

The commission proposes amendments to §101.1, concerning Definitions, §101.24, concerning Inspection Fees, and §101.27, concerning Emissions Fees, and revisions to the State Implementation Plan regarding these proposals.

#### EXPLANATION OF PROPOSED RULES

The definitions of “site” found in 30 TAC §122.10 (Title V), “account” in §101.1, and “account” in §101.24 and §101.27 are all different. Prior to the advent of Title V permitting, the term “account” was the unique facility identifier for air and air related programs. The definition of “site” can encompass multiple accounts, which has the effect of creating a new, partially overlapping facility identifier for the affected air programs. Multiple Title V permits may be issued at a site. In addition, the situation arises that a single Title V permit could span accounts at a site, because of the difference in definitions of site and account. This has the effect of splintering data and decreasing data interchange across air program areas. This proposal would amend the definition of "account" such that the term continues as the key identifier for a facility while retaining the necessary structure for federal permitting purposes.

Administrative changes are also being proposed to §101.24 and §101.27 to keep them consistent with current rule citations and definitions. Under the 1990 Federal Clean Air Act Amendments, the Beaumont/Port Arthur area was classified as a “serious” nonattainment area for failure to meet the National Ambient Air Quality Standard for ozone. On June 3, 1996, this status was changed by the United States Environmental Protection Agency to “moderate” nonattainment, and the commission

proposes to update §101.27 to be consistent with the current designation. Additionally, references to 30 TAC §101.6, concerning Notification Requirements for Major Upset and 30 TAC §101.7, concerning Notification Requirements for Maintenance would be changed to reflect anticipated changes in the title designations of those sections.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no effect on state or local government as a result of enforcing or administering the sections.

#### PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more accurate and efficient recordkeeping for the purpose of assigning emissions and inspection fees. There are no additional regulatory burdens on small businesses. There is no anticipated economic cost for persons who are required to comply with the sections as proposed.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these amendments under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose

of these amendments is to modify the definition of "account" so that it may serve as the key identifier for facilities under air pollution control programs of the commission.

#### COASTAL MANAGEMENT PLAN

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies. This proposal is intended primarily to improve data management internal to the commission. If adopted, it will not authorize any new air emissions. Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

#### PUBLIC HEARING

A public hearing on the proposal will be held July 15, 1997, at 10:00 a.m. in Room 201 of Texas Natural Resource Conservation Commission (TNRCC) Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons.

Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97124-101-AI. Comments must be received by 5:00 p.m., July 24, 1997. For further information, please contact Brad Toups, Field Operations, (512) 239-1872 or Beecher Cameron, Office of Policy and Regulatory Development, (512) 239-1495.

#### STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments implement Health and Safety Code, §382.017.

**§101.1. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission [Texas Natural Resource Conservation Commission (Commission)], the terms used by the commission [Commission] have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Account** - For those sources permitted under Chapter 122 of this title (relating to Federal Operating Permits), all sources which are aggregated as a site. For all other sources, any combination where the sources are under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

[**Account** - Any combination of facilities or sources, including federal sources, as defined in the Texas Clean Air Act (Title 5, Texas Health and Safety Code, §382.003) where the combined facilities or sources are:

[A] under common ownership, management, and control; and

[B] located on contiguous property or on properties that are contiguous except for intervening road, railroads, rights-of-way, waterways, or the like.]

**§101.24. Inspection Fees.**

(a) Applicability. The owner or operator of each account to which this rule applies [, as defined in this subsection,] shall remit to the commission [Texas Natural Resource Conservation Commission (TNRCC)] an inspection fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an inspection fee and an emissions fee, under [pursuant to] §101.27 of this title (relating to Emissions Fees), is required to pay only the greater of the two fees. [For purposes of this section, an account shall be defined as all of the facilities located at a property, including those that are permitted, non-permitted, exempted, and grandfathered. Properties under common ownership, but containing separate operations, or managed independently, or] Accounts carried on the records of this agency under separate [account] numbers, will be charged a separate fee for each such account. [, even if the properties are contiguous or are contiguous except for intervening roads, railroads, rights-of-way, waterways, and the like.] The inspection fee shall apply to each account which contains one or more of the types of plants, facilities, and/or processes described in subsection (d) of this section, including permitted and non-permitted facilities. References for the industrial categories used are provided in the *Standard Industrial Classification (SIC) Manual* (Executive Office of the President, Office of Management and Budget, 1987). If more than one SIC category can apply to an account, the fee assessed shall be the highest fee listed for the applicable classifications in the fee schedule. Provisions of the section apply to all accounts, including accounts which have not been assigned specific Texas Natural Resource

Conservation Commission (TNRCC) Office of Air Quality (OAQ) account numbers. The owner or operator of an account subject to an inspection fee requirement is responsible for contacting the appropriate TNRCC regional office to obtain an account number. The OAQ will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full inspection fee is due. If OAQ is notified in writing that the plant is not and will not be in operation during that fiscal year, a fee will not be due.

(b) - (f) (No change.)

**§101.27. Emissions Fees.**

(a) Applicability. The owner or operator of each account to which this rule applies [, as defined in this subsection,] shall remit to the commission [Texas Natural Resource Conservation Commission (TNRCC)] an emissions fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an emissions fee and an inspection fee, pursuant to §101.24 of this title (relating to Inspection Fees), is required to pay only the greater of the two fees. [For purposes of this section, an account shall be defined as all of the facilities located at a property including those that are permitted, non-permitted, exempted, and grandfathered. Properties under common ownership, but containing separate operations, or managed

independently, or] Accounts carried on the records of this agency under separate [account] numbers, will be charged a separate fee for each such account. [, even if the properties are contiguous or are contiguous except for intervening roads, railroads, rights-of-way, waterways, and the like.] Provisions of the section apply to all accounts, including accounts which have not been assigned specific Texas Natural Resource Conservation Commission (TNRCC) Office of Air Quality (OAQ) account numbers. The owner or operator of an account subject to an emissions fee requirement is responsible for contacting the appropriate TNRCC regional office to obtain an account number. The OAQ will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full emissions fee is due. If OAQ is notified in writing that the plant is not and will not be in operation during that fiscal year, a fee will not be due. All regulated air pollutants, as defined in subsection (c)(3) of this section, including, but not limited to, those emissions from point and fugitive sources during normal operations with the exception of (for applicability purposes only) hydrogen, oxygen, carbon dioxide, water, nitrogen, methane, and ethane, are used to determine applicability of this section. In accordance with rules proposed by the United States Environmental Protection Agency (EPA) at 40 Code of Federal Regulations (CFR) 70, concerning the use of fugitive emissions in major source determinations, fugitive emissions shall be considered toward applicability of this section only for those source categories listed at 40 CFR 51.166(b)(1)(iii). For purposes of this section, an affected account shall have met one or more of the following conditions:

- (1) (No change.)

(2) the account has the potential to emit, at maximum operational or design capacity, 50 tons per year or more of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) and is located in [El Paso, Hardin, Jefferson, or Orange Counties; or] any [other] serious ozone nonattainment area listed in §101.1 of this title (relating to Definitions);

(3) the account has the potential to emit, at maximum operational or design capacity, 25 tons per year or more of VOC or NO<sub>x</sub> and is located in [Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, or Waller Counties; or] any [other] severe ozone nonattainment area listed in §101.1 of this title;

(4) - (9) (No change.)

(b) (No change.)

(c) Basis for fees.

(1) The emissions fee shall be based on allowable levels and/or actual emissions at the account during the last full calendar year preceding the beginning of the fiscal year for which the fee is assessed. For purposes of this section, the term "allowable levels" are those limits as specified in an enforceable document such as a permit or Commission Order which are in effect on the date the fee is

due. The fee applies to the tonnage of regulated pollutants at the account, including those emissions from point and fugitive sources during normal operations. Although certain fugitive emissions are excluded for applicability determination purposes under [pursuant to] subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations.

The fee for each fiscal year is set at the following rates. Figure: 30 TAC §101.27(c)(1)

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<u>Fiscal Year</u>	<u>Rate Per Ton</u>	<u>Minimum Fee</u>
1992	\$ 3	
1993	\$ 5	\$25
1994	\$25	\$25
1995	\$26	\$26
1996	\$26	\$26
1997	\$26	\$26

The rate of \$26 per ton will remain effective for future fiscal years until amended. If the fee is applicable, the company responsible for the account shall pay the calculated emissions fee or the minimum fee, whichever is greater.

(2) (No change.)

(3) For purposes of this section, the term "regulated pollutant" shall include any volatile organic compound, any pollutant subject to the Federal Clean Air Act (FCAA), §111, any pollutant listed as a hazardous air pollutant under the FCAA, §112, each pollutant for which a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under commission [TNRCC] rules, regulations, permits, orders of the commission, or court orders. The term "normal operations" shall mean all operations other than those documented under [reported to the TNRCC in response to the requirements of] §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements) [(relating to Notification Requirements for Major Upset)] or §101.7 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements) [(relating to Notification Requirements for Maintenance)].

(d) - (f) (No change.)

The agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 11, 1997.

