

APPENDIX E

LEGAL AUTHORITY OF THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
FOR THE STATE PLAN
FOR EXISTING COAL-FIRED ELECTRIC GENERATING UTILITIES
STATEWIDE TO REDUCE
MERCURY EMISSIONS

CITATIONS UNDER CHAPTER 382, TEXAS HEALTH AND SAFETY CODE,
and
CHAPTERS 5 AND 7, TEXAS WATER CODE

1. Adopt emission standards and compliance schedules applicable to designated facilities.

§ 382.011. General Powers and Duties.

(a) The commission shall:

- (1) administer this chapter;
- (2) establish the level of quality to be maintained in the state's air; and
- (3) control the quality of the state's air.

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

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

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

Amended by Acts 1995, 74th Leg., ch. 76, § 11.143, eff. Sept. 1, 1995.

§ 382.012. State Air Control Plan.

The commission shall prepare and develop a general, comprehensive plan for the proper control of the state's air.

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

Amended by Acts 1995, 74th Leg., ch. 76, § 11.143, eff. Sept. 1, 1995.

§ 382.013. Air Quality Control Regions.

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

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

Amended by Acts 1995, 74th Leg., ch. 76, § 11.143, eff. Sept. 1, 1995.

§ 382.014. Emission Inventory.

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

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

§ 382.017. Rules.

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

(b) If the rule will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the commission's

judgment, give reasonable circulation throughout the state. If the rule will have effect in only a part of the state, the notice shall be published one time at least 20 days before the scheduled date of the hearing in a newspaper of general circulation in the area to be affected.

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

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

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

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

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

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

- (1) a particular method to be used to control or abate air pollution;
- (2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or
- (3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

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

§ 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, and 401, Health and Safety Code;
- (12) the administration of the national flood insurance program;
- (13) administration of the state's water rate program under Chapter 13 of this code; and
- (14) 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, § 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, § 284(75), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.005, eff. Aug. 12, 1991; Acts 2001, 77th Leg., ch. 376, § 3.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, §

1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1067, § 22, eff. Sept. 1, 2003.

2. Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.

§ 382.0541. Administration and Enforcement of Federal Operating Permit.

(a) The commission may:

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

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

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

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

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

(4) establish maximum achievable control technology requirements in accordance with Section 112(j) of the federal Clean Air Act (42 U.S.C. Section 7412);

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

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

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

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

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

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

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

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

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

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

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

issuance or denial of the permit;

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

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

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

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

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

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

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

§ 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, § 1.001, eff. Sept. 1, 1985.

§ 7.002. Enforcement Authority.

The commission may initiate an action under this chapter to enforce provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions. The commission or the executive director may institute legal proceedings to compel compliance with the relevant provisions of this code and the Health and Safety Code and rules, orders, permits, or other decisions of the commission.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.032. Injunctive Relief.

(a) The executive director may enforce a commission rule or a provision of a permit issued by the commission by injunction or other appropriate remedy.

(b) If it appears that a violation or threat of violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute has occurred or is about to occur, the executive director may have a suit instituted in district court for injunctive relief to restrain the violation or threat of violation.

(c) The suit may be brought in the county in which the defendant resides or in the county in which the violation or threat of violation occurs.

(d) In a suit brought under this section to enjoin a violation or threat of violation described by Subsection (b), the court may grant the commission, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including a temporary restraining order and, after notice and hearing, a temporary injunction or permanent injunction.

(e) On request of the executive director, the attorney general or the prosecuting attorney in a county in which the violation occurs shall initiate a suit in the name of the state for injunctive relief. The suit may be brought independently of or in conjunction with a suit under Subchapter D.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.302. Grounds for Revocation or Suspension of Permit.

(a) This section applies to a permit or exemption issued by the commission under:

- (1) Chapter 26, 27, 28, or 31 of this code;
- (2) Subchapter C or R, Chapter 361, Health and Safety Code;
- (3) Subchapter D, Chapter 366, Health and Safety Code;
- (4) Chapter 382, Health and Safety Code; or
- (5) a rule adopted under any of those provisions.

(b) After notice and hearing, the commission may revoke, suspend, or revoke and reissue a permit or exemption on any of the following grounds:

(1) violating any term or condition of the permit, and revocation, suspension, or revocation and reissuance is necessary in order to maintain the quality of water or the quality of air in the state, or to otherwise protect human health and the environment consistent with the objectives of the statutes or rules within the commission's jurisdiction;

(2) having a record of environmental violations in the preceding five years at the permitted or exempted site;

(3) causing a discharge, release, or emission contravening a pollution control standard set by the commission or contravening the intent of a statute or rule described in Subsection (a);

(4) including a material mistake in a federal operating permit issued under Chapter 382, Health and Safety Code, or making an inaccurate statement in establishing an emissions standard or other term or condition of a federal operating permit;

(5) misrepresenting or failing to disclose fully all relevant facts in obtaining the

permit or misrepresenting to the commission any relevant fact at any time;

(6) a permit holder being indebted to the state for fees, payment of penalties, or taxes imposed by the statutes or rules within the commission's jurisdiction;

(7) a permit holder failing to ensure that the management of the permitted facility conforms or will conform to the statutes and rules within the commission's jurisdiction;

(8) the permit is subject to cancellation or suspension under Section 26.084;

(9) abandoning the permit or operations under the permit; or

(10) the commission finds that a change in conditions requires elimination of the discharge authorized by the permit

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 376, § 3.04, eff. Sept. 1, 2001.

3. Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules.

§ 382.015. Power to Enter Property.

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

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

residence shall:

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

(2) show proper credentials.

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

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

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

§ 382.016. Monitoring Requirements; Examination of Records.

(a) The commission may prescribe reasonable requirements for:

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

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

(b) A member, employee, or agent of the commission may examine during regular business hours any records or memoranda relating to the operation of any air pollution or

emission control equipment or facility, or relating to emission of air contaminants. This subsection does not authorize the examination of records or memoranda relating to the operation of equipment or a facility on property designed for and used exclusively as a private residence housing not more than three families.

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

§ 382.021. Sampling Methods and Procedures.

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

- (1) ambient air sampling;
- (2) stack-sampling;
- (3) visual observation; or
- (4) any other sampling method or procedure generally recognized in the field of

air pollution control.

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

- (1) in the commission's judgment, existing methods or procedures are not adequate to meet the needs and objectives of the commission's rules, variances, and orders; and
- (2) the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the commission.

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

§ 382.022. Investigations.

The executive director may make or require the making of investigations:

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

(2) as requested or directed by the commission.

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

§ 382.029. Hearing Powers.

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

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.153, eff. Sept. 1, 1995.

§ 382.034. Research and Investigations.

The commission shall conduct or require any research and investigations it considers advisable and necessary to perform its duties under this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.155, eff. Sept. 1, 1995.

§ 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, § 1.001, eff. Sept. 1, 1985.

4. Require recordkeeping and to make inspections and conduct tests of designated facilities.

§ 382.015. Power to Enter Property.

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

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

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

(2) show proper credentials.

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

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

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

§ 382.016. Monitoring Requirements; Examination of Records.

(a) The commission may prescribe reasonable requirements for:

(1) measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants subject to the

commission's jurisdiction under this chapter; and

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

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

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

Amended by Acts 1995, 74th Leg., ch. 76, § 11.145, eff. Sept. 1, 1995.

5. Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the state.

§ 382.0514. Sampling, Monitoring, and Certification.

The commission may require, at the expense of the permit holder and as a condition of the permit:

- (1) sampling and monitoring of a permitted federal source or facility;
- (2) certification of the compliance of the owner or operator of the permitted federal source with the terms and conditions of the permit and with all applicable requirements;

and

(3) a periodic report of:

(A) the results of sampling and monitoring; and

(B) the certification of compliance.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.08, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 485, § 9, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, § 11.161, eff. Sept. 1, 1995.

§ 382.016. Monitoring Requirements; Examination of Records.

(a) The commission may prescribe reasonable requirements for:

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

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

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

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

6. Make emissions data available to the public.

§ 382.014. Emission Inventory.

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

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

§ 382.040. Documents; Public Property.

All information, documents, and data collected by the commission in performing its duties are state property. Subject to the limitations of Section 382.041, all commission records are public records open to inspection by any person during regular office hours.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Renumbered from § 381.020 and amended by Acts 1993, 73rd Leg., ch. 485, § 2, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 11.158, eff. Sept. 1, 1995.

§ 382.041. Confidential Information.

(a) Except as provided by Subsection (b), a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.

(b) A member, employee, or agent of the commission may disclose information confidential under Subsection (a) to a representative of the United States Environmental Protection Agency on the request of a representative of that agency if:

(1) at the time of disclosure the member, employee, or agent notifies the representative that the material has been identified as confidential when submitted; and

(2) the commission, before the information is disclosed, has entered into an agreement with the United States Environmental Protection Agency that ensures that the agency treats information identified as confidential as though it had been submitted by the originator of the information with an appropriate claim of confidentiality under federal law.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Renumbered from § 381.022 and amended by Acts 1993, 73rd Leg., ch. 485, § 3, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 11.158, eff. Sept. 1, 1995.