

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE A. EXECUTIVE AGENCIES

CHAPTER 5. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5.001. DEFINITIONS. In this chapter:

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

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

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Clean coal project" means the installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(5) "Coal" has the meaning assigned by Section [134.004](#), Natural Resources Code.

(6) "Component of the FutureGen project" means a process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen

project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(7) "FutureGen project profile" means a standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.001, eff. Aug. 12, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 1097 (H.B. [2201](#)), Sec. 6, eff. June 18, 2005.

Sec. 5.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER B. ORGANIZATION OF THE TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION

Sec. 5.011. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide an organizational structure for the commission that will provide more efficient and effective administration of the conservation of natural resources and the protection of the environment in this state and to define the duties, responsibilities, authority, and functions of the commission and the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.003, eff. Aug. 12, 1991.

Sec. 5.012. DECLARATION OF POLICY. The commission is the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.004, eff. Aug. 12, 1991.

Sec. 5.013. GENERAL JURISDICTION OF COMMISSION.

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(6) conduct of the state's hazardous spill prevention and control program;

(7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(8) the administration of a portion of the state's injection well program;

(9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(10) the state's responsibilities relating to regional waste disposal;

(11) the responsibilities assigned to the commission by Chapters [361](#), [363](#), [382](#), [401](#), [505](#), [506](#), and [507](#), Health and Safety Code; and

(12) any other areas assigned to the commission by this code and other laws of this state.

(b) The rights, powers, duties, and functions delegated to the Texas Department of Water Resources by this code or by any other law of this state that are not expressly assigned to the board are vested in the commission.

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.005, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 376, Sec. 3.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1067, Sec. 22, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. [1436](#)), Sec. 2, eff.

September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.01, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 32, eff. September 1, 2015.

Sec. 5.014. SUNSET PROVISION. The Texas Commission on Environmental Quality is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2023.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 2.20(46), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.006, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 5.19(a), eff. Nov. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.02, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.12, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.02, eff. September 1, 2011.

Sec. 5.015. CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the commission and the executive director to carry out their powers and duties in an efficient and effective manner.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER C. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Sec. 5.051. COMMISSION. The Texas Natural Resource Conservation Commission is created as an agency of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1,

1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.008, eff. Aug. 12, 1991.

Sec. 5.052. MEMBERS OF THE COMMISSION; APPOINTMENT. (a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate to represent the general public.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 485, Sec. 1, eff. June 9, 1993; Acts 2001, 77th Leg., ch. 965, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 5.053. ELIGIBILITY FOR MEMBERSHIP. (a) A person may not be a member of the commission if the person or the person's spouse:

(1) is registered, certified, licensed, permitted, or otherwise authorized by the commission;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) In addition to the eligibility requirements in Subsection (a) of this section, persons who are appointed to serve on the commission for terms which expire after August 31, 2001, must comply at the time of their appointment with the eligibility requirements established under 33 U.S.C. Sections 1251-1387, as

amended.

(c) Subsection (a)(2) does not apply to an employee of a political subdivision of this state. If the United States Environmental Protection Agency determines that there will be a negative impact on the State of Texas' National Pollution Discharge Elimination Systems delegation, this subsection does not apply.

Added by Acts 1995, 74th Leg., ch. 310, Sec. 1, eff. Aug. 28, 1995.

Amended by Acts 2001, 77th Leg., ch. 965, Sec. 1.04, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1278 (H.B. 3769), Sec. 1, eff. June 15, 2007.

Sec. 5.0535. REQUIRED TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the commission;
- (2) the programs operated by the commission;
- (3) the role and functions of the commission;
- (4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the commission;
- (6) the results of recent significant internal and external audits of the commission;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials,

including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.05, eff. Sept. 1, 2001.

Sec. 5.054. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 5.053(b);

(2) does not maintain during the service on the commission the qualifications required by Section 5.053(b);

(3) is ineligible for membership under Section 5.053(a), 5.059, or 5.060;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than one-half of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a member of the commission exists.

(c) If the executive director or a member has knowledge that a potential ground for removal exists, the executive director or member shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director or another member of the commission shall notify the member of the commission with the most

seniority, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.06, eff. Sept. 1, 2001.

Sec. 5.055. OFFICERS OF STATE; OATH. Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.056. TERMS OF OFFICE. (a) The members of the commission hold office for staggered terms of six years, with the term of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) A person appointed to the commission may not serve for more than two six-year terms.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.057. FULL-TIME SERVICE. Each member of the commission shall serve on a full-time basis.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.058. OFFICERS; MEETINGS. (a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) The presiding officer may designate another commissioner to act for the presiding officer in the presiding officer's absence.

(c) The presiding officer shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its

minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The presiding officer or acting presiding officer shall give the other members reasonable notice before holding a special meeting.

(e) A majority of the commission is a quorum.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.07, eff. Sept. 1, 2001.

Sec. 5.059. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 5.060. LOBBYIST PROHIBITION. A person may not be a member of the commission or act as general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1,

1985; Acts 1987, 70th Leg., ch. 167, Sec. 2.19(24), eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 965, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN CONTRIBUTIONS. A member of the commission may not accept a contribution to a campaign for election to an elected office. If a member of the commission accepts a campaign contribution, the person is considered to have resigned from the office and the office immediately becomes vacant. The vacancy shall be filled in the manner provided by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.03, eff. September 1, 2011.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF THE COMMISSION

Sec. 5.101. SCOPE OF SUBCHAPTER. The powers and duties provided by this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of the code and other laws of this state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.102. GENERAL POWERS. (a) The commission has the powers to perform any acts whether specifically authorized by this code or other law or implied by this code or other law, necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws.

(b) The commission may call and hold hearings, receive evidence at hearings, administer oaths, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to its jurisdiction under this code and other laws and rules, orders, permits, licenses, certificates, and other actions adopted, issued, or taken by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.103. RULES. (a) The commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state.

(b) The commission shall adopt reasonable procedural rules to be followed in a commission hearing. The executive director may recommend to the commission for its consideration any rules that he considers necessary.

(c) Rules shall be adopted in the manner provided by Chapter 2001, Government Code. As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of an agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

(d) The commission shall include as a part of each rule the commission adopts, and each proposed rule for adoption after the effective date of this subsection, a citation to the statute that grants the specific regulatory authority under which the rule is justified and a citation of the specific regulatory authority that will be exercised. If no specific statutory authority exists and the agency is depending on this section, citation of this section, or Section 5.102 or 5.013, is sufficient. A rule adopted in violation of this subsection is void.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 802, Sec. 1, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 1.09, eff. Sept. 1, 2001.

Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's

jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.04, eff. September 1, 2011.

Sec. 5.1035. RULES REGARDING DRINKING-WATER STANDARDS. Before adopting rules regarding statewide drinking-water standards, the commission shall hold public meetings, if requested, at its regional offices to allow municipalities, water supply corporations, and other interested persons to submit data or comments concerning the proposed drinking-water standards.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.41, eff. Sept. 1, 1997.

Sec. 5.104. MEMORANDA OF UNDERSTANDING. (a) The commission and board by rule shall develop memoranda of understanding as necessary to clarify and provide for their respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission or board that is not expressly assigned to either the commission or board.

(b) The commission may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the commission and any other state agency.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1,

1985.

Sec. 5.105. GENERAL POLICY. Except as otherwise specifically provided by this code, the commission, by rule, shall establish and approve all general policy of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.106. BUDGET APPROVAL. The commission shall examine and approve all budget recommendations for the commission that are to be transmitted to the legislature.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.107. ADVISORY COMMITTEES, WORK GROUPS, AND TASK FORCES. (a) The commission or the executive director may create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the executive director may consider appropriate.

(b) The commission shall identify affected groups of interested persons for advisory committees, work groups, and task forces and shall make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces. This subsection does not require the commission to ensure that all representatives attend a scheduled meeting. A rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

(c) The commission shall monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and shall maintain that information in a form and location that is easily accessible to the public, including making the information available on the Internet.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.10, eff. Sept. 1, 2001.

Sec. 5.108. EXECUTIVE DIRECTOR. (a) The commission shall appoint an executive director to serve at the will of the commission.

(b) The board shall exercise the powers of appointment which the Texas Water Rights Commission had the authority to exercise on August 30, 1977, except for those powers of appointment expressly provided to the Texas Water Rights Commission in Chapters 50 through 63 inclusive, of the Water Code, which are delegated to the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.109. CHIEF CLERK. (a) The commission shall appoint a chief clerk who shall serve at the will of the commission.

(b) The chief clerk shall assist the commission in carrying out its duties under this code and other law.

(c) The chief clerk shall issue notice of public hearings held under the authority of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.009, eff. Aug. 12, 1991.

Sec. 5.110. GENERAL COUNSEL. (a) The commission shall appoint a general counsel who shall serve at the will of the commission.

(b) The general counsel is the chief legal officer for the commission.

(c) The general counsel must be an attorney licensed to practice law in this state.

(d) The general counsel shall perform the duties and may exercise the powers specifically authorized by this code or delegated to the general counsel by the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.111. STANDARDS OF CONDUCT. The commission shall provide to its members, appointees, and employees as often as is

necessary information regarding their qualifications under this code and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.112. PUBLIC TESTIMONY POLICY. The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 977, Sec. 1, eff. June 19, 1987.

Sec. 5.113. COMMISSION AND STAFF RESPONSIBILITY POLICY. The commission shall develop and implement policies that clearly separate the respective responsibilities of the commission and the staff.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.114. APPLICATIONS AND OTHER DOCUMENTS. Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided by this code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.115. PERSONS AFFECTED IN COMMISSION HEARINGS; NOTICE OF APPLICATION. (a) For the purpose of an administrative hearing held by or for the commission involving a contested case, "affected person," or "person affected," or "person who may be affected" means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.

(a-1) The commission shall adopt rules specifying factors

which must be considered in determining whether a person is an affected person in any contested case arising under the air, waste, or water programs within the commission's jurisdiction and whether an affected association is entitled to standing in contested case hearings. For a matter referred under Section 5.556, the commission:

(1) may consider:

(A) the merits of the underlying application, including whether the application meets the requirements for permit issuance;

(B) the likely impact of regulated activity on the health, safety, and use of the property of the hearing requestor;

(C) the administrative record, including the permit application and any supporting documentation;

(D) the analysis and opinions of the executive director; and

(E) any other expert reports, affidavits, opinions, or data submitted on or before any applicable deadline to the commission by the executive director, the applicant, or a hearing requestor; and

(2) may not find that:

(A) a group or association is an affected person unless the group or association identifies, by name and physical address in a timely request for a contested case hearing, a member of the group or association who would be an affected person in the person's own right; or

(B) a hearing requestor is an affected person unless the hearing requestor timely submitted comments on the permit application.

(b) At the time an application for a permit or license under this code is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license. A state agency that receives notice under this subsection may submit comments to the commission in response to the notice but may not contest the issuance of a permit or license by

the commission. For the purposes of this subsection, "state agency" does not include a river authority.

(c) At the time an application for any formal action by the commission that will affect lands dedicated to the permanent school fund is filed with the executive director or the commission and is administratively complete, the commission shall give notice of the application to the School Land Board. Notice shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office. Delivery is not complete until the return receipt is signed by the deputy commissioner of the asset management division of the General Land Office and returned to the commission.

(d) The commission shall adopt rules for the notice required by this section. The rules must provide for the notice required by this section to be posted on the Internet by the commission.

(e) The notice must state:

(1) the identifying number given the application by the commission;

(2) the type of permit or license sought under the application;

(3) the name and address of the applicant;

(4) the date on which the application was submitted;
and

(5) a brief summary of the information included in the permit application.

(f) The notice to the School Land Board under this section shall additionally:

(1) state the location of the permanent school fund land to be affected; and

(2) describe any foreseeable impact or effect of the commission's action on permanent school fund land.

(g) A formal action or ruling by the commission on an application affecting permanent school fund land that is made without the notice required by this section is voidable by the School Land Board as to any permanent school fund lands affected by the action or ruling.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1,

1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.010, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 991, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 882, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1350, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.01, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 2, eff. September 1, 2015.

Sec. 5.116. HEARINGS; RECESS. The commission may recess any hearing or examination from time to time and from place to place.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.117. MANDATORY ENFORCEMENT HEARING. (a) The executive director shall monitor compliance with all permits and licenses issued by the commission under this code, and if the evidence available to the executive director through this monitoring process indicates that a permittee or licensee is in substantial noncompliance with his permit or license for a period of four months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance.

(b) On receiving a report from the executive director under Subsection (a) of this section, the commission shall call and hold a hearing to determine whether the permittee or licensee who is the subject of the executive director's report has been in substantial noncompliance with his permit or license.

(c) At the conclusion of the hearing, the commission shall issue one of the following orders stating that:

(1) no violation of the permit or license has occurred;

(2) a violation of the permit or license has occurred but has been corrected and no further action is necessary to protect

the public interest;

(3) the executive director is authorized to enter into a compliance agreement with the permittee or licensee;

(4) a violation of the permit or license has occurred and an administrative penalty is assessed as provided by this code; or

(5) a violation of the permit or license has occurred, and the executive director is directed to have enforcement proceedings instituted against the permittee or licensee.

(d) A compliance agreement under Subsection (c)(3) of this section is not effective unless it is approved by the commission. If the commission determines at a hearing that a permittee or licensee has not complied with the terms of the compliance agreement, the commission may direct the executive director to institute enforcement proceedings.

(e) The executive director, on receiving an order from the commission directing institution of enforcement proceedings, shall take all necessary steps to have enforcement proceedings instituted.

(f) The commission may compel the attendance of the governing body or any other officer of any permittee or licensee at any hearing held under this section.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.011, eff. Aug. 12, 1991.

Sec. 5.1175. PAYMENT OF PENALTY BY INSTALLMENT. (a) The commission by rule may allow a person who owes a monetary civil or administrative penalty imposed for a violation of law within the commission's jurisdiction or for a violation of a license, permit, or order issued or rule adopted by the commission to pay the penalty in periodic installments. The rule must provide a procedure for a person to apply for permission to pay the penalty over time.

(b) The rule may vary the period over which the penalty may be paid or the amount of the periodic installments according to the amount of the penalty owed and the size of the business that owes the penalty. The period over which the penalty may be paid may not

exceed 36 months.

Added by Acts 1995, 74th Leg., ch. 112, Sec. 1, eff. May 17, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 4, eff. September 1, 2009.

Sec. 5.118. POWER TO ADMINISTER OATHS. Each member of the commission, the chief clerk, or a hearings examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.119. COMMISSION TO BE KNOWLEDGEABLE. The commission shall be knowledgeable of the watercourses and natural resources of the state and of the needs of the state concerning the use, storage and conservation of water and the use and conservation of other natural resources and of the need to maintain the quality of the environment in the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.012, eff. Aug. 12, 1991.

Sec. 5.1191. RESEARCH MODEL. (a) In this section, "research model" means a mechanism for developing a plan to address the commission's practical regulatory needs. The commission's plan shall be prioritized by need and shall identify short-term, medium-term, and long-term research goals. The plan may address preferred methods of conducting the identified research.

(b) The commission shall develop a research model. The commission may appoint a research advisory board to assist the commission in providing appropriate incentives to encourage various interest groups to participate in developing the research model and to make recommendations regarding research topics specific to this state. The research advisory board must include representatives of the academic community, representatives of the regulated community, and public representatives of the state at

large.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.1192. COORDINATION OF RESEARCH. (a) The commission shall facilitate and coordinate environmental research in the state according to the research model developed under Section 5.1191.

(b) The commission shall explore private and federal funding opportunities for research needs identified in the research model. The commission may conduct, direct, and facilitate research to implement the commission's research model by administering grants or by contracting for research if money is appropriated to the commission for those purposes.

(c) To the degree practicable, the commission, through the research model, shall coordinate with or make use of any research activities conducted under existing state initiatives, including research by state universities, the Texas Higher Education Coordinating Board, the United States Department of Agriculture, the Texas Department of Agriculture, and other state and federal agencies as appropriate.

(d) This section does not authorize the commission to initiate or direct the research efforts of another entity except under the terms of a grant or contract.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.1193. REPORT. The commission shall include in the reports required by Section 5.178 a description of cooperative research efforts, an accounting of money spent on research, and a review of the purpose, implementation, and results of particular research projects conducted.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 5.120. CONSERVATION AND QUALITY OF ENVIRONMENT. The commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the

environment and the natural resources of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.013, eff. Aug. 12, 1991.

Sec. 5.121. PUBLIC INFORMATION. (a) The commission shall comply with Section 2001.004, Government Code, by indexing and making available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the commission in the discharge of its functions.

(b) The commission shall comply with Section 2001.004, Government Code, by indexing and making available for public inspection all of the commission's final orders, decisions, and opinions.

Added by Acts 1987, 70th Leg., ch. 638, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(71), (72), eff. Sept. 1, 1995.

Sec. 5.122. DELEGATION OF UNCONTESTED MATTERS TO EXECUTIVE DIRECTOR. (a) The commission by rule or order may delegate to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration, or other authorization or approval if:

(1) required notice of the application or request for the authorization or approval has been given;

(2) the holder of or applicant for the authorization or approval agrees in writing to the action to be taken by the executive director; and

(3) the application or request:

(A) is uncontested and does not require an evidentiary hearing;

(B) has become uncontested before parties are named because each person who requested a contested case hearing within the time allowed by law has:

(i) withdrawn the request for a contested case hearing without condition;

(ii) withdrawn the request for a contested case hearing conditioned only on the withdrawal of all other hearing requests; or

(iii) agreed in writing to allow the executive director to make a final decision on the matter; or

(C) has become uncontested because all parties have agreed in writing to the action to be taken by the executive director.

(b) A person affected by an action the executive director takes on a matter delegated under this section may appeal the executive director's action to the commission unless the action is a decision:

(1) regarding a federal operating permit under Subchapter C, Chapter 382, Health and Safety Code; or

(2) specified as final and appealable by the commission rule that delegates the decision to the executive director.

(c) A person affected by a decision of the executive director on a matter delegated under this section that regards a federal operating permit under Subchapter C, Chapter 382, Health and Safety Code, may:

(1) petition the administrator of the United States Environmental Protection Agency in accordance with rules adopted under Section 382.0563, Health and Safety Code; or

(2) file a petition for judicial review under Section 382.032, Health and Safety Code.

(d) The commission's authority under this section is cumulative of the commission's authority to delegate its powers, duties, or rights under any other law.

Added by Acts 1995, 74th Leg., ch. 860, Sec. 1, eff. Aug. 28, 1995.

Amended by Acts 1997, 75th Leg., ch. 302, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1065 (H.B. 3177), Sec. 1, eff. September 1, 2017.

Sec. 5.124. AUTHORITY TO AWARD GRANTS. (a) With the consent of the commission, the executive director may award grants for any purpose regarding resource conservation or environmental protection in accordance with this section.

(b) The commission by rule shall establish procedures for awarding a grant, for making any determination related to awarding a grant, and for making grant payments.

(c) Each activity funded by a grant must directly relate to a purpose specified in the grant. A grant may be awarded only for a purpose consistent with the commission's jurisdiction and purposes under law, including:

(1) the development or implementation of a comprehensive conservation and management plan under Section 320, Federal Water Pollution Control Act (33 U.S.C. Section 1330), for a designated national estuary in this state;

(2) a demonstration project that involves new techniques for pollution prevention, energy or resource conservation, or waste management;

(3) an environmental purpose identified in a federal grant that is intended as a pass-through grant;

(4) development or improvement of monitoring or modeling techniques for water or air quality;

(5) support of a local air pollution program; or

(6) a study or program related to efforts to prevent an area that is near nonattainment with federal air quality standards from reaching nonattainment status.

(d) A grant may be awarded to any person that meets the eligibility requirements of the grant. The executive director shall establish eligibility requirements for each grant appropriate to the purposes of and activities under the grant and the method of selecting the recipient.

(e) Selection of grant recipients must be by solicitation of a proposal or application except as provided by Subsections (f) and (g). The executive director may specify any selection criterion the executive director considers relevant to the grant. Selection criteria must address:

(1) evaluation and scoring of:
(A) fiscal controls;
(B) project effectiveness;
(C) project cost; and
(D) previous experience with grants and contracts; and

(2) the possibility and method of making multiple awards.

(f) A grant may be made by direct award only if:

(1) the executive director determines that:

(A) selection of recipients by the solicitation of proposals or applications is not feasible; and

(B) awarding the grant directly is in the best interest of the state;

(2) eligibility for the grant is limited to:

(A) an agency or political subdivision of this state or of another state;

(B) a state institution of higher learning of this state or of another state, including any part or service of the institution; or

(C) an agency of the United States; or

(3) the grant is awarded to a person established or authorized to develop or implement a comprehensive conservation and management plan under Section 320, Federal Water Pollution Control Act (33 U.S.C. Section 1330), for a national estuary in this state.

(g) If a solicitation of a proposal is made for the purpose of identifying a partner for a joint application for a federal grant that is subsequently awarded to the commission, the executive director is not required to make an additional solicitation for entering into a pass-through grant with an identified partner.

(h) The executive director shall publish information regarding a solicitation related to a grant to be awarded under this section on the commission's electronic business daily in the manner provided by Section [2155.074](#), Government Code, as added by Section 1, Chapter 508, Acts of the 75th Legislature, Regular Session, 1997.

(i) For a grant awarded under this section, the commission

may use:

- (1) money appropriated for grant-making purposes;
- (2) federal money granted for making pass-through grants; and
- (3) state or federal grant money appropriated for a purpose that the executive director determines is consistent with a purpose of the grant from the commission.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 28, eff. Sept. 1, 1999.

Sec. 5.125. COST-SHARING FOR ENVIRONMENTAL COMPLIANCE ASSESSMENTS BY CERTAIN BUSINESSES. (a) In this section, "environmental compliance assessment" means an environmental compliance audit, pollution prevention assessment, or environmental management system audit performed by a small business. The term does not include an audit conducted under Chapter 1101, Health and Safety Code.

(b) The commission may implement cost-sharing to assist with payment of costs for an environmental compliance assessment performed by a business subject to regulation by the commission that employs at least 100 but not more than 250 individuals.

Added by Acts 1999, 76th Leg., ch. 104, Sec. 2, eff. May 17, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(d), eff. September 1, 2017.

Sec. 5.126. REPORT ON ENFORCEMENT ACTIONS. (a) Not later than December 1 of each year, the commission shall:

(1) prepare an electronic report on its enforcement actions for the preceding fiscal year, including a comparison with its enforcement actions for each of the preceding five fiscal years; and

(2) provide the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) The report shall separately describe the enforcement actions for each type of regulatory program, including programs under Chapters 26 and 27 of this code and Chapters 361, 382, and 401, Health and Safety Code.

(c) The description of enforcement actions for each type of regulatory program shall include:

- (1) the number of inspections;
- (2) the number of notices of violations;
- (3) the number of enforcement actions;
- (4) the type of enforcement actions;
- (5) the amount of penalties assessed, deferred, or collected; and
- (6) any other information the commission determines relevant.

(d) As soon as possible after the end of each fiscal year, the attorney general shall provide the commission information on enforcement actions referred by the commission to the attorney general that were resolved during the preceding fiscal year or are pending at the end of that fiscal year.

Added by Acts 1997, 75th Leg., ch. 304, Sec. 1, eff. May 26, 1997; Acts 1997, 75th Leg., ch. 1082, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 5.123 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(112), eff. Sept. 1, 2001.

Sec. 5.127. ENVIRONMENTAL MANAGEMENT SYSTEMS. (a) In this section, "environmental management system" means a documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(b) The commission by rule shall adopt a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems by regulated entities, state agencies, local governments, and other entities as determined by the commission. The incentives may include:

- (1) on-site technical assistance;
 - (2) accelerated access to information about programs;
- and
- (3) to the extent consistent with federal

requirements:

(A) inclusion of information regarding an entity's use of an environmental management system in the entity's compliance history and compliance summaries; and

(B) consideration of the entity's implementation of an environmental management system in scheduling and conducting compliance inspections.

(c) The rules must provide that an environmental management system, at a minimum, must require the entity implementing the system to:

(1) adopt a written environmental policy;

(2) identify the environmental aspects and impacts of the entity's activities;

(3) set priorities, goals, and targets for continuous improvement in environmental performance and for ensuring compliance with environmental laws, regulations, and permit terms applicable to the facility;

(4) assign clear responsibilities for implementation, training, monitoring, and corrective action and for ensuring compliance with environmental laws, regulations, and permit terms applicable to the facility;

(5) document implementation of procedures and results; and

(6) evaluate and refine implementation over time to improve attainment of environmental goals and targets and the system itself.

(d) The commission shall:

(1) integrate the use of environmental management systems into its regulatory programs, including permitting, compliance assistance, and enforcement;

(2) develop model environmental management systems for small businesses and local governments; and

(3) establish environmental performance indicators to measure the program's performance.

Added by Acts 2001, 77th Leg., ch. 1161, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.128. ELECTRONIC REPORTING TO COMMISSION; ELECTRONIC

TRANSMISSION OF INFORMATION BY COMMISSION; REDUCTION OF DUPLICATE REPORTING.

(a) The commission shall encourage the use of electronic reporting through the Internet, to the extent practicable, for reports required by the commission. Notwithstanding any other law, the commission may adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. An electronic report must be submitted in a format prescribed by the commission. The commission may consult with the Department of Information Resources on developing a simple format for use in implementing this subsection.

(a-1) Notwithstanding any other law, the commission may utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission.

(a-2) The commission shall utilize electronic means of transmission for any notice issued or sent by the commission to a state senator or representative, unless the senator or representative has requested to receive notice by mail.

(a-3) If the notice issued or sent under Subsection (a-2) concerns a permit for a facility, the notice must include an Internet link to an electronic map indicating the location of the facility.

(b) The commission shall strive to reduce duplication in reporting requirements throughout the agency.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 664 (H.B. [1254](#)), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 962 (H.B. [3544](#)), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 108 (H.B. [610](#)), Sec. 1, eff. September 1, 2011.

Sec. 5.129. SUMMARY FOR PUBLIC NOTICES. (a) The commission by rule shall provide for each public notice issued or published by

the commission or by a person under the jurisdiction of the commission as required by law or by commission rule to include at the beginning of the notice a succinct statement of the subject of the notice. The rules must provide that a summary statement must be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice.

(b) The summary statement may not be grounds for challenging the validity of the proposed action for which the notice was published.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. The commission shall:

(1) develop and implement policies, by specific environmental media, to protect the public from cumulative risks in areas of concentrated operations; and

(2) give priority to monitoring and enforcement in areas in which regulated facilities are concentrated.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001.

Sec. 5.132. CREATION OF PERFORMANCE MEASURES FOR INNOVATIVE REGULATORY PROGRAMS. The commission shall work with the Legislative Budget Board to create performance measures that assess the improvements in environmental quality achieved by innovative regulatory programs implemented by the commission.

Added by Acts 2001, 77th Leg., ch. 1483, Sec. 1, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(138), eff. Sept. 1, 2003.

Sec. 5.133. ACTIONS IN MEXICO. The commission may take and finance any action in Mexico, in cooperation with governmental authorities of Mexico, that in the opinion of the commission:

(1) is necessary or convenient to accomplish a duty of the commission imposed by law; and

(2) will yield benefits to the environment in this

state.

Added by Acts 2001, 77th Leg., ch. 728, Sec. 1, eff. Sept. 1, 2001.
Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(139), eff. Sept. 1, 2003.

Sec. 5.134. USE OF ENVIRONMENTAL TESTING LABORATORY DATA AND ANALYSIS. (a) The commission may accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission under Subchapter R or an environmental testing laboratory described in Subsection (b) or (e).

(b) The commission may accept for use in commission decisions data and analysis prepared by:

(1) an on-site or in-house environmental testing laboratory if the laboratory:

(A) is periodically inspected by the commission;

or

(B) is located in another state and is accredited or periodically inspected by that state;

(2) an environmental testing laboratory that is accredited under federal law; or

(3) if the data and analysis are necessary for emergency response activities and the required data and analysis are not otherwise available, an environmental testing laboratory that is not accredited by the commission under Subchapter R or under federal law.

(c) The commission by rule may require that data and analysis used in other commission decisions be obtained from an environmental testing laboratory accredited by the commission under Subchapter R.

(d) The commission shall periodically inspect on-site or in-house environmental testing laboratories described in Subsection (b).

(e) The commission may accept for use in commission

decisions data from an on-site or in-house laboratory if the laboratory is performing the work:

(1) for another company with a unit located on the same site; or

(2) without compensation for a governmental agency or a charitable organization if the laboratory is periodically inspected by the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.12, eff. Sept. 1, 2001. Renumbered from Water Code Sec. 5.127 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(140), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 912, Sec. 1, eff. Sept. 1, 2005.

Sec. 5.135. SMALL BUSINESS COMPLIANCE ASSISTANCE PROGRAM.

(a) The commission shall establish a small business compliance assistance program.

(b) The program shall include:

(1) mechanisms to develop, collect, and coordinate information about compliance methods and technologies for small businesses and to encourage cooperation between those small businesses and other persons to achieve compliance with applicable air quality, water quality, and solid waste laws;

(2) mechanisms to assist small businesses with pollution prevention and the prevention and detection of accidental releases, including information about alternative technologies, process changes, products, and methods of operation to reduce air pollution, water pollution, and improper disposal of solid waste;

(3) an ombudsman to help small businesses meet the requirements of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended, the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), as amended, and the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), as amended;

(4) a compliance assistance program to help small businesses identify the requirements for and obtain required permits in a timely and efficient manner;

(5) notification procedures to assure that small businesses receive notice of their rights and obligations under the

federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended, the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), as amended, and the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), as amended, in time to identify applicable requirements and evaluate and implement appropriate compliance methods;

(6) auditing services or referrals for small business stationary source operations to determine compliance with the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended; and

(7) procedures for considering a request by a small business to modify work practices, technological compliance methods, or an implementation schedule requirement that precedes a compliance date, taking into account the technological and financial capability of that source.

(c) The program shall include a small business compliance assistance advisory panel that consists of the following seven members:

(1) two members who are not owners or representatives of owners of small business stationary sources, selected by the governor to represent the public;

(2) two members who are owners or who represent owners of small business stationary sources, selected by the speaker of the house of representatives;

(3) two members who are owners or who represent owners of small business stationary sources, selected by the lieutenant governor; and

(4) one member selected by the chairman of the commission to represent the commission.

(d) The small business compliance assistance advisory panel shall:

(1) give advisory opinions on the effectiveness of the program, the difficulties of implementing the program, and the incidence and severity of enforcement;

(2) report periodically to the administrator regarding the program's compliance with requirements of the Paperwork Reduction Act of 1980 (Pub.L. No. 96-511), as amended,

the Regulatory Flexibility Act (5 U.S.C. Section 601 et seq.), as amended, and the Equal Access to Justice Act (Pub.L. No. 96-481), as amended;

(3) review information the program provides to small businesses to assure the information is understandable to nonexperts; and

(4) distribute opinions, reports, and information developed by the panel.

(e) The commission shall enter into a memorandum of understanding with the Texas Department of Economic Development to coordinate assistance to any small business in applying for permits from the commission.

(f) The commission may adopt rules reasonably necessary to implement this section. Rules relating to air pollution must comply with Section 507 of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended, and regulations adopted under that Act.

(g) In this section:

(1) "Program" means the small business compliance assistance program.

(2) "Small business" means:

(A) a small business stationary source; or

(B) a business that employs at least 100 but not more than 250 individuals.

(3) "Small business stationary source" has the meaning assigned by Section 507(c) of the federal Clean Air Act (42 U.S.C. Section 7661f), as added by Section 501 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), as amended.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.05, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.156, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 104, Sec. 3, eff. May 17, 1999. Renumbered from Health & Safety Code, Sec. 382.0365 and amended by Acts 2003, 78th Leg., ch. 81, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER E. ADMINISTRATIVE PROVISIONS FOR COMMISSION

Sec. 5.171. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 584, Sec. 73, eff. Sept. 1, 1989.

Sec. 5.172. FUNDS FROM OTHER STATE AGENCIES. Any state agency that has statutory responsibilities for environmental pollution or environmental quality control and that receives a legislative appropriation for these purposes may transfer to the commission any amount mutually agreed on by the commission and the agency, subject to the approval of the governor.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.014, eff. Aug. 12, 1991.

Sec. 5.173. PUBLIC INFORMATION RELATING TO COMMISSION. The commission shall prepare information of public interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and the appropriate state agencies.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.1733. ELECTRONIC POSTING OF INFORMATION. The commission shall post public information on its website. Such information shall include but not be limited to the minutes of advisory committee meetings, pending permit and enforcement actions, compliance histories, and emissions inventories by county and facility name.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.13, eff. Sept. 1, 2001.

Sec. 5.174. COPIES OF DOCUMENTS, PROCEEDINGS, ETC. (a) Except as otherwise specifically provided by this code and subject

to the specific limitations provided by this code, on application of any person the commission shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the commission. A certified copy with the seal of the commission and the signature of the presiding officer of the commission or the executive director or chief clerk is admissible as evidence in any court or administrative proceeding.

(b) The commission shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the commission, except that the fees set by the commission for copies prepared by the commission may not exceed those prescribed in Chapter 603, Government Code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(13), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.01, eff. Sept. 1, 2001.

Sec. 5.175. INSPECTION OF WATER POLLUTION RECORDS. (a) All information, documents, and data collected by the commission in the performance of its duties are the property of the state.

(b) Except as provided by Subsection (c) of this section, records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours.

(c) If a showing satisfactory to the executive director is made by any person that those records, reports, data, or other information, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commission shall consider those records, reports, data, or other information as confidential.

(d) This chapter may not be construed to make confidential any effluent data, including effluent data in records, reports, or

other information, and including effluent data in permits, draft permits, and permit applications.

(e) Records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the state or of the United States with responsibilities in water pollution control. However, this disclosure or transmittal may be made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity.

(f) The executive director may not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, 1.168; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.016, eff. Aug. 12, 1991.

Sec. 5.176. COMPLAINT FILE. (a) The commission shall maintain a file on each written complaint filed with the commission about a matter within the commission's regulatory jurisdiction. The file must include:

- (1) the name of the person who filed the complaint, unless the person has specifically requested anonymity;
- (2) the date the complaint is received by the commission;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(b) The commission shall establish and implement procedures

for receiving complaints submitted by means of the Internet and orally and shall maintain files on those complaints as provided by Subsection (a).

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 5.1765. PUBLICATION OF INFORMATION REGARDING COMPLAINT PROCEDURES AND POLICIES. The commission shall establish a process for educating the public regarding the commission's complaint policies and procedures. As part of the public education process, the commission shall make available to the public in pamphlet form an explanation of the complaint policies and procedures, including information regarding and standards applicable to the collection and preservation of credible evidence of environmental problems by members of the public.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.14, eff. Sept. 1, 2001.

Sec. 5.177. NOTICE OF COMPLAINT PROCEDURES; NOTICE OF INVESTIGATION STATUS. (a) The agency shall provide to the person filing the complaint about a matter within the commission's regulatory jurisdiction and to each person who is the subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(b) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(c) The commission is not required to provide the information described in Subsection (a) or (b) to a complainant who files an anonymous complaint or provides inaccurate contact information.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 5.1771. COORDINATION OF COMPLAINT INVESTIGATIONS WITH

LOCAL ENFORCEMENT OFFICIALS: TRAINING. (a) The commission shall share information regarding a complaint about a matter within the commission's regulatory jurisdiction made to the commission with local officials with authority to act on the complaint in the county or municipality in which the alleged action or omission that is the subject of the complaint occurred or is threatening to occur.

(b) On request, the commission shall provide training for local enforcement officials in investigating complaints and enforcing environmental laws relating to matters under the commission's jurisdiction under this code or the Health and Safety Code. The training must include, at a minimum:

(1) procedures for local enforcement officials to use in addressing citizen complaints if the commission is unavailable or unable to respond to the complaint; and

(2) an explanation of local government authority to enforce state laws and commission rules relating to the environment.

(c) The commission may charge a reasonable fee for providing training to local enforcement officials as required by Subsection (b) in an amount sufficient to recover the costs of the training.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.1772. AFTER-HOURS RESPONSE TO COMPLAINTS. (a) The commission shall adopt and implement a policy to provide timely response to complaints during periods outside regular business hours.

(b) This section does not:

(1) require availability of field inspectors for response 24 hours a day, seven days a week, in all parts of the state; or

(2) authorize additional use of overtime.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.1773. COMPLAINT ASSESSMENT. (a) The commission annually shall conduct a comprehensive analysis of the complaints

it receives, including analysis by the following categories:

- (1) air;
- (2) water;
- (3) waste;
- (4) priority classification;
- (5) region;
- (6) commission response;
- (7) enforcement action taken; and
- (8) trends by complaint type.

(b) In addition to the analysis required by Subsection (a), the commission shall assess the impact of changes made in the commission's complaint policy.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.16, eff. Sept. 1, 2001.

Sec. 5.178. BIENNIAL REPORTS. (a) On or before December 1 of each even-numbered year, the commission shall file with the governor and the members of the legislature a written report that includes a statement of the activities of the commission during the preceding fiscal biennium.

(b) The report due by December 1 of an even-numbered year shall include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Section [361.0219\(c\)](#), Health and Safety Code;

(B) the reports required by Section [26.0135\(d\)](#) and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985; and

(C) a summary of the analyses and assessments required by Section [5.1773](#).

(c) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(b).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(164), eff. June 17, 2011.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1,

1985; Acts 1997, 75th Leg., ch. 1082, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 1.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.02, 7.03, 7.04(b), eff. Jan. 11, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. [1179](#)), Sec. 25(164), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 21.001, eff. September 1, 2013.

Sec. 5.1781. REPORT TO SECRETARY OF STATE. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section [17.921](#);

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) To assist the secretary of state in preparing the report required under Section [405.021](#), Government Code, the commission on a quarterly basis shall provide a report to the secretary of state detailing any projects funded by the commission that provide assistance to colonias.

(c) The report must include:

(1) a description of any relevant projects;

(2) the location of each project;

(3) the number of colonia residents served by each project;

(4) the exact amount spent or the anticipated amount to be spent on each colonia served by each project;

(5) a statement of whether each project is completed and, if not, the expected completion date of the project; and

(6) any other information, as determined appropriate by the secretary of state.

(d) The commission shall require an applicant for funds administered by the commission to submit to the commission a

colonia classification number, if one exists, for each colonia that may be served by the project proposed in the application. If a colonia does not have a classification number, the commission may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the commission, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia. Added by Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 12, eff. June 15, 2007.

Sec. 5.179. SEAL. The commission shall have a seal bearing the words Texas Natural Resource Conservation Commission encircling the oak and olive branches common to other official seals.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.017, eff. Aug. 12, 1991.

SUBCHAPTER F. EXECUTIVE DIRECTOR

Sec. 5.221. GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR. The executive director shall manage the administrative affairs of the commission subject to this code and other laws and under the general supervision and direction of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.222. DELEGATION OF EXECUTIVE DIRECTOR'S AUTHORITY OR DUTY. The executive director may delegate to the executive director's staff any authority or duty assigned to the executive director unless the statute, rule, or order assigning or delegating the authority or duty specifies otherwise.

Added by Acts 1997, 75th Leg., ch. 302, Sec. 2, eff. Sept. 1, 1997. Renumbered from Sec. 5.238 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(109), eff. Sept. 1, 1999.

Sec. 5.223. ADMINISTRATIVE ORGANIZATION OF COMMISSION.

Subject to approval of the commission, the executive director may organize and reorganize the administrative sections and divisions of the commission in a manner and in a form that will achieve the greatest efficiency and effectiveness.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.224. INFORMATION REQUEST TO BOARD. (a) With regard to any matter pending before the commission, the executive director may obtain from the board information relating to that matter.

(b) On receiving a request from the executive director, the board should make the requested information available within 30 days after the information is requested and shall make the requested information available not later than 90 days after the information is requested.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.225. CAREER LADDER PROGRAM. The executive director or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.226. MERIT PAY. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this section.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.227. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or his designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are

made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) a comprehensive analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 965, Sec. 1.18, eff. Sept. 1, 2001.

Sec. 5.228. APPEARANCES AT HEARINGS. (a) The position of and information developed by the commission shall be presented by the executive director or his designated representative at hearings of the commission and the hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's environment and natural resources, including matters that have been determined to be policies of the state.

(b) The executive director shall be named a party in hearings before the commission in a matter in which the executive director bears the burden of proof.

(c) The executive director shall participate as a party in contested case permit hearings before the commission or the State Office of Administrative Hearings to:

(1) provide information to complete the administrative record; and

(2) support the executive director's position developed in the underlying proceeding, unless the executive

director has revised or reversed that position.

(d) In a contested case hearing relating to a permit application, the executive director or the executive director's designated representative may not rehabilitate the testimony of a witness unless the witness is a commission employee.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1021, Sec. 10.04, eff. September 1, 2011.

(f) The fact that the executive director is not named as a party in a hearing before the commission is not grounds for appealing a commission decision.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.018, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.20, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.04, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 3, eff. September 1, 2015.

Sec. 5.229. CONTRACTS. (a) The executive director, on behalf of the commission, may negotiate with and with the consent of the commission enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the commission.

(b) The executive director, on behalf of the commission, may negotiate with and with the consent of the commission enter into contracts or other agreements with states and political subdivisions of this state or any other entity for the purpose of carrying out the powers, duties, and responsibilities of the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.2291. SCIENTIFIC AND TECHNICAL SERVICES. (a) In

this section, "scientific and technical environmental services" means services, other than engineering services, of a scientific or technical nature the conduct of which requires technical training and professional judgment. The term includes modeling, risk assessment, site characterization and assessment, studies of the magnitude, source, and extent of contamination, contaminant fate and transport analysis, watershed assessment and analysis, total maximum daily load studies, scientific data analysis, and similar tasks, to the extent those tasks are not defined as the "practice of engineering" under Chapter 1001, Occupations Code.

(b) Except as provided by Section 5.2292, the procurement of a contract for scientific and technical environmental services shall be conducted under the procedures for professional services selection provided in Subchapter A, Chapter 2254, Government Code. Added by Acts 2001, 77th Leg., ch. 965, Sec. 1.21, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.842, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.05, eff. September 1, 2011.

Sec. 5.2292. CONTRACTS FOR SERVICES UNDER PETROLEUM STORAGE TANK STATE-LEAD PROGRAM. (a) The executive director may directly award a contract for scientific and technical environmental services to a person if:

(1) the contract is for the performance of services related to the remediation of a site that has been placed in the state-lead program under Section 26.3573(r-1);

(2) the person has registered to perform corrective action under Section 26.364;

(3) the person is eligible to receive a contract award from the state;

(4) the person was performing related work at the site on or before July 1, 2011; and

(5) the contract includes all contract provisions required for state contracts.

(b) Notwithstanding Section 2254.004, Government Code, the

executive director may directly award a contract for engineering services to a person if:

(1) the contract is for the performance of services related to the remediation of a site that has been placed in the state-lead program under Section 26.3573(r-1);

(2) the person is licensed under Chapter 1001, Occupations Code;

(3) the person has registered to perform corrective action under Section 26.364;

(4) the person is eligible to receive a contract award from the state;

(5) the person was performing related work at the site on or before July 1, 2011; and

(6) the contract includes all contract provisions required for state contracts.

(c) Nothing in Subsection (a) or (b) requires the executive director to make an award at a site or prevents the executive director from negotiating additional contract terms, including qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 1.06, eff. September 1, 2011.

Sec. 5.230. ENFORCEMENT. On approval of the commission, the executive director may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, or rule by injunction or other appropriate remedy in a court of competent jurisdiction.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.231. TRAVEL EXPENSES. The executive director is entitled to receive actual and necessary travel expenses. Other employees of the commission are entitled to receive travel expenses as provided in the General Appropriations Act.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.232. EMPLOYEE MOVING EXPENSES. If provided by legislative appropriation, the commission may pay the costs of transporting and delivering the household goods and effects of employees transferred by the executive director from one permanent station to another when, in the judgment of the executive director, the transfer will serve the best interest of the state.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.233. GIFTS AND GRANTS. The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code and other law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.019, eff. Aug. 12, 1991.

Sec. 5.234. APPLICATIONS AND OTHER DOCUMENTS. (a) An application, petition, or other document requiring action of the commission shall be presented to the executive director and handled as provided by this code or other law and in the rules adopted by the commission.

(b) After an application, petition, or other document is processed, it shall be presented to the commission for action as required by law and rules of the commission. If, in the course of reviewing an application and preparing a draft permit, the executive director has required changes to be made to the applicant's proposal, the executive director shall prepare a summary of the changes that were made to increase protection of public health and the environment.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.020, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 1.22, eff. Sept. 1, 2001.

Sec. 5.236. GROUNDWATER CONTAMINATION REPORTS. (a) If the executive director acquires information that confirms that a

potential public health hazard exists because usable groundwater has been or is being contaminated, the executive director, not later than the 30th day after the date on which the executive director acquires the information confirming contamination, shall give written notice of the contamination to the following persons:

(1) the county judge and the county health officer, if any, in each county in which the contamination has occurred or is occurring;

(2) any person under the commission's jurisdiction who is suspected of contributing to the contamination;

(3) any other state agency with jurisdiction over any person who is suspected of contributing to the contamination; and

(4) a groundwater conservation district, if the contamination has occurred or is occurring in the jurisdiction of the district.

(b) The executive director shall give the notice in the manner and form, and include the information, required by rule of the commission.

Added by Acts 1987, 70th Leg., ch. 393, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 607 (S.B. 430), Sec. 1, eff. September 1, 2011.

Sec. 5.237. OPERATING FUND. (a) The Texas Natural Resource Conservation Commission Operating Fund is established in the treasury. At the request of the commission, the comptroller is authorized to transfer to an account in the operating fund any appropriations made to the commission for the purpose of making expenditures. After expenditures have been made from the operating fund and proper line-item appropriations identified, the commission shall submit periodic adjustments to the comptroller in summary amounts to record accurate cost allocations to the appropriate funds and accounts. Periodic adjustments under this section shall be made at least quarterly.

(b) The commission will establish and maintain accounting records adequate to support the periodic reconciliation of operating fund transfers and document expenditures from each fund

or account. All expenditures shall be made consistent with provisions of law relating to the authorized use of each fund or account from which appropriations are made to the commission.
Added by Acts 1993, 73rd Leg., ch. 746, Sec. 2, eff. Aug. 30, 1993.

Sec. 5.238. ADMINISTRATIVE ACCOUNT. The commission administrative account is an account in the general revenue fund. The account consists of reimbursements to the commission for services provided by the commission and other sources specified by law and authorized by legislative appropriation.
Added by Acts 1997, 75th Leg., ch. 333, Sec. 2, eff. Sept. 1, 1997.

Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The executive director shall ensure that the agency is responsive to environmental and citizens' concerns, including environmental quality and consumer protection.

(b) The executive director shall develop and implement a program to:

(1) provide a centralized point for the public to access information about the commission and to learn about matters regulated by the commission;

(2) identify and assess the concerns of the public in regard to matters regulated by the commission; and

(3) respond to the concerns identified by the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.01, eff. September 1, 2011.

SUBCHAPTER G. OFFICE OF PUBLIC INTEREST COUNSEL

Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest counsel is created to ensure that the commission promotes the public's interest. The primary duty of the office is to represent the public interest as a party to matters before the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.02, eff. September 1, 2011.

Sec. 5.272. PUBLIC INTEREST COUNSEL. The office shall be headed by a public interest counsel appointed by the commission. The executive director may submit the names and qualifications of candidates for public interest counsel to the commission.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.

Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The office of public interest counsel shall report to the commission each year in a public meeting held on a date determined by the commission to be timely for the commission to include the reported information in the commission's reports under Sections 5.178(a) and (b) and in the commission's biennial legislative appropriations requests as appropriate:

(1) an evaluation of the office's performance in representing the public interest in the preceding year;

(2) an assessment of the budget needs of the office, including the need to contract for outside expertise; and

(3) any legislative or regulatory changes recommended under Section 5.273.

(b) The commission and the office of public interest counsel shall work cooperatively to identify performance measures for the office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.03, eff. September 1, 2011.

Sec. 5.273. DUTIES OF THE PUBLIC INTEREST COUNSEL. (a) The counsel shall represent the public interest and be a party to all proceedings before the commission.

(b) The counsel may recommend needed legislative and regulatory changes.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 965, Sec. 1.23, eff. Sept. 1, 2001.

Sec. 5.274. STAFF; OUTSIDE TECHNICAL SUPPORT. (a) The office shall be adequately staffed to carry out its functions under this code.

(b) The counsel may obtain and use outside technical support to carry out its functions under this code.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 965, Sec. 1.23, eff. Sept. 1, 2001.

Sec. 5.275. APPEAL. A ruling, decision, or other act of the commission may not be appealed by the counsel.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 708, Sec. 1, eff. Aug. 28, 1989.

Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

(a) The commission by rule, after consideration of recommendations from the office of public interest counsel, shall establish factors the public interest counsel must consider before the public interest counsel decides to represent the public interest as a party to a commission proceeding.

(b) Rules adopted under this section must include:

(1) factors to determine the nature and extent of the public interest; and

(2) factors to consider in prioritizing the workload of the office of public interest counsel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 3.04, eff. September 1, 2011.

SUBCHAPTER H. DELEGATION OF HEARINGS

Sec. 5.311. DELEGATION OF RESPONSIBILITY. (a) The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility to hear any matter before the commission.

(b) Except as provided in Subsection (a), the administrative law judge shall report to the commission on the

hearing in the manner provided by law.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985. Renumbered from Water Code Sec. 5.313 and amended by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.01, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.02, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 2, eff. September 1, 2013.

Sec. 5.312. TIME LIMIT FOR ISSUANCE OR DENIAL OF PERMITS.

(a) Except as provided in Subsection (b), all permit decisions shall be made within 180 days of the receipt of the permit application or application amendment or the determination of administrative completeness, whichever is later.

(b) This section does not apply to permits issued under federally delegated or approved programs unless allowed under that program.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.022, eff. Aug. 12, 1991. Renumbered from Water Code Sec. 5.314 by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995.

Sec. 5.313. HEARING EXAMINERS REFERENCED IN LAW. Any reference in law to a hearing examiner who has a duty related to a case pending before the commission means an administrative law judge of the State Office of Administrative Hearings.

Amended by Acts 1995, 74th Leg., ch. 106, Sec. 2, eff. Sept. 1, 1995.

Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN TESTIMONY. In a contested case hearing delegated by the commission to the State Office of Administrative Hearings that uses prefiled written testimony, all discovery must be completed before the deadline for the submission of that testimony.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 10.03, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. [1148](#)), Sec. 1, eff. September 1, 2015.

SUBCHAPTER I. JUDICIAL REVIEW

Sec. 5.351. JUDICIAL REVIEW OF COMMISSION ACTS. (a) A person affected by a ruling, order, decision, or other act of the commission may file a petition to review, set aside, modify, or suspend the act of the commission.

(b) A person affected by a ruling, order, or decision of the commission must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the commission performed the act.

(c) Notwithstanding Subsection (b), a person affected by a ruling, order, or decision on a matter delegated to the executive director under Section [5.122](#) or other law may, after exhausting any administrative remedies, file a petition to review, set aside, modify, or suspend the ruling, order, or decision not later than the 30th day after:

(1) the effective date of the ruling, order, or decision; or

(2) if the executive director's ruling, order, or decision is appealed to the commission as authorized by Section [5.122](#)(b) or other law, the earlier of:

(A) the date the commission denies the appeal; or

(B) the date the appeal is overruled by operation of law in accordance with commission rules.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1065 (H.B. [3177](#)), Sec. 2, eff. September 1, 2017.

Sec. 5.352. REMEDY FOR COMMISSION OR EXECUTIVE DIRECTOR

INACTION. A person affected by the failure of the commission or the executive director to act in a reasonable time on an application to appropriate water or to perform any other duty with reasonable promptness may file a petition to compel the commission or the executive director to show cause why it should not be directed by the court to take immediate action.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.353. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 5.351 or 5.352 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.354. VENUE. A suit instituted under Section 5.351 or 5.352 of this code must be brought in a district court in Travis County.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.355. APPEAL OF DISTRICT COURT JUDGMENT. A judgment or order of a district court in a suit brought for or against the commission is appealable as are other civil cases in which the district court has original jurisdiction.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.356. APPEAL BY EXECUTIVE DIRECTOR PRECLUDED. A ruling, order, decision, or other act of the commission may not be appealed by the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

Sec. 5.357. LAW SUITS; CITATION. Law suits filed by and against the commission or executive director shall be in the name of the commission. In suits against the commission or executive director, citation may be served on the executive director.

Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985.

SUBCHAPTER J. CONSOLIDATED PERMIT PROCESSING

Sec. 5.401. CONSOLIDATED PERMIT PROCESSING. (a) If a plant, facility, or site is required to have more than one permit issued by the commission and the applications for all permits required by the commission are filed within a 30-day period, the commission, on request of the applicant, shall conduct coordinated application reviews and one consolidated permit hearing on all permits requested to be consolidated by the applicant and may issue one consolidated permit. On request of the applicant, the commission shall issue one consolidated permit.

(b) The executive director shall designate one permit program as the lead program for coordination, and that program is the point of contact regarding the consolidated permit.

(c) The executive director may require separate processing of consolidated applications or may return to the applicant parts of an application if the executive director determines that the applicant has submitted an incomplete application or if the applicant does not respond as requested to notices of deficiency.

(d) A federal operating permit governed by the requirements of Sections 382.054-382.0543, Health and Safety Code, may not be consolidated with other permits under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.402. REQUEST FOR SEPARATE PROCESSING. (a) At any time before the public notice of the opportunity to request a hearing on a permit application, the applicant may request that

consolidated applications be processed separately as determined by the executive director. The executive director shall process the applications separately if the applicant submits a timely request under this subsection.

(b) At any time after the notice of opportunity to request a hearing but before referral of the matter to the State Office of Administrative Hearings, the executive director may separate the applications for processing on a showing of good cause by the applicant that the applications should be processed separately. For purposes of this subsection, "good cause" includes a change in the statutory or regulatory requirements governing a permit or a substantial change in the factual circumstances surrounding the applications for permits.

(c) After an application has been referred to the State Office of Administrative Hearings, the applicant may have the applications processed separately only on a showing of compliance with commission procedural rules regarding the withdrawal of applications.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.403. RENEWAL PERIOD FOR CONSOLIDATED PERMIT. The renewal period for a consolidated permit issued under this subchapter is the shortest term set by any state or federal statute or rule governing one or more of the authorizations sought in the consolidated permit.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.404. RENEWAL OF PERMITS. A permit issued under this subchapter or a permit issued before and effective on September 1, 1997, that authorizes more than one permit program may be renewed, amended, or modified as a consolidated permit or may be separated by program and the permits may be processed separately and subject to the renewal, amendment, or modification requirements of applicable law governing operations at the facility, plant, or site.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.405. FEES. (a) Except as provided by Subsection

(b), the fee for a consolidated permit shall be computed as if the permits consolidated had been processed separately.

(b) The commission by rule may reduce the fee for a consolidated permit below the total amount that the applicant would have paid for processing the applications separately if the commission finds that consolidated processing results in savings to the agency.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.406. RULES. The commission may adopt rules to effectuate the purposes of this subchapter, including rules providing for:

(1) combined public notices of permits issued under the authority of this section; or

(2) procedures for the processing and issuing of consolidated permits.

Added by Acts 1997, 75th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER L. EMERGENCY AND TEMPORARY ORDERS

Sec. 5.501. EMERGENCY AND TEMPORARY ORDER OR PERMIT; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITION. (a) For the purposes and in the manner provided by this subchapter, the commission:

(1) may issue a temporary or emergency mandatory, permissive, or prohibitory order; and

(2) by temporary or emergency order may:

(A) issue a temporary permit; or

(B) temporarily suspend or amend a permit condition.

(b) The commission may issue an emergency order under this subchapter after providing the notice and opportunity for hearing that the commission considers practicable under the circumstances or without notice or hearing. Except as provided by Section 5.506, notice must be given not later than the 10th day before the date set for a hearing if the commission requires notice and hearing before issuing the order. The commission shall give notice not later than

the 20th day before the date set for a hearing on a temporary order.

(c) The commission by order or rule may delegate to the executive director the authority to:

(1) receive applications and issue emergency orders under this subchapter; and

(2) authorize, in writing, a representative or representatives to act on the executive director's behalf under this subchapter.

(d) Chapter 2001, Government Code, does not apply to the issuance of an emergency order under this subchapter without a hearing.

(e) A law under which the commission acts that requires notice of hearing or that sets procedures for the issuance of permits does not apply to a hearing on an emergency order issued under this subchapter unless the law specifically requires notice for an emergency order. The commission shall give the general notice of the hearing that the commission considers practicable under the circumstances.

(f) An emergency or temporary order issued under this subchapter does not vest in the permit holder or recipient any rights and expires in accordance with its terms.

(g) The commission may prescribe rules and adopt fees necessary to carry out and administer this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.502. APPLICATION FOR EMERGENCY OR TEMPORARY ORDER.

A person other than the executive director or the executive director's representative who desires an emergency or temporary order under this subchapter must submit a sworn written application to the commission. The application must:

(1) describe the condition of emergency or other condition justifying the issuance of the order;

(2) allege facts to support the findings required under this subchapter;

(3) estimate the dates on which the proposed order should begin and end;

(4) describe the action sought and the activity

proposed to be allowed, mandated, or prohibited; and

(5) include any other statement or information required by this subchapter or by the commission.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.503. NOTICE OF ISSUANCE. Notice of the issuance of an emergency order shall be provided in accordance with commission rules.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.504. HEARING TO AFFIRM, MODIFY, OR SET ASIDE ORDER.

(a) If the commission, the executive director, or the executive director's representative issues an emergency order under this subchapter without a hearing, the order shall set a time and place for a hearing to affirm, modify, or set aside the emergency order to be held before the commission or its designee as soon as practicable after the order is issued.

(b) At or following the hearing required under Subsection (a), the commission shall affirm, modify, or set aside the emergency order.

(c) A hearing to affirm, modify, or set aside an emergency order shall be conducted in accordance with Chapter 2001, Government Code, and commission rules. Commission rules concerning a hearing to affirm, modify, or set aside an emergency order must provide for presentation of evidence by the applicant under oath, presentation of rebuttal evidence, and cross-examination of witnesses.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.505. TERM OF ORDER. An emergency or temporary order issued under this subchapter must be limited to a reasonable time specified by the order. Except as otherwise provided by this subchapter, the term of an emergency order may not exceed 180 days. An emergency order may be renewed once for a period not to exceed 180 days.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES. (a) The commission by emergency or temporary order may suspend a permit condition relating to beneficial inflows to affected bays and estuaries and instream uses if the commission finds that an emergency exists that cannot practicably be resolved in another way.

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) The commission must give written notice of the proposed action to the Parks and Wildlife Department before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1). The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action for a period of 72 hours from receipt of the notice and must consider those comments before issuing an order implementing the proposed action.

(c) The commission may suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice except as required by Subsection (b).

(d) The commission shall notify all affected persons immediately by publication.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. 3), Sec. 1.02, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 1.02, eff. September 1, 2007.

Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER. The commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under Section 13.4132. Notice of the action is adequate if the notice is mailed or hand delivered to the last known address of the utility's headquarters.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.03, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 2, eff. September 1, 2015.

Sec. 5.509. TEMPORARY OR EMERGENCY ORDER RELATING TO DISCHARGE OF WASTE OR POLLUTANTS. (a) The commission may issue an emergency or temporary order relating to the discharge of waste or pollutants into or adjacent to water in the state if:

(1) the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Chapter 18 or 26, as applicable, to effectuate the policy and purposes of that chapter; and

(2) the commission finds that:

(A) the discharge is unavoidable to:

(i) prevent loss of life, serious injury, or severe property damage;

(ii) prevent severe economic loss or ameliorate serious drought conditions, to the extent consistent with the requirements for United States Environmental Protection Agency authorization of a state permit program; or

(iii) make necessary and unforeseen repairs to a facility;

(B) there is no feasible alternative to the proposed discharge;

(C) the discharge will not cause significant hazard to human life and health, unreasonable damage to the property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant; and

(D) the discharge will not present a significant hazard to the uses that will be made of the receiving water after the discharge.

(b) A person desiring a temporary or emergency order under this section must submit an application under Section 5.502 that, in addition to complying with that section:

(1) states the volume and quality of the proposed discharge;

(2) explains the measures proposed to minimize the volume and duration of the discharge; and

(3) explains the measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 2, eff. June 17, 2015.

Sec. 5.510. EMERGENCY ORDER CONCERNING UNDERGROUND OR ABOVEGROUND STORAGE TANKS. (a) The commission may issue an emergency order to the owner or operator of an underground or aboveground storage tank regulated under Chapter 26 prohibiting the owner or operator from allowing or continuing a release or threatened release and requiring the owner or operator to take the actions necessary to eliminate the release or threatened release, if the commission finds that:

(1) there is an actual or threatened release of a regulated substance; and

(2) more expeditious action than is otherwise provided under Chapter 26 is necessary to protect the public health or safety or the environment from harm.

(b) An emergency order issued under this section must be:

(1) mailed by certified mail, return receipt

requested, to each person identified in the order;

(2) hand delivered to each person identified in the order; or

(3) on failure of service by certified mail or hand delivery, served by publication one time in the Texas Register and one time in a newspaper with general circulation in each county in which any of the persons identified in the order has a last known address.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.511. EMERGENCY ADMINISTRATIVE ORDER CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT. The commission or the executive director may issue an emergency administrative order under Section [361.272](#), Health and Safety Code, in the manner provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.512. EMERGENCY ORDER CONCERNING ACTIVITY OF SOLID WASTE MANAGEMENT. The commission may issue an emergency order concerning an activity of solid waste management under the commission's jurisdiction, even if that activity is not covered by a permit, if the commission finds that an emergency requiring immediate action to protect the public health and safety exists.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.513. EMERGENCY ORDER CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The commission may issue an emergency order suspending the registration of the installer of an on-site sewage disposal system, regulating an on-site sewage disposal system, or both, if the commission finds that an emergency exists and that the public health and safety is endangered because of the operation of an on-site sewage disposal system that does not comply with Chapter [366](#), Health and Safety Code, or a rule adopted under that chapter.

(b) If an order issued under this section is adopted without notice or hearing, the order must set a time, not more than 30 days after the order is issued, for a hearing to affirm, modify, or set aside the order.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.514. ORDER ISSUED UNDER AIR EMERGENCY. (a) If the commission finds that a generalized condition of air pollution exists that creates an emergency requiring immediate action to protect human health or safety, the commission, with the concurrence of the governor, may issue an emergency order requiring a person causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants.

(b) If the commission finds that emissions from one or more sources are causing imminent danger to human health or safety but that there is not a generalized condition of air pollution under Subsection (a), the commission may issue an emergency order requiring the persons responsible for the emissions to immediately reduce or discontinue the emissions.

(c) Notwithstanding Section 5.504, the commission shall affirm, modify, or set aside an order issued under this section not later than 24 hours after the hearing under that section begins and without adjournment of the hearing.

(d) This section does not limit any power that the governor or another officer may have to declare an emergency and to act on that declaration if the power is conferred by law or inheres in the office.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Sec. 5.5145. EMERGENCY ORDER CONCERNING OPERATION OF ROCK CRUSHER OR CONCRETE PLANT WITHOUT PERMIT. The commission may issue an emergency order under this subchapter suspending operations of a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under Section 382.0518, Health and Safety Code, and is operating without the necessary permit.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.08(a), eff. Sept. 1, 2001 and Acts 2001, 77th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1072 (S.B. 1003), Sec. 2, eff. June 17, 2011.

Sec. 5.5146. EMERGENCY ORDER CONCERNING OPERATION OF CERTAIN TREATMENT FACILITIES WITHOUT PERMIT. The commission may issue an emergency order under this subchapter suspending operations of a treatment facility that:

(1) handles waste and wastewater from humans or household operations;

(2) is required to obtain a permit from the commission; and

(3) is operating without the required permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 806 (H.B. 3264), Sec. 1, eff. June 17, 2015.

Sec. 5.515. EMERGENCY ORDER BECAUSE OF CATASTROPHE. (a) The commission may issue an emergency order authorizing immediate action for the addition, replacement, or repair of facilities or control equipment or the repair or replacement of roads, bridges, or other infrastructure improvements necessitated by a catastrophe occurring in this state and the emission of air contaminants during the addition, replacement, or repair of those facilities, that equipment, or those improvements if the actions and emissions are otherwise precluded under Chapter 382, Health and Safety Code.

(b) An order issued under this section:

(1) may authorize action only:

(A) on property on which a catastrophe has occurred;

(B) on other property that is owned by the owner or operator of the damaged facility and that produces the same intermediates, products, or by-products; or

(C) for a public works project needed to repair or replace a damaged road, bridge, or other infrastructure improvement destroyed during a catastrophe; and

(2) must contain a schedule for submitting a complete application for a permit under Section 382.0518, Health and Safety Code.

(c) The person applying for an emergency order must demonstrate that there will be no more than a de minimis increase in

the predicted concentration of air contaminants at or beyond the property line of the other property on which action is authorized under Subsection (b)(1)(B). The commission shall review and act on an application submitted as provided by Subsection (b)(2) without regard to construction activity under an order under this section.

(d) An applicant desiring an emergency order under this section must submit an application under Section 5.502 that, in addition to complying with that section:

(1) describes the catastrophe;

(2) states that:

(A) the construction and emissions are essential to prevent loss of life, serious injury, severe property damage, loss of a critical transportation thoroughfare, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of a facility or control equipment or the repair or replacement of a road, bridge, or other infrastructure improvement necessitated by the catastrophe;

(B) there is no practicable alternative to the proposed construction and emissions; and

(C) the emissions will not cause or contribute to air pollution;

(3) estimates the dates on which the proposed construction or emissions, or both, will begin and end;

(4) estimates the date on which the facility, equipment, or infrastructure improvement will begin operation; and

(5) describes the quantity and type of air contaminants proposed to be emitted.

(e) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather, explosions, fire, or similar occurrences beyond the reasonable control of the applicant, that makes a facility or its related appurtenances or a road, bridge, or other infrastructure improvement inoperable.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 158 (H.B. 2949), Sec. 1, eff. September 1, 2005.

Sec. 5.516. EMERGENCY ORDER UNDER SECTION 401.056, HEALTH AND SAFETY CODE. The commission may issue an emergency order under Section 401.056, Health and Safety Code, in the manner provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER M. ENVIRONMENTAL PERMITTING PROCEDURES

Sec. 5.551. PERMITTING PROCEDURES; APPLICABILITY. (a) This subchapter establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing under Subchapters C-H, Chapter 2001, Government Code, regarding commission actions relating to a permit issued under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code. This subchapter is procedural and does not expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided under Chapter 26 or 27 of this code or Chapter 361, Health and Safety Code.

(a-1) Notwithstanding Section 18.002, this subchapter does not apply to a permit issued under Section 18.005(c)(2) if the point of discharge is not located within three miles of any point located on the coast of this state.

(b) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for hearing to the extent necessary to satisfy a requirement for United States Environmental Protection Agency authorization of a state permit program.

(c) In this subchapter, "permit" means a permit, approval, registration, or other form of authorization required by law for a person to engage in an action.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 3, eff. June 17, 2015.

Sec. 5.552. NOTICE OF INTENT TO OBTAIN PERMIT. (a) The executive director shall determine when an application is administratively complete.

(b) Not later than the 30th day after the date the executive director determines the application to be administratively complete:

(1) the applicant shall publish notice of intent to obtain a permit at least once in the newspaper of largest circulation in the county in which the facility to which the application relates is located or proposed to be located or, if the facility to which the application relates is located or proposed to be located in a municipality, at least once in a newspaper of general circulation in the municipality; and

(2) the chief clerk of the commission shall mail notice of intent to obtain a permit to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located;

(B) the mayor and health authorities of the municipality in which the facility is located or proposed to be located;

(C) the county judge and health authorities of the county in which the facility is located or proposed to be located; and

(D) the river authority in which the facility is located or proposed to be located if the application is under Chapter 26, Water Code.

(c) The commission by rule shall establish the form and content of the notice. The notice must include:

(1) the location and nature of the proposed activity;

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

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

(4) a description, including a telephone number, of the manner in which a person may contact the applicant for further

information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

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

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

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

(d) In addition to providing notice under Subsection (b)(1), the applicant shall comply with any applicable public notice requirements under Chapters 26 and 27 of this code, Chapter 361, Health and Safety Code, and rules adopted under those chapters.

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

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

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 679, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.553. PRELIMINARY DECISION; NOTICE AND PUBLIC COMMENT. (a) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(b) The applicant shall publish notice of the preliminary decision in a newspaper.

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

(1) the information required by Sections

5.552(c)(1)-(5);

(2) a summary of the preliminary decision;

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

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

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

(d) In addition to providing notice under this section, the applicant shall comply with any applicable public notice requirements under Chapters 26 and 27 of this code, Chapter 361, Health and Safety Code, and rules adopted under those chapters.

(e) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located. Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.554. PUBLIC MEETING. During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

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

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

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.555. RESPONSE TO PUBLIC COMMENTS. (a) The executive director, in accordance with procedures provided by commission rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment period.

(b) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the

commission reconsider the executive director's decision or hold a contested case hearing to:

- (1) the applicant;
- (2) any person who submitted comments during the public comment period; and
- (3) any person who requested to be on the mailing list for the permit action.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.5553. NOTICE OF DRAFT PERMIT. (a) This section applies only to a permit application that is eligible to be referred for a contested case hearing under Section 5.556 or 5.557.

(b) Notwithstanding any other law, not later than the 30th day before the date the commission issues a draft permit in connection with a permit application, the executive director shall provide written notice to the state senator and state representative of the area in which the facility that is the subject of the permit is located.

Added by Acts 2015, 84th Leg., R.S., Ch. 116 (S.B. 709), Sec. 4, eff. September 1, 2015.

Sec. 5.556. REQUEST FOR RECONSIDERATION OR CONTESTED CASE HEARING. (a) A person may request that the commission reconsider the executive director's decision or hold a contested case hearing. A request must be filed with the commission during the period provided by commission rule.

(b) The commission shall act on a request during the period provided by commission rule.

(c) The commission may not grant a request for a contested case hearing unless the commission determines that the request was filed by an affected person as defined by Section 5.115.

(d) The commission may not refer an issue to the State Office of Administrative Hearings for a hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact;
- (2) was raised during the public comment period; and
- (3) is relevant and material to the decision on the

application.

(e) If the commission grants a request for a contested case hearing it shall:

(1) limit the number and scope of the issues to be referred to the State Office of Administrative Hearings for a hearing; and

(2) consistent with the nature and number of the issues to be considered at the hearing, specify the maximum expected duration of the hearing.

(f) This section does not preclude the commission from holding a hearing if it determines that the public interest warrants doing so.

Added by Acts 1999, 76th Leg., ch. 1350, Sec. 2, eff. Sept. 1, 1999.

Sec. 5.557. DIRECT REFERRAL TO CONTESTED CASE HEARING. (a) Immediately after the executive director issues a preliminary decision on an application under Section 5.553, the commission, on the request of the applicant or the executive director, shall refer the application directly to the State Office of Administrative Hearings for a contested case hearing on whether the application complies with all applicable statutory and regulatory requirements.

(b) Sections 5.554, 5.555, and 5.556 of this code and Sections 2003.047(e) and (f), Government Code, do not apply to an application referred for a hearing under Subsection (a).

(c) Notwithstanding Subsection (b), the commission by rule shall provide for public comment and the executive director's response to public comment to be entered into the administrative record of decision on an application.

Added by Acts 2001, 77th Leg., ch. 935, Sec. 3, eff. June 14, 2001.

Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile as defined by Section 382.0565, Health and Safety Code.

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

(c) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 382, Health and Safety Code, or Subchapters C-G, Chapter 2001, Government Code.

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

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 7, eff. June 18, 2005.

SUBCHAPTER N. ESTUARY MANAGEMENT PLANS

Sec. 5.601. DEFINITIONS. In this subchapter:

(1) "Approved implementation program" means an implementation plan identified as part of an approved comprehensive conservation and management plan.

(2) "Approved comprehensive conservation and management plan" means an estuary management plan that is prepared through the efforts of citizens, organizations, industries, local governments, and state and national agencies working together as part of the National Estuary Program to develop long-term comprehensive conservation and management plans (CCMPs) and that has been approved by the governor of Texas and the administrator of the United States Environmental Protection Agency to protect the environment and the economies of the state and of the regions with estuaries. The term includes the plans for Galveston Bay and the Coastal Bend estuaries.

(3) "Implementing agency" means the entity identified for day-to-day administration of an estuary program. An implementing agency may be a state agency or other local or regional entity, as identified in an approved estuary management plan.

(4) "National Estuary Program" means the cooperative

estuary management program authorized by and developed under Section 320 of the Federal Water Pollution Control Act (33 U.S.C. Section 1330), as amended.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.551 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.602. RECOGNITION OF NATIONAL SIGNIFICANCE OF ESTUARIES OF TEXAS COAST. The state recognizes the state and national significance of estuaries on the Texas coast and that the cooperative efforts created by the National Estuary Program serve a public and state purpose. By virtue of that state purpose, an approved implementation program established under the National Estuary Program is eligible to receive state funds through a grant program administered by the commission.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.552 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.603. FINDING OF BENEFIT AND PUBLIC PURPOSE. The state recognizes the importance of implementing estuary management plans by protecting and improving water quality and restoring estuarine habitat that makes the bays and estuaries productive, protecting the economies of those areas, and continuing the involvement of the public and the many interests who use and appreciate the estuarine resources of Texas. State and local government participation in estuary programs to protect natural resources serves a public use and benefit. The state and the implementing agencies recognize the prerogatives of local governments and the sanctity of private property rights. No action by an estuary program is intended to usurp the authority of any local government. A local government's participation in or withdrawal from an estuary program is at the sole discretion of the local government and is subject only to the local government's obligation to complete any financial commitment it has made.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.553 by Acts 2001, 77th Leg., ch. 1420, Sec.

21.001(114), eff. Sept. 1, 2001.

Sec. 5.604. LEAD STATE AGENCY. The commission is the lead state agency for the implementation of approved comprehensive conservation and management plans developed under the National Estuary Program. The commission may accept federal grants for purposes of this subchapter and may award grants and enter into contracts with an implementing agency for the implementation of approved plans under this subchapter.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.554 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.605. STATE AGENCY PARTICIPATION. (a) The following state agencies shall participate and provide assistance to the estuary programs in implementing approved comprehensive conservation and management plans:

- (1) the General Land Office;
- (2) the Parks and Wildlife Department;
- (3) the Texas Department of Transportation;
- (4) the Railroad Commission of Texas;
- (5) the State Soil and Water Conservation Board;
- (6) the Texas Water Development Board; and
- (7) the Texas Department of Health.

(b) Other state agencies may participate as necessary or convenient.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.555 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.606. ESTUARY PROGRAM OFFICES. To accomplish the purposes of this subchapter, the estuary program office of any estuary of the state included in the National Estuary Program and for which the commission is the implementing agency shall be maintained in the region of the estuary involved.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.556 by Acts 2001, 77th Leg., ch. 1420, Sec.

21.001(114), eff. Sept. 1, 2001.

Sec. 5.607. IMPLEMENTATION FUNDING. Funding for the implementation of approved comprehensive conservation and management plans is to be shared by the state, local governments in the area of the estuaries, the federal government, and other participants.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.557 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.608. ELIGIBILITY FOR STATE FUNDING. A comprehensive conservation and management plan is eligible for state funding to assist in implementation of the plan if:

(1) the estuary involved has been designated jointly by the governor and the United States Environmental Protection Agency as an estuary of national significance in accordance with Section 320 of the Federal Water Pollution Control Act (33 U.S.C. Section 1330), as amended; and

(2) the comprehensive conservation and management plan for the estuary involved, together with the accompanying implementation plan, has been completed and approved.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.558 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

Sec. 5.609. ADMINISTRATION. The commission, as the lead state agency for administering the state's share of funds, and any state agency designated as an implementing agency for an approved comprehensive conservation and management plan may accept and make grants and enter into contracts to accomplish the actions identified in the approved plan and to further the purposes of this subchapter.

Added by Acts 1999, 76th Leg., ch. 287, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 5.559 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(114), eff. Sept. 1, 2001.

SUBCHAPTER P. FEES

Sec. 5.701. FEES. (a) The executive director shall charge and collect the fees prescribed by law. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise. Except as otherwise provided, a fee assessed and collected under this section shall be deposited to the credit of the water resource management account.

(1) Notwithstanding other provisions, the commission by rule may establish due dates, schedules, and procedures for assessment, collection, and remittance of fees due the commission to ensure the cost-effective administration of revenue collection and cash management programs.

(2) Notwithstanding other provisions, the commission by rule shall establish uniform and consistent requirements for the assessment of penalties and interest for late payment of fees owed the state under the commission's jurisdiction. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections [111.060](#) and [111.061](#), Tax Code.

(b) Except as otherwise provided by law, the fee for filing an application or petition is \$100 plus the cost of any required notice. The fee for a by-pass permit shall be set by the commission at a reasonable amount to recover costs, but not less than \$100.

(c) The fee for filing a water permit application is \$100 plus the cost of required notice.

(d) The fee for filing an application for fixing or adjusting rates is \$100 plus the cost of required notice.

(e) A person who files with the commission a petition for the creation of a water district or addition of sewage and drainage powers or a resolution for a water district conversion must pay a one-time nonrefundable application fee. The commission by rule may establish the application fee in an amount sufficient to cover the costs of reviewing and processing the application, plus the cost of required notice. The commission may also use the application fee to

cover other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Subsection (p). This fee is the only fee that the commission may charge with regard to the processing of an application for creation of a water district, addition of sewage or drainage powers, or conversion under this code.

(f) A person who files a bond issue application with the commission must pay an application fee set by the commission. The commission by rule may set the application fee in an amount not to exceed the costs of reviewing and processing the application, plus the cost of required notice. If the bonds are approved by the commission, the seller shall pay to the commission a percentage of the bond proceeds not later than the seventh business day after receipt of the bond proceeds. The commission by rule may set the percentage of the proceeds in an amount not to exceed 0.25 percent of the principal amount of the bonds actually issued. Proceeds of the fees shall be used to supplement any other funds available for paying expenses of the commission in supervising the various bond and construction activities of the districts filing the applications.

(g) The fee for recording an instrument in the office of the commission is \$1.25 per page.

(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(i) The fee for impounding water, except under Section [11.142](#) of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level.

(j) The fee for other uses of water not specifically named in this section is \$1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution. A fee is not required for a water right that is deposited into the Texas Water Trust.

(k) A fee charged under Subsections (h) through (j) of this section for one use of water under a permit from the commission may

not exceed \$50,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed \$10,000.

(l) The fees prescribed by Subsections (h) through (j) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds \$1,000, the applicant shall pay one-half of the fee when the application is filed and one-half within 180 days after notice is mailed to him that the permit is granted. If the applicant does not pay all of the amount owed before beginning to use water under the permit, the permit is annulled.

(m) If a permit is annulled, the matter reverts to the status of a pending, filed application and, on the payment of use fees as provided by Subsections (h) through (l) of this section together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

(n)(1) Each provider of potable water or sewer utility service shall collect a regulatory assessment from each retail customer as follows:

(A) A public utility as defined in Section [13.002](#) shall collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) A water supply or sewer service corporation as defined in Section [13.002](#) shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(C) A district as defined in Section [49.001](#) that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(2) The regulatory assessment may be listed on the customer's bill as a separate item and shall be collected in addition to other charges for utility services.

(3) The assessments collected under this subsection may be appropriated by a rider to the General Appropriations Act to

an agency with duties related to water and sewer utility regulation or representation of residential and small commercial consumers of water and sewer utility services solely to pay costs and expenses incurred by the agency in the regulation of districts, water supply or sewer service corporations, and public utilities under Chapter 13.

(4) The commission shall annually use a portion of the assessments to provide on-site technical assistance and training to public utilities, water supply or sewer service corporations, and districts. The commission shall contract with others to provide the services.

(5) The commission by rule may establish due dates, collection procedures, and penalties for late payment related to regulatory assessments under this subsection. The executive director shall collect all assessments from the utility service providers.

(6) Repealed by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(c), eff. December 1, 2017.

(7) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(o) A fee imposed under Subsection (j) of this section for the use of saline tidal water for industrial processes shall be \$1 per acre-foot of water diverted for the industrial process, not to exceed a total fee of \$5,000.

(p) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsection (b), to the extent those fees are paid by water districts, and Subsections (e), (f), and (n); or

(2) Section 54.037(c).

(q) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality,

reasonably related to the activities of any of the persons required to pay a fee under:

(1) Subsections (b) and (c), to the extent those fees are collected in connection with water use or water quality permits;

(2) Subsections (h)-(l);

(3) Section [11.138](#)(g);

(4) Section [11.145](#);

(5) Section [26.0135](#)(h);

(6) Sections [26.0291](#), [26.044](#), and [26.0461](#); or

(7) Sections [341.041](#), [366.058](#), [366.059](#), [371.024](#), [371.026](#), and [371.062](#), Health and Safety Code.

(r) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1021, Sec. 2.07, eff. September 1, 2011.

Amended by Acts 1985, 69th Leg., ch. 239, Sec. 38, eff. Sept. 1, 1985. Renumbered from Sec. 5.182 and amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.001, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 399, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 710, Sec. 10, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.021, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 564, Sec. 1.02, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 772, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1010, Sec. 4.42, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 966, Sec. 4.03, eff. Sept. 1, 2001. Redesignated from Sec. 5.235 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 3.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 6(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1351 (H.B. [3](#)), Sec. 1.03, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. [3](#)), Sec. 1.03, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. [2667](#)), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 2.07,

eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 6.03, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 6, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 867 (H.B. 2771), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(c), eff. December 1, 2017.

Sec. 5.702. PAYMENT OF FEES REQUIRED WHEN DUE. (a) A fee due the commission under this code or the Health and Safety Code shall be paid on the date the fee is due, regardless of whether the fee is billed by the commission to the person required to pay the fee or is calculated and paid to the commission by the person required to pay the fee.

(b) A person required to pay a fee to the commission may not dispute the assessment of or amount of a fee before the fee has been paid in full.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.703. FEE ADJUSTMENTS. (a) The commission may not consider adjusting the amount of a fee due the commission under this code or the Health and Safety Code:

(1) before the fee has been paid in full; or

(2) if the request for adjustment is received after the first anniversary of the date on which the fee was paid in full.

(b) A person who pays an amount that exceeds the amount of the fee due because the commission incorrectly calculated the fee or the person made a duplicate payment may request a refund of the excess amount paid before the fourth anniversary of the date on which the excess amount was paid.

(c) A request for a refund or credit in an amount that exceeds \$5,000 shall be forwarded for approval to the commission fee audit staff, together with an explanation of the grounds for the requested refund or credit. Approval of a refund or credit does not

prevent the fee audit staff from conducting a subsequent audit of the person for whom the refund or credit was approved.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.704. NOTICE OF CHANGE IN PAYMENT PROCEDURE. The commission shall promptly notify each person required to pay a commission fee under this code or the Health and Safety Code of any change in fee payment procedures.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.705. NOTICE OF VIOLATION. (a) The commission may issue a notice of violation to a person required to pay a commission fee under this code or the Health and Safety Code for knowingly violating reporting requirements or knowingly calculating the fee in an amount less than the amount actually due.

(b) The executive director may modify audit findings reported by a commission fee auditor only if the executive director provides a written explanation showing good cause for the modification.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.706. PENALTIES AND INTEREST ON DELINQUENT FEES. (a) Except as otherwise provided by law, the commission may collect, for a delinquent fee due the commission under this code or the Health and Safety Code:

(1) a penalty in an amount equal to five percent of the amount of the fee due, if the fee is not paid on or before the day on which the fee is due; and

(2) an additional penalty in an amount equal to five percent of the amount due, if the fee is not paid on or before the 30th day after the date on which the fee was due.

(b) Unless otherwise required by law interest accrues, beginning on the 61st day after the date on which the fee was due, on the total amount of fee and penalties that have not been paid on or

before the 61st day after the date on which the fee was due. The yearly interest rate is the rate of interest established for delinquent taxes under Section 111.060, Tax Code.

(c) The executive director may modify a penalty or interest on a fee and penalties authorized by this section if the executive director provides a written explanation showing good cause for the modification.

(d) Penalties and interest collected by the commission under this section or under other law, unless that law otherwise provides, shall be deposited to the credit of the fund or account to which the fee is required to be deposited.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.707. TRANSFERABILITY OF APPROPRIATIONS AND FUNDS DERIVED FROM FEES. Notwithstanding any law that provides specific purposes for which a fund, account, or revenue source may be used and expended by the commission and that restricts the use of revenues and balances by the commission, the commission may transfer a percentage of appropriations from one appropriation item to another appropriation item consistent with the General Appropriations Act for any biennium authorizing the commission to transfer a percentage of appropriations from one appropriation item to another appropriation item. The use of funds in dedicated accounts under this section for purposes in addition to those provided by statutes restricting their use may not exceed seven percent or \$20 million, whichever is less, of appropriations to the commission in the General Appropriations Act for any biennium. A transfer of \$500,000 or more from one appropriation item to another appropriation item under this section must be approved by the commission at an open meeting subject to Chapter 551, Government Code.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

Sec. 5.708. PERMIT FEE EXEMPTION FOR CERTAIN RESEARCH PROJECTS. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section [61.003](#), Education Code.

(2) "State agency" has the meaning assigned by Section [572.002](#), Government Code.

(b) If a permit issued by the commission is required for a research project by an institution of higher education or a state agency, payment of a fee is not required for the permit.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 3.03, eff. Sept. 1, 2001.

SUBCHAPTER Q. PERFORMANCE-BASED REGULATION

Sec. 5.751. APPLICABILITY. This subchapter applies to programs under the jurisdiction of the commission under Chapters [26](#), [27](#), and [32](#) of this code and Chapters [361](#), [375](#), [382](#), and [401](#), Health and Safety Code. It does not apply to occupational licensing programs under the jurisdiction of the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.01, eff. September 1, 2011.

Sec. 5.752. DEFINITIONS. In this subchapter:

(1) "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement.

(2) "Innovative program" means:

(A) a program developed by the commission under this subchapter, Chapter [26](#) or [27](#) of this code, or Chapter [361](#), [382](#), or [401](#), Health and Safety Code, that provides incentives to a person in return for benefits to the environment that exceed benefits that would result from compliance with applicable legal requirements under the commission's jurisdiction;

(B) the flexible permit program administered by the commission under Chapter [382](#), Health and Safety Code;

(C) the regulatory flexibility program

administered by the commission under Section 5.758; or

(D) a program established under Section 382.401, Health and Safety Code, to encourage the use of alternative technology for detecting leaks or emissions of air contaminants.

(3) "Permit" includes a license, certificate, registration, approval, permit by rule, standard permit, or other form of authorization issued by the commission under this code or the Health and Safety Code.

(4) "Region" means a region of the commission's field operations division or that division's successor.

(5) "Strategically directed regulatory structure" means a program that is designed to use innovative programs to provide maximum environmental benefit and to reward compliance performance.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 870 (H.B. 1526), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.02, eff. September 1, 2011.

Sec. 5.753. STANDARDS FOR EVALUATING AND USING COMPLIANCE HISTORY. (a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop standards for evaluating and using compliance history that ensure consistency. In developing the standards, the commission may account for differences among regulated entities.

(b) The components of compliance history must include:

(1) enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under the jurisdiction of the commission;

(2) notwithstanding any other provision of this code, orders issued under Section 7.070;

(3) to the extent readily available to the commission, enforcement orders, court judgments, consent decrees, and criminal

convictions relating to violations of environmental rules of the United States Environmental Protection Agency; and

(4) changes in ownership.

(c) The set of components must also include any information required by other law or any requirement necessary to maintain federal program authorization.

(d) Except as provided by this subsection, notices of violation must be included as a component of compliance history for a period not to exceed one year from the date of issuance of each notice of violation. The listing of a notice of violation must be preceded by the following statement prominently displayed: "A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action nor proof that a violation has actually occurred." A notice of violation administratively determined to be without merit may not be included in a compliance history. A notice of violation that is included in a compliance history shall be removed from the compliance history if the commission subsequently determines the notice of violation to be without merit.

(d-1) For purposes of listing compliance history, the commission may not include as a notice of violation information received by the commission as required by Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) unless the commission issues a written notice of violation. Final enforcement orders or judgments resulting from self-reported Title V deviations or violations may be considered as compliance history components for purposes of determining compliance history.

(e) Except as required by other law or any requirement necessary to maintain federal program authorization, the commission by rule shall establish a period for compliance history. Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.04,

eff. September 1, 2011.

Sec. 5.754. CLASSIFICATION AND USE OF COMPLIANCE HISTORY.

(a) The commission by rule shall establish a set of standards for the classification of a person's compliance history as a means of evaluating compliance history. The commission may consider the person's classification when using compliance history under Subsection (e).

(b) Rules adopted under Subsection (a):

(1) must, at a minimum, provide for three classifications of compliance history in a manner adequate to distinguish among:

(A) unsatisfactory performers, or regulated entities that in the commission's judgment perform below minimal acceptable performance standards established by the commission;

(B) satisfactory performers, or regulated entities that generally comply with environmental regulations; and

(C) high performers, or regulated entities that have an above-satisfactory compliance record;

(2) may establish a category of unclassified performers, or regulated entities for which the commission does not have adequate compliance information about the site; and

(3) must take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.).

(c) In classifying a person's compliance history, the commission shall:

(1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;

(2) establish criteria for classifying a repeat violator, giving consideration to the size and complexity of the site at which the violations occurred, and limiting consideration to violations of the same nature and the same environmental media that occurred in the preceding five years; and

(3) consider:

(A) the significance of the violation and whether

the person is a repeat violator;

(B) the size and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.); and

(C) the potential for a violation at the site that is attributable to the nature and complexity of the site.

(d) The commission by rule may require a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.

(e) The commission by rule shall provide for the use of compliance history in commission decisions regarding:

(1) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(2) enforcement;

(3) the use of announced inspections; and

(4) participation in innovative programs.

(e-1) The amount of the penalty enhancement or escalation attributed to compliance history may not exceed 100 percent of the base penalty for an individual violation as determined by the commission's penalty policy.

(f) The assessment methods shall specify the circumstances in which the commission may revoke the permit of a repeat violator and shall establish enhanced administrative penalties for repeat violators.

(g) Rules adopted under Subsection (e) for the use of compliance history shall provide for additional oversight of, and review of applications regarding, facilities owned or operated by a person whose compliance performance is classified as unsatisfactory according to commission standards.

(h) The commission by rule shall, at a minimum, prohibit a person whose compliance history is classified as unsatisfactory according to commission standards from obtaining or renewing a flexible permit under the program administered by the commission under Chapter 382, Health and Safety Code, or participating in the regulatory flexibility program administered by the commission under Section 5.758.

(i) The commission shall consider the compliance history of

a regulated entity when determining whether to grant the regulated entity's application for a permit or permit amendment for any activity under the commission's jurisdiction to which this subchapter applies. Notwithstanding any provision of this code or the Health and Safety Code relating to the granting of permits or permit amendments by the commission, the commission, after an opportunity for a hearing, shall deny a regulated entity's application for a permit or permit amendment if the regulated entity's compliance history is unacceptable based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.05, eff. September 1, 2011.

Sec. 5.755. STRATEGICALLY DIRECTED REGULATORY STRUCTURE.

(a) The commission by rule shall develop a strategically directed regulatory structure to provide incentives for enhanced environmental performance.

(b) The strategically directed regulatory structure shall offer incentives based on:

(1) a person's compliance history; and

(2) any voluntary measures undertaken by the person to improve environmental quality.

(c) An innovative program offered as part of the strategically directed regulatory structure must be consistent with other law and any requirement necessary to maintain federal program authorization.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.06, eff. September 1, 2011.

Sec. 5.756. COLLECTION AND ANALYSIS OF COMPLIANCE PERFORMANCE INFORMATION. (a) The commission shall collect data on:

(1) the results of inspections conducted by the commission; and

(2) whether inspections are announced or unannounced.

(b) The commission shall collect data on and make available to the public on the Internet:

(1) the number and percentage of all violations committed by persons who previously have committed the same or similar violations;

(2) the number and percentage of enforcement orders issued by the commission that are issued to entities that have been the subject of a previous enforcement order;

(3) whether a violation is of major, moderate, or minor significance, as defined by commission rule;

(4) whether a violation relates to an applicable legal requirement pertaining to air, water, or waste; and

(5) the region in which the facility is located.

(c) The commission annually shall prepare a comparative analysis of data evaluating the performance, over time, of the commission and of entities regulated by the commission.

(d) The commission shall include in the annual enforcement report required by Section 5.126 the comparative performance analysis required by Subsection (c), organized by region and regulated medium.

(e) Before compliance performance information about a site may be placed on the Internet under this subchapter, the information must be evaluated through a quality assurance and control procedure, including a 30-day period for the owner or operator of the site to review and comment on the information.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 22.001, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.07, eff. September 1, 2011.

Sec. 5.757. COORDINATION OF INNOVATIVE PROGRAMS. (a) The commission shall designate a single point of contact within the agency to coordinate all innovative programs.

(b) The coordinator shall:

(1) inventory, coordinate, and market and evaluate all innovative programs;

(2) provide information and technical assistance to persons participating in or interested in participating in those programs; and

(3) work with the pollution prevention advisory committee to assist the commission in integrating the innovative programs into the commission's operations, including:

(A) program administration;

(B) strategic planning; and

(C) staff training.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 4.01, eff. Sept. 1, 2001.

Sec. 5.758. REGULATORY FLEXIBILITY. (a) The commission by order may exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is:

(1) as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply; and

(2) not inconsistent with federal law.

(b) The commission may not exempt an applicant under this section unless the applicant can present to the commission evidence that the alternative the applicant proposes is as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply.

(c) The commission by rule shall specify the procedure for

obtaining an exemption under this section. The rules must provide for public notice and for public participation in a proceeding involving an application for an exemption under this section.

(d) The commission's order must provide a description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.

(e) The commission by rule may establish a reasonable fee for applying for an exemption under this section.

(f) A violation of an order issued under this section is punishable as if it were a violation of the statute or rule from which the order grants an exemption.

(g) This section does not authorize exemptions to statutes or regulations for storing, handling, processing, or disposing of low-level radioactive materials.

(h) In implementing the program of regulatory flexibility authorized by this section, the commission shall:

(1) promote the program to businesses in the state through all available appropriate media;

(2) endorse alternative methods that will clearly benefit the environment and impose the least onerous restrictions on business;

(3) fix and enforce environmental standards, allowing businesses flexibility in meeting the standards in a manner that clearly enhances environmental outcomes; and

(4) work to achieve consistent and predictable results for the regulated community and shorter waits for permit issuance.

Added by Acts 1997, 75th Leg., ch. 1203, Sec. 1, eff. Sept. 1, 1997.

Renumbered from Sec. 5.123 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 4.02, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. [2694](#)), Sec. 4.08, eff. September 1, 2011.

SUBCHAPTER R. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

Sec. 5.801. DEFINITION. In this subchapter, "environmental testing laboratory" means a scientific laboratory that performs

analyses to determine the chemical, molecular, or pathogenic components of environmental media for regulatory compliance purposes.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.001 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.802. ADMINISTRATION BY COMMISSION. The commission shall adopt rules for the administration of the voluntary environmental testing laboratory accreditation program established by this chapter. The program must be consistent with national accreditation standards approved by the National Environmental Laboratory Accreditation Program.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.002 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.803. APPLICATION; FEE. (a) To be accredited under the accreditation program adopted under this subchapter, an environmental testing laboratory must submit an application to the commission on a form prescribed by the commission, accompanied by the accreditation fee. The application must contain the information that the commission requires.

(b) The commission by rule shall establish a schedule of reasonable accreditation fees designed to recover the costs of the accreditation program, including the costs associated with:

- (1) application review;
- (2) initial, routine, and follow-up inspections by the commission; and
- (3) preparation of reports.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.003 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.804. ISSUANCE OF ACCREDITATION; RECIPROCITY. (a) The commission may accredit an environmental testing laboratory that complies with the commission requirements established under

this subchapter.

(b) The commission by rule may provide for the accreditation of an environmental testing laboratory that is accredited or licensed in another state by an authority that is approved by the National Environmental Laboratory Accreditation Program.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.004 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.805. RULES; MINIMUM STANDARDS. The commission shall adopt rules to implement this subchapter and minimum performance and quality assurance standards for accreditation of an environmental testing laboratory.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.005 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.806. DISCIPLINE. After notice and an opportunity for hearing, the commission may suspend or revoke the accreditation of an environmental testing laboratory that does not comply with the minimum performance and quality assurance standards established under this subchapter.

Added by Acts 1999, 76th Leg., ch. 447, Sec. 1, eff. June 18, 1999. Redesignated from Health and Safety Code Sec. 421.006 and amended by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.

Sec. 5.807. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION ACCOUNT. All fees collected under this subchapter shall be deposited to the credit of the environmental testing laboratory accreditation account and may be appropriated to the commission only for paying the costs of the accreditation program.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 6.01, eff. Sept. 1, 2001.