 16, eff. May 31, 1989.

Amended by Acts 1991, 72nd Leg., ch. 905, Sec. 6, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 533, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(8), (49) eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 315, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 23, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1442, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 880, Sec. 8, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 14.08, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(145), (146), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. [485](#)), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. [1863](#)), Sec. 5.04, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. [1987](#)), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. [3554](#)), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. [3554](#)), Sec. 2, eff. August 27, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.18, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. [1523](#)), Sec. 2.15, eff. September 1, 2019.

Sec. 26.35731. CONSIDERATION AND PROCESSING OF APPLICATIONS FOR REIMBURSEMENT. (a) Except as provided by Subsection (b), the commission shall consider and process a claim by an eligible owner or operator for reimbursement from the petroleum storage tank remediation account in the order in which it is received. The commission shall consider and process all claims by eligible owners and operators for reimbursement from the account that were received before September 1, 1995, before the commission considers a claim received after that date.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 722
(S.B. 485), Sec. 7

(b) The commission may postpone considering, processing, or paying a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior commission approval after September 1, 1993, that is filed with the commission before January 1, 2005.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 899
(S.B. 1863), Sec. 5.03

(b) The commission has discretion whether to postpone considering, processing, or paying a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior commission approval after September 1, 1993, and filed with the commission prior to January 1, 2005.

(c) Not later than the 90th day after the date on which the commission receives a completed application for reimbursement from the petroleum storage tank remediation account, the commission shall send a fund payment report to the owner or operator of a petroleum storage tank system that is seeking reimbursement, if sufficient funds are available to make the payment.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 11, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 333, Sec. 24, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1441, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 200, Sec. 6(b), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 7, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.03, eff. September 1, 2005.

Sec. 26.35735. CLAIMS AUDIT. (a) The commission annually shall audit claims for payment from the petroleum storage tank remediation account.

(b) The commission shall conduct the audit in accordance with generally accepted accounting standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards.

(c) The commission may use generally recognized sampling techniques to audit claims if the commission determines that the use of those techniques would be cost-effective and would promote greater efficiency in administering claims for payment from the petroleum storage tank remediation account.

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

(e) The commission may audit a claim for payment as required by this section only:

(1) under guidelines adopted by commission rule that relate to conducting an audit under this section and denying a claim as a result of that audit and that are in effect when the audit is conducted; or

(2) in a case of suspected fraud.

(f) Not later than the 90th day after an audit under this section has been completed, the commission shall send a copy of the audit to the person whose claim for payment is the subject of the audit.

Added by Acts 1993, 73rd Leg., ch. 533, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 315, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 25, eff. Sept. 1, 1997.

Sec. 26.3574. FEE ON DELIVERY OF CERTAIN PETROLEUM PRODUCTS. (a) In this section:

(1) "Bulk facility" means a facility in this state, including pipeline terminals, refinery terminals, rail and barge terminals, and associated underground and aboveground tanks, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or a barge used to transport those products. This term does not include petroleum products consumed at an electric generating facility.

(2) "Cargo tank" means an assembly that is used for transporting, hauling, or delivering liquids and that consists of a tank having one or more compartments mounted on a wagon, truck, trailer, railcar, or wheels.

(2-a) "Supplier" has the meaning assigned by Section [162.001](#), Tax Code.

(3) "Withdrawal from bulk" means the removal of a petroleum product from a bulk facility storage tank for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for distribution or sale in this state.

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each supplier on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) not more than \$3.75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;

(2) not more than \$7.50 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;

(3) not more than \$11.75 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(4) not more than \$15.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) not more than \$7.50 for each increment of 5,000

gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.

(b-1) The commission by rule shall set the amount of the fee in Subsection (b) in an amount not to exceed the amount necessary to cover the agency's costs of administering this subchapter, as indicated by the amount appropriated by the legislature from the petroleum storage tank remediation account for that purpose, not including any amount appropriated by the legislature from the petroleum storage tank remediation account for the purpose of the monitoring or remediation of releases occurring on or before December 22, 1998.

(c) The fee collected under Subsection (b) of this section shall be computed on the net amount of a petroleum product delivered into a cargo tank.

(d) A person who imports a petroleum product in a cargo tank or a barge destined for delivery into an underground or aboveground storage tank, regardless of whether or not the tank is exempt from regulation under Section 26.344, other than a storage tank connected to or part of a bulk facility in this state, shall pay to the comptroller a fee on the number of gallons imported, computed as provided by Subsections (b) and (c). If a supplier imports a petroleum product in a cargo tank or a barge, the supplier is not required to pay the fee on that imported petroleum product if the petroleum product is delivered to a bulk facility from which the petroleum product will be withdrawn from bulk.

(e) A supplier who receives petroleum products on which the fee has been paid may take credit for the fee paid on monthly reports.

(f) Subsection (b) does not apply to a delivery of a petroleum product destined for export from this state if the petroleum product is in continuous movement to a destination outside this state. For purposes of this subsection, a petroleum product ceases to be in continuous movement to a destination outside this state if the product is delivered to a destination in this state. The person that directs the delivery of the product to a destination in this state shall pay the fee imposed by this section on that product.

(g) Each supplier and each person covered by Subsection (d) shall file an application with the comptroller for a permit to deliver a petroleum product into a cargo tank destined for delivery to an underground or aboveground storage tank, regardless of whether or not the tank is exempt from regulation under Section 26.344. A permit issued by the comptroller under this subsection is valid on and after the date of its issuance and until the permit is surrendered by the holder or canceled by the comptroller. An applicant for a permit issued under this subsection must use a form adopted or approved by the comptroller that contains:

(1) the name under which the applicant transacts or intends to transact business;

(2) the principal office, residence, or place of business in this state of the applicant;

(3) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the name of the member of an applicant partnership, and the office, street, or post office address of each; and

(4) any other information required by the comptroller.

(h) A permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which petroleum products are delivered into cargo tanks and in each motor vehicle used by the permit holder to transport petroleum products by him for delivery into petroleum storage tanks in this state.

(i) Each supplier and each person covered by Subsection (d) shall:

(1) list, as a separate line item on an invoice or cargo manifest required under this section, the amount of the delivery fee due under this section; and

(2) on or before the 25th day of the month following the end of each calendar month, file a report with the comptroller and remit the amount of fees required to be collected or paid during the preceding month.

(j) Each supplier or the supplier's representative and each person covered by Subsection (d) shall prepare the report required

under Subsection (i) on a form provided or approved by the comptroller.

(k) The cargo manifests or invoices or copies of the cargo manifests or invoices and any other records required under this section or rules of the comptroller must be maintained for a period of four years after the date on which the document or other record is prepared and be open for inspection by the comptroller at all reasonable times.

(l) As provided by the rules of the comptroller, the owner or lessee of a cargo tank or a common or contract carrier transporting a petroleum product shall possess a cargo manifest or an invoice showing the delivery point of the product, the amount of the required fee, and other information as required by rules of the comptroller.

(m) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(n) A person who fails to file a report as provided by Subsection (i) of this section or who possesses a fee collected or payable under this section and who fails to remit the fee to the comptroller at the time and in the manner required by this section and rules of the comptroller shall pay a penalty of five percent of the amount of the fee due and payable. If the person fails to file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(o) Chapters 101 and 111-113, and Sections 162.005, 162.007, and 162.111(b)-(k), Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(p) The comptroller may add a penalty of 75 percent of the amount of the fee, penalty, and interest due if failure to file the report or pay the fee when it comes due is attributable to fraud or an intent to evade the application of this section or a rule made under this section or Chapter 111, Tax Code.

(q) The comptroller may require a bond or other security from a permittee and may establish the amount of the bond or other security.

(r) A person forfeits to the state a civil penalty of not less than \$25 nor more than \$200 if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting petroleum products on demand of a peace officer or the comptroller;

(2) fails or refuses to comply with or violates a provision of this section; or

(3) fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this section.

(s) A person commits an offense if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting petroleum products on the demand of a peace officer or the comptroller;

(2) makes a delivery of petroleum products into cargo tanks on which he knows the fee is required to be collected, if at the time the delivery is made he does not hold a valid permit issued under this section;

(3) makes a delivery of petroleum products imported into this state on which he knows a fee is required to be collected, if at the time the delivery is made he does not hold a valid permit issued under this section;

(4) refuses to permit the comptroller or the attorney general to inspect, examine, or audit a book or record required to be kept by any person required to hold a permit under this section;

(5) refuses to permit the comptroller or the attorney general to inspect or examine any plant, equipment, or premises where petroleum products are stored or delivered into cargo tanks;

(6) refuses to permit the comptroller or the attorney general to measure or gauge the contents of or take samples from a storage tank or container on premises where petroleum products are stored or delivered into cargo tanks;

(7) is required to hold a permit under this section and fails or refuses to make or deliver to the comptroller a report required by this section to be made and delivered to the

comptroller;

(8) refuses, while transporting petroleum products, to stop the motor vehicle he is operating when called on to do so by a person authorized to stop the motor vehicle;

(9) transports petroleum products for which a cargo manifest is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest containing the information required to be shown on the manifest;

(10) mutilates, destroys, or secretes a book or record required by this section to be kept by any person required to hold a permit under this section;

(11) is required to hold a permit under this section or is the agent or employee of that person and makes a false entry or fails to make an entry in the books and records required under this section to be made by the person;

(12) transports in any manner petroleum products under a false cargo manifest;

(13) engages in a petroleum products transaction that requires that the person have a permit under this section without then and there holding the required permit;

(14) makes and delivers to the comptroller a report required under this section to be made and delivered to the comptroller, if the report contains false information;

(15) forges, falsifies, or alters an invoice or manifest prescribed by law; or

(16) fails to remit any fees collected by any person required to hold a permit under this section.

(t) The following criminal penalties apply to the offenses enumerated in Subsection (s) of this section:

(1) an offense under Subdivision (1) is a Class C misdemeanor;

(2) an offense under Subdivisions (2) through (7) is a Class B misdemeanor;

(3) an offense under Subdivisions (8) and (9) is a Class A misdemeanor;

(4) an offense under Subdivisions (10) through (15) is

a felony of the third degree;

(5) an offense under Subdivision (16) is a felony of the second degree; and

(6) violations of three or more separate offenses under Subdivisions (10) through (15) committed pursuant to one scheme or continuous course of conduct may be considered as one offense and are punished as a felony of the second degree.

(u) The court may not fine a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be fixed by the court under Section 12.51(b), Penal Code.

(v) In addition to a sentence imposed on a corporation, the court shall give notice of the conviction to the attorney general as required by Article 17A.09, Code of Criminal Procedure.

(w) The comptroller shall deduct two percent of the amount collected under this section as the state's charge for its services and shall credit the amount deducted to the general revenue fund. The balance of the fees, penalties, and interest collected by the comptroller shall be deposited in the state treasury to the credit of the petroleum storage tank remediation account.

(x) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

Added by Acts 1989, 71st Leg., ch. 228, Sec. 17, eff. May 31, 1989.

Amended by Acts 1995, 74th Leg., ch. 315, Sec. 13, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 26, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1442, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.09, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.05, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 3, eff. August 27, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1227 (S.B. 1495), Sec. 40, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.19, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 44, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 601 (S.B. 1557), Sec. 11, eff. January 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 601 (S.B. 1557), Sec. 12, eff. January 1, 2018.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(6), eff. September 1, 2019.

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

Sec. 26.35745. REPORT ON CORRECTIVE ACTIONS FOR PETROLEUM CONTAMINATED SITES AND FEES NECESSARY TO CONCLUDE PROGRAM. (a) The commission annually shall prepare a report regarding the status of corrective actions for sites reported to the commission under this subchapter as having had a release needing corrective action. The commission must issue the report to the legislature on or before November 1 of each year.

(b) Regarding sites reported to the commission under this subchapter as having had a release needing corrective action on or before December 22, 1998, and that remain in the commission's PST State-Lead Program on September 1, 2013, the report must include:

- (1) the total number of sites;
- (2) the total number of sites for which corrective action is ongoing;
- (3) the total number of sites monitored;
- (4) the projected costs of the corrective actions;
- (5) the projected costs of monitoring;
- (6) a projected timeline for issuing closure letters under this subchapter for all of the sites; and
- (7) for each site, the corrective action activities proposed and completed during the preceding state fiscal year.

(c) Regarding sites reported to the commission under this subchapter as having had a release needing corrective action after December 22, 1998, for which the commission has elected to assume responsibility for undertaking corrective action under this subchapter, the report must include:

- (1) the current status of each site;

(2) the costs associated with the corrective action activities performed during the preceding state fiscal year for the sites;

(3) amounts recovered under Section 26.355 related to the sites; and

(4) enforcement actions taken against owners and operators related to those sites.

(d) The commission shall investigate the amount of fees that would be necessary to cover the costs necessary to conclude the programs and activities under this subchapter before September 1, 2021. The commission shall include in the annual report under this section the conclusions of the investigation and the commission's recommendations regarding the fees and programs and activities.

(e) This section expires September 1, 2021.
Added by Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 18, eff. June 14, 2013.

Sec. 26.358. COLLECTION, USE, AND DISPOSITION OF STORAGE TANK FEES AND OTHER REVENUES. (a) Revenues collected by the commission under this section shall be deposited to the credit of the waste management account.

(b) Under this subchapter, the commission may collect:

(1) fees imposed on facilities with underground or aboveground storage tanks used for the storage of regulated substances;

(2) the interest and penalties imposed under this section for the late payment of those fees;

(3) funds received from cost recovery for corrective and enforcement actions taken under this subchapter, except as provided by Subsection (c) of this section;

(4) funds received from insurers, guarantors, or other sources of financial responsibility; and

(5) funds from the federal government and other sources for use in connection with the storage tank program.

(c) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement as provided by this subchapter, money recovered in a court proceeding

under Section 26.355 of this code shall be deposited in the state treasury to the credit of the petroleum storage tank remediation account.

(d) The commission shall impose an annual facility fee on a facility that operates one or more underground or aboveground storage tanks if the fee charged under Section 26.3574 is discontinued. The commission may also impose reasonable interest and penalties for late payment of the fee as provided by commission rule. The commission may establish a fee schedule that will generate an amount of money sufficient to fund the commission's budget for the regulatory program regarding underground and aboveground storage tanks authorized by this subchapter.

(e) Under this subchapter, the commission may use money in the waste management account to:

- (1) pay the costs of taking corrective action;
- (2) provide matching funds for grants and to fund contracts executed under this subchapter; and
- (3) pay for administrative expenses, rules development, enforcement, monitoring, and inspection costs, and other costs incurred in the course of carrying out the purposes and duties of this subchapter.

(f) The amount of an annual fee that the commission may impose on a facility under Subsection (d) is equal to the amount set by the commission for each aboveground storage tank and for each underground storage tank operated at the facility.

(g) The commission shall collect any fees imposed under this section on dates set by commission rule. The period between collection dates may not exceed two years.

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

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 228, Sec. 18, eff. May 31, 1989; Acts 1997, 75th Leg., ch. 333, Sec. 27, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 4, eff. August 27, 2007.

Sec. 26.359. LOCAL REGULATION OR ORDINANCE. (a) In this section, "local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(b) A regulation or ordinance adopted by a local government that imposes standards for the design, construction, installation, or operation of underground storage tanks is not valid.

Text of subsec. (c) as amended by Acts 2001, 77th Leg., ch. 965,
Sec. 14.10

(c) This section does not apply to a regulation or ordinance in effect as of January 1, 2001.

Text of subsec. (c) as amended by Acts 2001, 77th Leg., ch. 966,
Sec. 11.02

(c) This section does not apply to a rule adopted by the Edwards Aquifer Authority, or to a regulation or ordinance in effect as of January 1, 2001, or thereafter amended.

Added by Acts 1987, 70th Leg., ch. 277, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 2001, 77th Leg., ch. 965, Sec. 14.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 11.02, eff. Sept. 1, 2001.

Sec. 26.360. PRIVATIZATION OF PROGRAM. Notwithstanding other provisions of this subchapter, the commission by rule may authorize the privatization of any part of the program established under this subchapter.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 14, eff. Sept. 1, 1995.

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2012. On or after September 1, 2012, the commission may not use money from the petroleum storage tank remediation

account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 14, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 333, Sec. 28, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1442, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 14.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1135, Sec. 10, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 722 (S.B. 485), Sec. 8, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 5.06, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1256 (H.B. 1987), Sec. 7, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1109 (H.B. 3554), Sec. 5, eff. August 27, 2007.

Sec. 26.362. SUIT TO TEST VALIDITY OF CLOSURE LETTER. The commission is immune from liability in any action against the commission to test the validity of a closure letter issued under Section 26.3572 if the letter is issued in accordance with commission rules.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 14, eff. Sept. 1, 1995.

Sec. 26.363. RELIANCE ON CLOSURE LETTER. An owner or operator to whom a closure letter for a site has been issued under Section 26.3572 may not be held liable for the owner's or operator's conduct taken in reliance on and within the scope of the closure letter.

Added by Acts 1995, 74th Leg., ch. 315, Sec. 14, eff. Sept. 1, 1995.

Sec. 26.364. REGISTRATION OF PERSONS WHO CONTRACT TO PERFORM CORRECTIVE ACTION. (a) The commission may implement a program under Chapter 37 to register persons who contract to perform corrective action under this subchapter.

(b) The commission, on the request of an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors, shall register the engineer in the program.

(c) An engineer registered in the program may contract to perform corrective action under this subchapter unless the Texas Board of Professional Engineers and Land Surveyors determines the engineer is not qualified to perform a corrective action.

(d) An engineer registered under this section is not subject to the commission's examination or continuing education requirements, fees, or disciplinary procedures.

(e) The commission may not adopt minimum qualifications for an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors to contract with an eligible owner or operator to perform a corrective action under this subchapter.

(f) Any qualified contractor registered under Chapter 37 may conduct the characterization, study, appraisal, or investigation of a site.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.16, eff. September 1, 2019.

Sec. 26.365. REGISTRATION OF GEOSCIENTISTS WHO CONTRACT TO PERFORM CORRECTIVE ACTION. (a) In administering the program implemented under Section 26.364(a), the commission, on the request of a geoscientist licensed by the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, shall register the geoscientist in the program.

(b) A geoscientist registered in the program may contract to perform corrective action under this subchapter unless the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, determines that the geoscientist is not qualified to perform a corrective action.

(c) A geoscientist registered under this section is not subject to the commission's examination or continuing education requirements, fees, or disciplinary proceedings.

(d) The commission may not adopt minimum qualifications for

a geoscientist licensed by the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, to contract with an eligible owner or operator to perform a corrective action under this subchapter.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 9, eff. Sept. 1, 2001.

Sec. 26.366. LICENSURE OF PERSONS WHO SUPERVISE CORRECTIVE ACTIONS. (a) The commission may implement a program under Chapter 37 to license persons who supervise a corrective action under this subchapter.

(b) The commission, on the request of an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors, shall license the engineer in the program.

(c) An engineer licensed in the program may supervise a corrective action under this subchapter unless the Texas Board of Professional Engineers and Land Surveyors determines the engineer is not qualified to supervise a corrective action.

(d) An engineer licensed under this section is not subject to the commission's examination or continuing education requirements, fees, or disciplinary procedures.

(e) The commission may not adopt minimum qualifications for an engineer licensed by the Texas Board of Professional Engineers and Land Surveyors to supervise a corrective action under this subchapter.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.17, eff. September 1, 2019.

Sec. 26.367. LICENSURE OF GEOSCIENTISTS WHO SUPERVISE CORRECTIVE ACTIONS. (a) In administering the program implemented under Section 26.366(a), the commission, on the request of a geoscientist licensed by the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, shall license the geoscientist in the program.

(b) A geoscientist licensed in the program may supervise a corrective action under this subchapter unless the Texas Board of

Professional Geoscientists, or an equivalent entity that licenses geoscientists, determines that the geoscientist is not qualified to supervise a corrective action.

(c) A geoscientist licensed under this section is not subject to the commission's examination or continuing education requirements, fees, or disciplinary proceedings.

(d) The commission may not adopt minimum qualifications for a geoscientist licensed by the Texas Board of Professional Geoscientists, or an equivalent entity that licenses geoscientists, to contract with an eligible owner or operator to supervise a corrective action under this subchapter.

Added by Acts 2001, 77th Leg., ch. 880, Sec. 9, eff. Sept. 1, 2001.

SUBCHAPTER J. GROUNDWATER PROTECTION

Sec. 26.401. LEGISLATIVE FINDINGS. (a) The legislature finds that:

(1) in order to safeguard present and future groundwater supplies, usable and potentially usable groundwater must be protected and maintained;

(2) protection of the environment and public health and welfare requires that groundwater be kept reasonably free of contaminants that interfere with present and potential uses of groundwater;

(3) groundwater contamination may result from many sources, including current and past oil and gas production and related practices, agricultural activities, industrial and manufacturing processes, commercial and business endeavors, domestic activities, and natural sources that may be influenced by or may result from human activities;

(4) the various existing and potential groundwater uses are important to the state economy; and

(5) aquifers vary both in their potential for beneficial use and in their susceptibility to contamination.

(b) The legislature determines that, consistent with the protection of the public health and welfare, the propagation and protection of terrestrial and aquatic life, the protection of the

environment, the operation of existing industries, and the maintenance and enhancement of the long-term economic health of the state, it is the goal of groundwater policy in this state that the existing quality of groundwater not be degraded. This goal of nondegradation does not mean zero-contaminant discharge.

(c) It is the policy of this state that:

(1) discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard; and

(2) the quality of groundwater be restored if feasible.

(d) The legislature recognizes the important role of the use of the best professional judgment of the responsible state agencies in attaining the groundwater goal and policy of this state.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Sec. 26.402. DEFINITION. In this subchapter, "committee" means the Texas Groundwater Protection Committee.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.295, eff. Sept. 1, 1995.

Sec. 26.403. CREATION AND MEMBERSHIP OF TEXAS GROUNDWATER PROTECTION COMMITTEE. (a) The Texas Groundwater Protection Committee is created as an interagency committee to coordinate state agency actions for the protection of groundwater quality in this state.

(b) The commission is designated as the lead agency for the committee and shall administer the activities of the committee.

(c) The committee is composed of:

(1) the executive director of the commission;

(2) the executive administrator of the Texas Water Development Board;

(3) the executive director of the Railroad Commission of Texas;

(4) the commissioner of health of the Texas Department

of Health;

(5) the deputy commissioner of the Department of Agriculture;

(6) the executive director of the State Soil and Water Conservation Board;

(7) the Director of the Texas Agricultural Experiment Station;

(8) the director of the Bureau of Economic Geology of The University of Texas at Austin;

(9) a representative selected by the Texas Alliance of Groundwater Districts; and

(10) a representative of the Water Well Drillers and Water Well Pump Installers Program of the Texas Department of Licensing and Regulation selected by the executive director of the department.

(d) Each member of the committee listed in Subsections (c)(1) through (8) of this section may designate a personal representative from the member's agency to represent the member on the committee, but that designation does not relieve the member of responsibility for the acts and decisions of the representative.

(e) The executive director of the commission shall serve as chairman, and the executive administrator of the Texas Water Development Board shall serve as vice-chairman of the committee.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1993, 73rd Leg., ch. 77, Sec. 1, eff. Aug. 30, 1993;

Acts 1999, 76th Leg., ch. 72, Sec. 1, eff. Aug. 30, 1999.

Sec. 26.404. ADMINISTRATION. (a) The committee shall meet not less than once each calendar quarter at a time determined by the committee and at the call of the chairman.

(b) Each member of the committee serves on the committee as an additional duty of the member's office and is not entitled to compensation for service on the committee.

(c) Each member of the committee may receive reimbursement for actual and necessary expenses in carrying out committee responsibilities as provided by legislative appropriations. Each member who is a representative of a state agency shall be reimbursed

from the money budgeted to the member's state agency.

(d) Each agency listed in Sections 26.403(c)(1) through (8) of this code that is represented on the committee shall provide staff as necessary to assist the committee in carrying out its responsibilities.

(e) The committee is subject to Chapter 2001, Government Code, Chapter 551, Government Code, and Chapter 552, Government Code.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 77, Sec. 2, eff. Aug. 30, 1993;
Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (82), (88), eff. Sept. 1, 1995.

Sec. 26.405. POWERS AND DUTIES OF COMMITTEE. The committee shall, on a continuing basis:

(1) coordinate groundwater protection activities of the agencies represented on the committee;

(2) develop and update a comprehensive groundwater protection strategy for the state that provides guidelines for the prevention of contamination and for the conservation of groundwater and that provides for the coordination of the groundwater protection activities of the agencies represented on the committee;

(3) study and recommend to the legislature groundwater protection programs for each area in which groundwater is not protected by current regulation;

(4) file with the governor, lieutenant governor, and speaker of the house of representatives before the date that each regular legislative session convenes a report of the committee's activities during the two preceding years and any recommendations for legislation for groundwater protection; and

(5) publish the joint groundwater monitoring and contamination report required by Section 26.406(c) of this code.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Sec. 26.406. GROUNDWATER CONTAMINATION INFORMATION AND REPORTS; RULES. (a) Each state agency having responsibilities related to the protection of groundwater shall maintain a public

file of all documented cases of groundwater contamination that are reasonably suspected of having been caused by activities regulated by the agency.

(b) For purposes of this section, the agencies identified as having responsibilities related to protection of groundwater include the commission, the Department of Agriculture, the Railroad Commission of Texas, and the State Soil and Water Conservation Board.

(c) In conjunction with the commission, the committee shall publish not later than April 1 of each year a joint groundwater monitoring and contamination report covering the activities and findings of the committee made during the previous calendar year. The report must:

(1) describe the current status of groundwater monitoring programs conducted by or required by each agency at regulated facilities or in connection with regulated activities;

(2) contain a description of each case of groundwater contamination documented during the previous calendar year and of each case of groundwater contamination documented during previous periods for which enforcement action was incomplete at the time of issuance of the preceding report; and

(3) indicate the status of enforcement action for each case of groundwater contamination that is included in the report.

(d) The committee shall adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report required by this section.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.296, eff. Sept. 1, 1995.

Sec. 26.407. PROTECTION AND ENHANCEMENT PLANS. (a) The commission, with the advice of the committee, shall develop plans, except for those plans required by Section 201.026, Agriculture Code, for the protection and enhancement of water quality pursuant to federal statute, regulation, or policy, including management plans for the prevention of water pollution by agricultural

chemicals and agents.

(b) Any agency represented on the committee shall be eligible to receive and spend federal funds for its participation in the development of such management plans. Receipt of such funds shall have no effect on whether the agency in receipt of the funds is the lead agency for water issues in this state.

Added by Acts 1989, 71st Leg., ch. 768, Sec. 1, eff. Sept. 1, 1989.

Sec. 26.408. NOTICE OF GROUNDWATER CONTAMINATION. (a) If a state agency documents under Section 26.406(a) a case of groundwater contamination that may affect a drinking water well, the state agency shall notify the commission.

(b) Not later than the 30th day after the date the commission receives notice under Subsection (a) or obtains independent knowledge of groundwater contamination, the commission shall make every effort to give notice of the contamination by first class mail to each owner of a private drinking water well that may be affected by the contamination and to each applicable groundwater conservation district.

(c) The committee by rule shall prescribe the form and content of notice required under this section.

Acts 2003, 78th Leg., ch. 1135, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER K. OCCUPATIONAL LICENSING AND REGISTRATION

Sec. 26.451. DEFINITIONS. In this subchapter:

(1), (2) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

(3) "Critical junctures" means, in the case of an installation, repair, or removal, all of the following steps:

(A) preparation of the tank bedding immediately before receiving the tank;

(B) setting of the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connection of piping systems to the tank;

(D) all pressure testing of the underground

storage tank, including associated piping, performed during the installation;

(E) completion of backfill and filling of the excavation;

(F) any time during the repair in which the piping system is connected or reconnected to the tank;

(G) any time during the repair in which the tank or its associated piping is tested; and

(H) any time during the removal of the tank.

(4) "Installation" means the installation of underground storage tanks and ancillary equipment.

(5) to (10) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

(11) "Removal" means the process of removing and disposing of an underground storage tank that is no longer in service, or the process of abandoning an underground storage tank in place after purging the tank of vapors and filling the vessel of the tank with an inert material.

(12) "Repair" means the modification or correction of an underground storage tank and ancillary equipment. The term does not include:

(A) relining an underground storage tank through the application of epoxy resins or similar materials;

(B) the performance of a tightness test to ascertain the integrity of the tank;

(C) the maintenance and inspection of cathodic protection devices by a corrosion expert or corrosion technician;

(D) emergency actions to halt or prevent leaks or ruptures; or

(E) minor maintenance on ancillary aboveground equipment.

(13), (14) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

Acts 1989, 71st Leg., ch. 244, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 639, Sec. 1, eff. Aug. 30, 1993. Renumbered from Vernon's Ann.Civ.St. art. 8900, Sec. 1 and amended by Acts 1995, ch. 315, Sec. 15, eff. Sept. 1, 1995. Amended 2001, 77th

Leg., ch. 880, Sec. 25(1), eff. Sept. 1, 2001.

Sec. 26.452. UNDERGROUND STORAGE TANK CONTRACTOR. (a) A person who offers to undertake, represents that the person is able to undertake, or undertakes to install, repair, or remove an underground storage tank must hold a registration issued by the commission under Chapter 37. If the person is a partnership or joint venture, it need not register in its own name if each partner or joint venture is registered.

(b) An underground storage tank contractor must have an on-site supervisor who is licensed by the commission under Chapter 37 at the site at all times during the critical junctures of the installation, repair, or removal.

(c) This subchapter does not apply to the installation of a storage tank or other facility exempt from regulation under Section 26.344.

Acts 1989, 71st Leg., ch. 244, eff. Sept. 1, 1989. Renumbered from Vernon's Ann.Civ.St. art. 8900, Sec. 2 and amended by Acts 1995, 74th Leg., ch. 315, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 880, Sec. 11, eff. Sept. 1, 2001.

Sec. 26.456. UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING. (a) A person supervising the installation, repair, or removal of an underground storage tank must hold a license issued by the commission under Chapter 37.

(b) An on-site supervisor must be present at the site at all times during the critical junctures of the installation, repair, or removal.

Acts 1989, 71st Leg., ch. 244, eff. Sept. 1, 1989. Renumbered from Vernon's Ann.Civ.St. art. 8900, Sec. 6 and amended by Acts 1995, 74th Leg., ch. 315, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 880, Sec. 11, eff. Sept. 1, 2001.

SUBCHAPTER L. PROTECTION OF CERTAIN WATERSHEDS

Sec. 26.501. DEFINITIONS. In this subchapter:

(1) "Concentrated animal feeding operation" has the

meaning assigned by 30 T.A.C. Section 321.32 on the effective date of this subchapter.

(2) "New concentrated animal feeding operation" means a proposed concentrated animal feeding operation, any part of which is located on property not previously authorized by the state to be operated as a concentrated animal feeding operation.

(3) "Historical waste application field" means an area of land that at any time since January 1, 1995, has been owned or controlled by an operator of a concentrated animal feeding operation on which agricultural waste from a concentrated animal feeding operation has been applied.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 12.02, eff. Sept. 1, 2001.

Sec. 26.502. APPLICABILITY. This subchapter applies only to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole source impairment zone. In this subchapter, "major sole source impairment zone" means a watershed that contains a reservoir:

(1) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(2) at least half of the water flowing into which is from a source that, on the effective date of this subchapter, is on the list of impaired state waters adopted by the commission as required by 33 U.S.C. Section 1313(d), as amended:

(A) at least in part because of concerns regarding pathogens and phosphorus; and

(B) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 12.02, eff. Sept. 1, 2001.

Sec. 26.503. REGULATION OF CERTAIN CONCENTRATED ANIMAL FEEDING OPERATION WASTES. (a) The commission may authorize the construction or operation of a new concentrated animal feeding

operation, or an increase in the animals confined under an existing operation, only by a new or amended individual permit.

(b) The individual permit issued or amended under Subsection (a) must:

(1) provide for management and disposal of waste in accordance with Subchapter B, Chapter 321, Title 30, Texas Administrative Code;

(2) require that 100 percent of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be:

(A) disposed of or used outside of the watershed;

(B) delivered to a composting facility approved by the executive director;

(C) applied as directed by the commission to a waste application field owned or controlled by the owner of the concentrated animal feeding operation, if the field is not a historical waste application field;

(D) put to another beneficial use approved by the executive director; or

(E) applied to a historical waste application field that is owned or operated by the owner or operator of the concentrated animal feeding operation only if:

(i) results of representative composite soil sampling conducted at the waste application field and filed with the commission show that the waste application field contains 200 or fewer parts per million of extractable phosphorus (reported as P); or

(ii) the manure is applied, with commission approval, in accordance with a detailed nutrient utilization plan approved by the commission that is developed by:

(a) an employee of the United States Department of Agriculture's Natural Resources Conservation Service;

(b) a nutrient management specialist certified by the United States Department of Agriculture's Natural Resources Conservation Service;

(c) the State Soil and Water Conservation Board;

(d) the Texas Agricultural Extension Service;

(e) an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or

(f) a professional agronomist or soil scientist certified by the American Society of Agronomy.

(c) The commission may approve a detailed nutrient utilization plan approved by the commission that is developed by a professional agronomist or soil scientist certified by the American Society of Agronomy only if the commission finds that another person listed by Subsection (b)(2)(E)(ii) cannot develop a plan in a timely manner.

(d) The commission may not issue a general permit to authorize the discharge of agricultural waste into or adjacent to waters in this state from an animal feeding operation if such waters are within a major sole source impairment zone.

(e) The commission and employees or agents of the commission may enter public or private property at any reasonable time for activities related to the purposes of this subchapter. The commission may enforce this authority as provided by Section [7.032](#), [7.051](#), [7.052](#), or [7.105](#).

(f) This section does not limit the commission's authority to include in an individual or general permit under this chapter provisions necessary to protect a water resource in this state.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 12.02, eff. Sept. 1, 2001.

Sec. 26.504. WASTE APPLICATION FIELD SOIL SAMPLING AND TESTING. (a) The commission shall collect one or more representative composite soil samples from each permitted waste application field associated with a concentrated animal feeding operation. The commission shall perform the sampling under this subsection not less often than once every 12 months. Sampling results obtained by the commission shall be used by the permitted

concentrated animal feeding operator to satisfy any annual sampling of permitted waste application fields required by commission rule or individual permit.

(b) Each sample collected under this section must be tested for phosphorus and any other nutrient designated by the commission. The commission may have the sampling required by this section performed under contract. The sampling must be performed by a person described by Section 26.503(b)(2)(E)(ii). The test results must be made available to the operator of the concentrated animal feeding operation. The test results are public records of the commission.

(c) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 500 parts per million, the operator shall file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(d) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 200 parts per million but not more than 500 parts per million, the operator shall:

(1) file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii); or

(2) show that the level is supported by a nutrient utilization plan certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(e) The owner or operator of a waste application field required by this section to have a nutrient utilization plan with a phosphorus reduction component for which the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus is subject to enforcement for a violation of this subchapter at the discretion of the executive director. The executive director, in determining whether to take an enforcement action under this subsection, shall consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus

reduction, including an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 769, Sec. 2, eff. June 1, 2010.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 12.02, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 769 (S.B. 876), Sec. 1, eff. June 1, 2010.

Acts 2009, 81st Leg., R.S., Ch. 769 (S.B. 876), Sec. 2, eff. June 1, 2010.

For expiration of Subchapter M, see Section 26.562.

SUBCHAPTER M. WATER QUALITY PROTECTION AREAS

Sec. 26.551. DEFINITIONS. In this subchapter:

(1) "Aggregates" means any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, granite, gravel, gypsum, marble, sand, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance. The term does not include clay or shale mined for use in manufacturing structural clay products.

(2) "John Graves Scenic Riverway" means that portion of the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas.

(3) "Operator" means any person engaged in or responsible for the physical operation and control of a quarry.

(4) "Overburden" means all materials displaced in an aggregates extraction operation that are not, or reasonably would not be expected to be, removed from the affected area.

(5) "Owner" means any person having title, wholly or partly, to the land on which a quarry exists or has existed.

(6) "Pit" means an open excavation from which

aggregates have been or are being extracted with a depth of five feet or more below the adjacent and natural ground level.

(7) "Quarry" means the site from which aggregates for commercial sale are being or have been removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which the plant processing the raw materials is located. The term does not include any land owned or leased by the responsible party not being currently used in the production of aggregates for commercial sale or an excavation to mine clay or shale for use in manufacturing structural clay products.

(8) "Quarrying" means the current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates for commercial sale from natural deposits occurring in the earth.

(9) "Refuse" means all waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(10) "Responsible party" means the owner, operator, lessor, or lessee who is responsible for overall function and operation of a quarry required to apply for and hold a permit pursuant to this subchapter.

(11) "Water quality protection area" means a contributing watershed of a river the water quality of which is threatened by quarrying activities.

(12) "Water body" means any navigable watercourse, river, stream, or lake within the water quality protection area.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.552. APPLICABILITY; PILOT PROGRAM. (a) This subchapter applies only to quarrying in a water quality protection area designated by commission rule. This subchapter does not apply to the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying.

(b) For the period of September 1, 2005, to September 1,

2025, the commission shall apply this subchapter only as a pilot program in the John Graves Scenic Riverway.

(c) This subchapter does not apply to:

(1) a quarry or associated processing plant that since on or before January 1, 1994, has been in regular operation in the John Graves Scenic Riverway without cessation of operation for more than 30 consecutive days and under the same ownership;

(2) the construction or modification of associated equipment located on a quarry site or associated processing plant site described by Subdivision (1); or

(3) an activity, facility, or operation regulated under Chapter 134, Natural Resources Code.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.553. REGULATION OF QUARRIES WITHIN WATER QUALITY PROTECTION AREA. (a) The commission shall require a responsible party to obtain an individual permit for any discharges from a quarry located in a water quality protection area that is located:

(1) within a 100-year floodplain of any water body; or

(2) within one mile of any water body.

(b) The commission shall require a responsible party to obtain a general permit under Section 26.040 for any quarry that is located in a water quality protection area and located a distance of more than one mile from any water body.

(c) Subject to Subsection (d), the commission shall prohibit the construction or operation of any new quarry, or the expansion of an existing quarry, located within 1,500 feet of a water body located in a water quality protection area for which a person files an application for a permit or permit amendment after September 1, 2005.

(d) Notwithstanding Subsection (c), the commission may issue or amend a permit to authorize the construction or operation of a quarry located between 200 and 1,500 feet of a water body on finding that:

(1) the responsible party can satisfy performance criteria established by commission rule and incorporated into the

permit to address:

(A) slope gradients that minimize the potential for erosion, slides, sloughing of quarry walls, overburden piles, and banks into the water body and related water quality considerations;

(B) whether operations could result in significant damage to important historic and cultural values and ecological systems;

(C) whether operations could affect renewable resource lands, including aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of a water supply or of food or fiber products; and

(D) whether operations could affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, in which the operations could substantially endanger life and property;

(2) the responsible party has provided a plan for the control of surface water drainage and water accumulation to prevent:

(A) erosion, siltation, or runoff; and

(B) damage to:

(i) fish, wildlife, or fish or wildlife habitat; or

(ii) public or private property;

(3) the responsible party has provided a plan for reclamation of the quarry that is consistent with best management standards and practices adopted by the commission for quarry reclamation, which may include backfilling, soil stabilization and compacting, grading, erosion control measures, and appropriate revegetation; and

(4) the responsible party has provided evidence that, to the extent possible, quarrying will be conducted using the best available technology to:

(A) minimize disturbance and adverse effects of the quarry operation on fish, wildlife, and related environmental resources; and

(B) enhance fish, wildlife, and related environmental resources where practicable.

(e) The commission by rule shall establish effluent or other water quality requirements, including requirements for financial responsibility, adequate to protect the water resources in a water quality protection area for inclusion in any authorization, including an individual or general permit, issued under this section by the commission.

(f) In addition to any other requirements established by commission rule adopted under Subsection (e), the responsible party for a quarry located in a water quality protection area required to obtain an individual or general permit shall include with an application filed with the commission under this section:

(1) a proposed plan of action for how the responsible party will restore the receiving water body to background conditions in the event of an unauthorized discharge that affects the water body; and

(2) evidence of sufficiently funded bonding or proof of financial resources to mitigate, remediate, and correct any potential future effects on a water body of an unauthorized discharge to a water body.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.554. FINANCIAL RESPONSIBILITY FOR DISCHARGES OF CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA. (a) The commission by rule shall adopt requirements for:

(1) maintaining evidence of financial responsibility for restoration of a water body affected by an unauthorized discharge from a permitted quarry; or

(2) taking corrective action and compensating for water quality effects caused by an unauthorized discharge resulting from quarrying.

(b) A responsible party commits a violation if the responsible party operates a permitted quarry knowing that financial responsibility required by a permit does not exist.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff.

June 17, 2005.

Sec. 26.555. INSPECTIONS OF AND SAMPLING OF WATER IN JOHN GRAVES SCENIC RIVERWAY. (a) To detect potential violations of this subchapter in the John Graves Scenic Riverway, the commission, the Brazos River Authority, and the Parks and Wildlife Department shall coordinate efforts to conduct each calendar year:

- (1) visual inspections of the riverway; and
- (2) testing of water samples drawn from the Brazos River and its tributaries in the riverway.

(b) The visual inspections and the drawing of water samples must be conducted at least once in a winter month and at least once in a summer month. The visual inspections must be conducted both from the surface of the John Graves Scenic Riverway and from an aircraft flying over the riverway.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.556. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The commission shall enforce this subchapter and impose administrative and civil penalties for discharges from a quarry in violation of this subchapter. Subject to Subsection (d), the commission shall assess an administrative penalty against a responsible party of a quarry responsible for a discharge in violation of this subchapter or of a permit, rule, or order adopted or issued under this subchapter in an amount of not less than \$2,500 and not more than \$25,000 for each violation of this subchapter or of the permit, rule, or order adopted or issued under this subchapter. Subject to Subsection (d), the commission shall assess an administrative penalty against a person for any other violation of this subchapter or of a permit, rule, or order adopted or issued under this subchapter in an amount of not less than \$100 for each violation of this subchapter or of the permit, rule, or order adopted or issued under this subchapter. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(b) In determining the amount of the penalty, the commission

shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts, and the hazard or potential hazard the violation presents to the health, safety, or welfare of the public;

(2) the effects of the violation on instream uses, water quality, and fish and wildlife habitats;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D) whether the violator is engaged in a for-profit operation;

(E) any economic benefit gained through the violation; and

(F) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(c) In addition to the administrative penalties and other available remedies or causes of action, the commission may seek injunctive relief in the district courts of Travis County to:

(1) force the temporary or permanent closure of a quarry operated without authorization required under this subchapter;

(2) force the temporary or permanent closure of a permitted quarry under this subchapter for which acceptable evidence of financial responsibility is not maintained;

(3) force the temporary or permanent closure of any quarry responsible for an unauthorized discharge; or

(4) force corrective action by the responsible party of a quarry responsible for an unauthorized discharge.

(d) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred and address the remediation, reclamation, or restoration of the water quality and the beds, bottoms, and banks of water bodies in the water quality area adversely affected by unauthorized discharges from quarries or abandoned quarries that threaten water quality and the beds, bottoms, and banks of water bodies in the water quality area. The commission may encourage the cleanup of contaminated property through the use of supplemental environmental projects. The commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws, that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(e) A violation of this subchapter also constitutes an offense that may be prosecuted and punished under Section [7.147](#).

(f) Nothing in this subchapter affects the right of any person that has a justiciable interest to pursue an available common law or statutory remedy to enforce a right, to prevent or seek redress or compensation for the violation of a right, or otherwise to redress an injury.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. [1354](#)), Sec. 2, eff. June 17, 2005.

Sec. 26.557. EMERGENCY ORDERS. The commission may issue a temporary or emergency order under Section [5.509](#) relating to a discharge of waste or pollutants from a quarry in a water quality protection area.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. [1354](#)), Sec. 2, eff. June 17, 2005.

Sec. 26.558. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES WITHIN WATER QUALITY PROTECTION AREA. If the commission has incurred any costs in undertaking a corrective or enforcement action with respect to an unauthorized discharge from a quarry under this subchapter, including a reclamation or restoration action, the responsible party is liable to the state for all reasonable costs of the corrective or enforcement action, including court costs and reasonable attorney's fees, and for any punitive damages that may be assessed by the court.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.559. RECLAMATION AND RESTORATION FUND ACCOUNT. (a) Penalties and other money received by the commission as a result of an enforcement action taken under this subchapter, and any gift or grant the commission receives for the purposes of this subchapter, shall be deposited into the reclamation and restoration fund account in the general revenue fund. Money in the account may be appropriated only to the commission for the reclamation and restoration of the beds, bottoms, and banks of water bodies affected by the unlawful discharges subject to this subchapter.

(b) At least 60 days before spending money from the reclamation and restoration fund account, the commission shall publish notice of its proposed plan and conduct a hearing for the purpose of soliciting public comment, oral or written. The commission shall fully consider all written and oral submissions on the proposed plan.

(c) At least 30 days before the date of the public hearing, the notice must be published in the Texas Register and in a newspaper of general circulation in the county where the violation resulting in the payment of the penalties or other money occurred.

(d) Interest and other income earned on money in the account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. 1354), Sec. 2, eff. June 17, 2005.

Sec. 26.560. COOPERATION WITH OTHER STATE AGENCIES. (a) The commission is the principal authority in the state on matters relating to the implementation of this subchapter. All other state agencies engaged in water quality or water pollution control activities in a water quality protection area shall coordinate those activities with the commission.

(b) The executive director, with the consent of the commission, may enter into contracts, memoranda of understanding, or other agreements with other state agencies for purposes of developing effluent or other water quality requirements, including requirements for financial responsibility, adequate to protect the water resources in a water quality protection area, in any individual or general permit or other authorization issued under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. [1354](#)), Sec. 2, eff. June 17, 2005.

Sec. 26.562. EXPIRATION. This subchapter expires September 1, 2025.

Added by Acts 2005, 79th Leg., Ch. 374 (S.B. [1354](#)), Sec. 2, eff. June 17, 2005.