

WATER CODE

CHAPTER 7. ENFORCEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Natural Resource Conservation Commission.
- (2) "Permit" includes a license, certificate, registration, approval, or other form of authorization. This definition does not apply to Subchapter G.

Sec. 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. The commission may delegate to the executive director the authority to issue an administrative order, including an administrative order that assesses penalties or orders corrective measures, to ensure compliance with the 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.

Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING INFORMATION PROVIDED BY PRIVATE INDIVIDUAL.

- (a) The commission may initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on information it receives from a private individual if that information, in the commission's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.
- (b) The executive director or the executive director's designated representative may evaluate the value and credibility of information received from a private individual and the merits of any proposed enforcement action based on that information.
- (c) The commission by rule may adopt criteria for the executive director to use in evaluating the value and credibility of information received from a private individual and for use of that information in an enforcement action.
- (d) A private individual who submits information on which the commission relies for all or part of an enforcement case may be called to testify in the enforcement proceedings and is subject to all sanctions under law for knowingly falsifying evidence. If the commission relies on the information submitted by a private individual to prove an enforcement case, any physical or sampling data must have been collected or gathered in accordance with commission protocols.

Sec. 7.00251. INITIATION OF CERTAIN CLEAN AIR ACT ENFORCEMENT ACTIONS USING INFORMATION PROVIDED BY A PERSON.

If the commission determines that there are multiple violations based on information it receives as required by Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) from a person, as defined in Section 382.003, Health and Safety Code, only those that require initiation of formal

enforcement will be included in any proposed enforcement action. For all other violations that do not require initiation of formal enforcement, the commission may not include in the enforcement action the following:

- (1) violations that are not repeat violations due to the same root cause from two consecutive investigations within the most recent five-year period; or
- (2) violations that have been corrected within the time frame specified by the commission or for which the facility has not had the time specified by the commission to correct the violations.

Sec. 7.0026. SUSPENSION OF ENFORCEMENT ACTION AGAINST CERTAIN REGIONAL WATER, SEWER, OR SOLID WASTE SERVICES.

If a water supply, sewer, wastewater treatment, or solid waste disposal service operated by or for a municipality or county is being integrated into a regional water supply, sewer, wastewater treatment, or solid waste disposal service, the commission may enter into a compliance agreement with the regional service under which the commission will not initiate an enforcement action against the regional service for existing or anticipated violations resulting from the operation by the regional service of the service being integrated. A compliance agreement under this section must include provisions necessary to bring the service being integrated into compliance.

Sec. 7.003. ENFORCEMENT REPORT.

- (a) The commission shall report at least once each month on enforcement actions taken by the commission or others and the resolution of those actions.
- (b) The report shall be an item for commission discussion at a meeting of the commission for which public notice is given.
- (c) If an enforcement action involves a suit filed for injunctive relief or civil penalties, or both, the report shall state the actual or projected time for resolution of the suit. A copy of the report and of the minutes of the meeting reflecting commission action relating to the report shall be filed with the governor and the attorney general.

Sec. 7.004. REMEDIES CUMULATIVE.

The remedies under this chapter are cumulative of all other remedies. Nothing in this chapter affects the right of a private corporation or individual to pursue any available common law remedy to abate a condition of pollution or other nuisance, to recover damages to enforce a right, or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

Sec. 7.005. EFFECT ON OTHER LAW.

This chapter does not exempt a person from complying with or being subject to other law.

Sec. 7.006. ENFORCEMENT POLICIES.

- (a) The commission by rule shall adopt a general enforcement policy that describes the commission's approach to enforcement.
- (b) The commission shall assess, update, and publicly adopt specific enforcement policies regularly, including policies regarding the calculation of penalties and deterrence to prevent the economic benefit of noncompliance.
- (c) The commission shall make the policies available to the public, including by posting the policies on the commission 's Internet website.

SUBCHAPTER B. CORRECTIVE ACTION AND INJUNCTIVE RELIEF

Sec. 7.031. CORRECTIVE ACTION RELATING TO HAZARDOUS WASTE.

- (a) The commission shall require corrective action for a release of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of when the waste is placed in the unit.
- (b) The commission shall establish schedules for compliance for the corrective action if the corrective action cannot be completed before permit issuance and shall require assurances of financial responsibility for completing the corrective action.
- (c) If the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:
 - (1) issue an order requiring corrective action or other response measures considered necessary to protect human health or the environment; or
 - (2) institute a civil action under Subchapter D.
- (d) An order issued under this section:
 - (1) may include a suspension or revocation of authorization to operate;
 - (2) must state with reasonable specificity the nature of the required corrective action or other response measure; and
 - (3) must specify a time for compliance.
- (e) If a person named in the order does not comply with the order, the commission may assess an administrative penalty or seek a civil penalty in accordance with this chapter.
- (f) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

Sec. 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.

Sec. 7.033. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH AND SAFETY CODE, VIOLATION.

The commission shall seek reimbursement, either by a commission order or by a suit filed under Subchapter D by the attorney general at the commission's request, of security from the radiation and perpetual care account used by the commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive material resulting from a violation of Chapter 401, Health and Safety Code, relating to an activity under the commission's jurisdiction or a rule adopted or a license, registration, or order issued by the commission under that chapter.

Sec. 7.034. DEFERRAL OF PENALTY FOR CERTAIN UTILITY FACILITIES.

(a) In this section:

(1) "District" means any district or authority created under either Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law or any conservation and reclamation district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that Chapter 49 applies to the district.

(2) "Municipally owned utility" and "water supply or sewer service corporation" have the meanings assigned by Section 13.002.

(b) The commission may allow a municipally owned utility, a water supply or sewer service corporation, or a district to defer the payment of all or part of an administrative penalty imposed under Subchapter C for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violation.

(c) In determining whether deferral of a penalty under this section is appropriate, the commission shall consider the factors to be considered under Section 7.053 and the following factors:

- (1) the financial position of the entity and its ability to reasonably pay the costs of corrective action under the terms of a commission order;
- (2) risks to public health and the environment of any delay in addressing the corrective actions as a result of limited financial resources;
- (3) alternatives reasonably available to the entity for paying both the costs of corrective action and the penalty; and
- (4) potential effects of the payment of the penalty on other essential public health and safety services for which the entity is responsible.

(d) At the discretion of the commission, any penalty deferred under this section becomes due and payable on a commission determination that the entity is not in compliance with a provision for corrective action in a commission order to address the violation.

SUBCHAPTER C. ADMINISTRATIVE PENALTIES

Sec. 7.051. ADMINISTRATIVE PENALTY.

(a) The commission may assess an administrative penalty against a person as provided by this subchapter if:

(1) the person violates:

(A) a provision of this code or of the Health and Safety Code that is within the commission's jurisdiction;

(B) a rule adopted or order issued by the commission under a statute within the commission's jurisdiction; or

(C) a permit issued by the commission under a statute within the commission's jurisdiction; and

(2) a county, political subdivision, or municipality has not instituted a lawsuit and is not diligently prosecuting that lawsuit under Subchapter H against the same person for the same violation.

(b) This subchapter does not apply to violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code.

Sec. 7.052. MAXIMUM PENALTY.

(a) The amount of the penalty for a violation of Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, or Chapter 1903, Occupations Code, may not exceed \$5,000 a day for each violation.

(b) Except as provided by Subsection (b-3), the amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is \$10,000. Each day that a continuing violation occurs is a separate violation.

(b-1) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or covered television equipment or adopt and implement a recovery plan as required by Section 361.955, 361.975, or 361.978, Health and Safety Code, as applicable, may not exceed \$10,000 for the second violation or \$25,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-2) Except as provided by Subsection (b-1), the amount of the penalty for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code, may not exceed \$1,000 for the second violation or \$2,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-3) If a person operating a facility as described by Subsection (b) holds any type of permit issued by the commission other than the permit required for the facility, the commission may assess a penalty under Subsection (b) or (c).

(c) The amount of the penalty for all other violations within the jurisdiction of the commission to enforce may not exceed \$25,000 a day for each violation.

(d) Except as provided by Subsection (b), each day that a continuing violation occurs may be considered a separate violation. The commission may authorize an installment payment schedule for an administrative penalty assessed under this subchapter, except for an administrative penalty assessed under Section 7.057.

Sec. 7.0525. PENALTIES FOR VIOLATIONS RELATED TO CERTAIN DRY CLEANING FACILITIES.

(a) Except as provided by Subsection (b), the amount of the penalty for a violation of Section 374.252, Health and Safety Code, may not exceed \$5,000.

(b) The amount of the penalty for a violation of Section 374.252(a)(3), Health and Safety Code, may not exceed \$10,000.

(c) In assessing an administrative penalty under this section, the commission shall consider, in addition to the factors prescribed by Section 7.053, the following factors, if applicable:

- (1) the extent to which the violation has or may have an adverse effect on the environment; and
- (2) the amount of the reasonable costs incurred by this state in detection and investigation of the violation.

Sec. 7.053. FACTORS TO BE CONSIDERED IN DETERMINATION OF PENALTY AMOUNT.

In determining the amount of an administrative penalty, the commission shall consider:

- (1) the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;
- (2) the impact of the violation on:
 - (A) air quality in the region;
 - (B) a receiving stream or underground water reservoir;
 - (C) instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or
 - (D) affected persons;
- (3) with respect to the alleged violator:
 - (A) the history and extent of previous violations;
 - (B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
 - (C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
 - (D) economic benefit gained through the violation; and
 - (E) the amount necessary to deter future violations; and
- (4) any other matters that justice may require.

Sec. 7.054. REPORT OF VIOLATION.

If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report in accordance with commission rules that includes recommendations regarding any penalty or corrective action.

Sec. 7.055. NOTICE OF REPORT.

Not later than the 10th day after the date on which the report of a violation is issued, the executive director shall give written notice of the report, in accordance with commission rules, to the person charged with the violation.

Sec. 7.056. CONSENT.

Not later than the 20th day after the date on which notice is received, the person charged may give to the commission written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

Sec. 7.057. DEFAULT.

If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission by order shall assess the penalty or order a hearing to be held on the recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice of its decision to the person charged.

Sec. 7.058. HEARING.

If the person charged requests or the commission orders a hearing, the commission shall order and shall give notice of the hearing. The commission by order may find that a violation has occurred and may assess a penalty, may find that a violation has occurred but that a penalty should not be assessed, or may find that a violation has not occurred. In making a penalty decision, the commission shall analyze each factor prescribed by Section 7.053. All proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 7.059. NOTICE OF DECISION.

The commission shall give notice of its decision to the person charged. If the commission finds that a violation has occurred and assesses a penalty, the commission shall give written notice to the person charged of:

- (1) the commission's findings;
- (2) the amount of the penalty;
- (3) the right to judicial review of the commission's order; and
- (4) other information required by law.

Sec. 7.060. NOTICE OF PENALTY.

If the commission is required to give notice of a penalty under Section 7.057 or 7.059, the commission shall publish notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

Sec. 7.061. PAYMENT OF PENALTY; PETITION FOR REVIEW.

Within the 30-day period immediately following the date on which the commission's order is final, as provided by Section 2001.144, Government Code, the person charged with the penalty shall:

- (1) pay the penalty in full;
 - (2) pay the first installment penalty payment in full;
 - (3) pay the penalty and file a petition for judicial review, contesting either the amount of the penalty or the fact of the violation or contesting both the fact of the violation and the amount of the penalty;
- or
- (4) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation and the amount of the penalty.

Sec. 7.062. STAYS.

Within the 30-day period described by Section 7.061, a person who acts under Section 7.061(3) may:

(1) stay enforcement of the penalty by:

- (A) paying the amount of the penalty to the court for placement in an escrow account; or
- (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

- (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to give the supersedeas bond; and
- (B) sending a copy of the affidavit to the executive director by certified mail.

Sec. 7.063. CONSENT TO AFFIDAVIT.

If the executive director receives a copy of an affidavit under Section 7.062(2), the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or give the supersedeas bond.

Sec. 7.064. JUDICIAL REVIEW.

Judicial review of the order or decision of the commission assessing the penalty is under Subchapter G, Chapter 2001, Government Code.

Sec. 7.065. PENALTY REDUCED OR NOT ASSESSED.

- (a) If the person paid the penalty and if the penalty is reduced or not assessed by the court, the executive director shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted.
- (b) The accrued interest on amounts remitted by the executive director under this section shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the executive director under Section 7.061 and ending on the day the penalty is remitted.

Sec. 7.066. REFERRAL TO ATTORNEY GENERAL.

A person who does not comply with Section 7.061 waives the right to judicial review, and the commission or the executive director may refer the matter to the attorney general for enforcement.

Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS.

- (a) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred. The commission may encourage the cleanup of contaminated property through the use of supplemental environmental projects. The commission may approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). Except as provided by Subsection (a-1), the commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws,

that is necessary to remediate environmental harm caused by the respondent's alleged violation, or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.

(a-1) The commission may approve a supplemental environmental project that is necessary to bring a respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent's alleged violation if the respondent is a local government.

(a-2) The commission shall develop a policy to prevent regulated entities from systematically avoiding compliance through the use of supplemental environmental projects under Subsection (a-1), including a requirement for an assessment of:

- (1) the respondent's financial ability to pay administrative penalties;
- (2) the ability of the respondent to remediate the harm or come into compliance; and
- (3) the need for corrective action.

(b) In this section:

- (1) "Local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.
- (2) "Supplemental environmental project" means a project that prevents pollution, reduces the amount of pollutants reaching the environment, enhances the quality of the environment, or contributes to public awareness of environmental matters.

Sec. 7.068. FULL AND COMPLETE SATISFACTION.

Payment of an administrative penalty under this subchapter is full and complete satisfaction of the violation for which the penalty is assessed and precludes any other civil or criminal penalty for the same violation.

Sec. 7.069. DISPOSITION OF PENALTY.

(a) Except as provided by Subsection (b), a penalty collected under this subchapter shall be deposited to the credit of the general revenue fund.

(b) A penalty collected under Section 7.052(b-1) or (b-2) shall be paid to the commission and deposited to the credit of the waste management account.

Sec. 7.070. FINDINGS OF FACT NOT REQUIRED; RESERVATIONS.

Notwithstanding any other provision to the contrary, the commission is not required to make findings of fact or conclusions of law other than an uncontested finding that the commission has jurisdiction in an agreed order compromising or settling an alleged violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute. An agreed administrative order may include a reservation that:

- (1) the order is not an admission of a violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute;
- (2) the occurrence of a violation is in dispute; or
- (3) the order is not intended to become a part of a party's or a facility's compliance history.

Sec. 7.071. INADMISSIBILITY.

An agreed administrative order issued by the commission under this subchapter is not admissible against a party to that order in a civil proceeding unless the proceeding is brought by the attorney general's office to:

- (1) enforce the terms of that order; or
- (2) pursue a violation of a statute within the commission's jurisdiction or of a rule adopted or an order or a permit issued under such a statute.

Sec. 7.072. RECOVERY OF PENALTY.

An administrative penalty owed under this subchapter may be recovered in a civil action brought by the attorney general at the request of the commission.

Sec. 7.073. CORRECTIVE ACTION.

If a person violates any statute or rule within the commission's jurisdiction, the commission may:

- (1) assess against the person an administrative penalty under this subchapter; and
- (2) order the person to take corrective action.

Sec. 7.074. HEARING POWERS.

The commission may exercise under this subchapter the hearing powers authorized by Section 26.020.

Sec. 7.075. PUBLIC COMMENT.

(a) Before the commission approves an administrative order or proposed agreement to settle an administrative enforcement action initiated under this subchapter to which the commission is a party, the commission shall allow the public to comment in writing on the proposed order or agreement. Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(b) The commission shall promptly consider any written comments and may withdraw or withhold consent to the proposed order or agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this subchapter, another statute within the commission's jurisdiction, or a rule adopted or an order or a permit issued under such a statute. Further notice of changes to the proposed order or agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(c) This section does not apply to:

- (1) a criminal enforcement proceeding; or
- (2) an emergency order or other emergency relief that is not a final order of the commission.

(d) Chapter 2001, Government Code, does not apply to public comment under this section.

SUBCHAPTER D. CIVIL PENALTIES

Sec. 7.101. VIOLATION.

A person may not cause, suffer, allow, or permit a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued under such a statute.

Sec. 7.102. MAXIMUM PENALTY.

A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, Subchapter G, Chapter 382, Health and Safety Code, or Chapter 1903, Occupations Code, shall be assessed for each violation

a civil penalty not less than \$50 nor greater than \$5,000 for each day of each violation as the court or jury considers proper. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation.

Sec. 7.103. CONTINUING VIOLATIONS.

If it is shown on a trial of a defendant that the defendant has previously been assessed a civil penalty for a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute within the year before the date on which the violation being tried occurred, the defendant shall be assessed a civil penalty not less than \$100 nor greater than \$25,000 for each subsequent day and for each subsequent violation. Each day of a continuing violation is a separate violation.

Sec. 7.104. NO PENALTY FOR FAILURE TO PAY CERTAIN FEES.

A civil penalty may not be assessed for failure to:

- (1) pay a fee under Section 371.062, Health and Safety Code; or
- (2) file a report under Section 371.024, Health and Safety Code.

Sec. 7.105. CIVIL SUIT.

(a) On the request of the executive director or the commission, the attorney general shall institute a suit in the name of the state for injunctive relief under Section 7.032, to recover a civil penalty, or for both injunctive relief and a civil penalty.

(b) The commission, through the executive director, shall refer a matter to the attorney general's office for enforcement through civil suit if a person:

- (1) is alleged to be making or to have made an unauthorized discharge of waste into or adjacent to the waters in the state at a new point of discharge without a permit in violation of state law;
- (2) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 26 occurring at the same wastewater management system or other point of discharge within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;
- (3) is alleged to be operating a new solid waste facility, as defined in Section 361.003, Health and Safety Code, without a permit in violation of state law;
- (4) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 361, Health and Safety Code, occurring at the same facility within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;
- (5) is alleged to be constructing or operating a facility at a new plant site without a permit required by Chapter 382, Health and Safety Code, in violation of state law; or
- (6) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 382, Health and Safety Code, for violations occurring at the same plant site within the two years immediately preceding the date of the first alleged violation currently under investigation at

that site.

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

Sec. 7.106. RESOLUTION THROUGH ADMINISTRATIVE ORDER.

The attorney general's office and the executive director may agree to resolve any violation, before or after referral, by an administrative order issued under Subchapter C by the commission with the approval of the attorney general.

Sec. 7.107. DIVISION OF CIVIL PENALTY.

Except in a suit brought for a violation of Chapter 28 of this code or of Chapter 401, Health and Safety Code, a civil penalty recovered in a suit brought under this subchapter by a local government shall be equally divided between:

- (1) the state; and
- (2) the local government that brought the suit.

Sec. 7.108. ATTORNEY'S FEES.

If the state prevails in a suit under this subchapter it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Sec. 7.109. PARKS AND WILDLIFE DEPARTMENT JURISDICTION.

(a) If it appears that a violation or a threat of violation of Section 26.121 or a rule, permit, or order of the commission has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the commission under this chapter, may have a suit instituted in a district court for injunctive relief or civil penalties, or both, as authorized by this subchapter, against the person who committed or is committing or threatening to commit the violation.

(b) In a suit brought under this section for a violation that is the proximate cause of injury to aquatic life or wildlife normally taken for commercial or sport purposes or to species on which this life is directly dependent for food, the Parks and Wildlife Department is entitled to recover damages for the injury. In determining damages, the court may consider the valuation of the injured resources established in rules adopted by the Parks and Wildlife Department under Subchapter D, Chapter 12, Parks and Wildlife Code, or the replacement cost of the injured resources. Any recovery of damages for injury to aquatic life or wildlife shall be deposited to the credit of the game, fish, and water safety account under Section 11.032, Parks and Wildlife Code, and the Parks and Wildlife Department shall use money recovered in a suit brought under this section to replenish or enhance the injured resources.

(c) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees may also be recovered, and those recovered amounts shall be credited to the same operating accounts from which expenditures occurred.

(d) This section does not limit recovery for damages available under other laws.

Sec. 7.110. COMMENTS.

(a) Before the commission approves an agreed final judgment, consent order, voluntary settlement agreement, or other voluntary settlement agreement, or other voluntary agreement that would finally settle a civil enforcement action initiated under this chapter to which the State of Texas is a party or before the court signs a judgment or other agreement settling a judicial enforcement action other than

an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), the attorney general shall permit the public to comment in writing on the proposed order, judgment, or other agreement.

(b) Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(c) The attorney general shall promptly consider any written comments and may withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter, the statutes within the commission's jurisdiction, or a rule adopted or an order or a permit issued under such a statute. Further notice of changes to the proposed order, judgment, or other agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(d) The attorney general may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

(e) This section does not apply to:

- (1) criminal enforcement proceedings; or
- (2) proposed temporary restraining orders, temporary injunctions, emergency orders, or other emergency relief that is not a final judgment or final order of the court or commission.

(f) Chapter 2001, Government Code, does not apply to public comment under this section.

Sec. 7.111. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH AND SAFETY CODE, VIOLATION. On request by the commission, the attorney general shall file suit to recover security under Section 7.033.

SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES

Sec. 7.141. DEFINITIONS. In this subchapter:

- (1) "Appropriate regulatory agency" means the commission, the Texas Department of Health, or any other agency authorized to regulate the handling and disposal of medical waste.
- (2) "Corporation" and "association" have the meanings assigned by Section 1.07, Penal Code, except that the terms do not include a government.
- (3) "Large quantity generator" means a person who generates more than 50 pounds of medical waste each month.
- (4) "Medical waste" includes animal waste, bulk blood and blood products, microbiological waste, pathological waste, sharps, and special waste from health care-related facilities as those terms are defined in 25 T.A.C. Section 1.132 (Texas Department of Health, Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities). The term does not include medical waste produced on farmland and rangeland as defined by Section 252.001(6), Agriculture Code.
- (5) "Serious bodily injury" has the meaning assigned by Section 1.07, Penal Code.
- (6) "Small quantity generator" means a person who generates 50 pounds or less of medical waste each month.

Sec. 7.142. VIOLATIONS RELATING TO UNLAWFUL USE OF STATE WATER.

- (a) A person commits an offense if the person violates:

- (1) Section 11.081;
- (2) Section 11.083;
- (3) Section 11.084;
- (4) Section 11.087;
- (5) Section 11.088;
- (6) Section 11.089;
- (7) Section 11.090;
- (8) Section 11.091;
- (9) Section 11.092;
- (10) Section 11.093;
- (11) Section 11.094;
- (12) Section 11.096;
- (13) Section 11.203; or
- (14) Section 11.205.

(b) An offense under Subsection (a)(9), (a)(10), or (a)(14) is punishable under Section 7.187(1)(A) or Section 7.187(2)(B) or both.

(c) An offense under Subsection (a)(1), (a)(2), (a)(4), (a)(6), (a)(7), or (a)(8) is punishable under Section 7.187(1)(A) or Section 7.187(2)(C) or both.

(d) An offense under Subsection (a)(3) or (a)(11) is punishable under Section 7.187(1)(A) or Section 7.187(2)(D) or both.

(e) An offense under Subsection (a)(5) is punishable under Section 7.187(1)(A) or Section 7.187(2)(E) or both.

(f) Possession of state water when the right to its use has not been acquired according to Chapter 11 is prima facie evidence of a violation of Section 11.081.

(g) Possession or use of water on a person's land by a person not entitled to the water under this code is prima facie evidence of a violation of Section 11.083.

[Note: if a corporation is convicted of a violation, see Penal Code Sec. 12.51 to assure that the provision for imposing a possibly greater fine is understood.]

Sec. 7.143. VIOLATION OF MINIMUM STATE STANDARDS OR MODEL POLITICAL SUBDIVISION RULES.

(a) A person commits an offense if the person knowingly or intentionally violates a rule adopted under Subchapter J, Chapter 16.

(b) An offense under this section is a Class A misdemeanor.

[Note: if a corporation is convicted of a violation, see Penal Code Sec. 12.51 to assure that the provision for imposing a possibly greater fine is understood.]

Sec. 7.145. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant:

- (1) into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued

or a rule adopted by the appropriate regulatory agency; or

(2) from a point source in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.147. UNAUTHORIZED DISCHARGE.

(a) A person commits an offense if the person discharges or allows the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant:

(1) is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency; or

(2) consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.

(b) An offense under this section may be prosecuted without alleging or proving any culpable mental state.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Sec. 7.148. FAILURE TO PROPERLY USE POLLUTION CONTROL MEASURES.

(a) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use pollution control or monitoring devices, systems, methods, or practices required by Chapter 26 or a rule adopted or a permit or an order issued under Chapter 26 by the commission or one of its predecessor agencies unless done in strict compliance with the rule, permit, or order.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.149. FALSE STATEMENT.

(a) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits or causes to be omitted material information from, an application, notice, record, report, plan, or other document, including monitoring device data, filed or required to be maintained by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.150. FAILURE TO NOTIFY OR REPORT.

(a) A person commits an offense if the person intentionally or knowingly fails to notify or report to the commission as required under Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.151. FAILURE TO PAY FEE.

(a) A person commits an offense if the person intentionally or knowingly fails to pay a fee required by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(H) or Section 7.187(2)(B) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(H).

Sec. 7.152. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE AND KNOWING ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action knowingly places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) For purposes of Subsection (a), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(I) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Sec. 7.153. INTENTIONAL OR KNOWING UNAUTHORIZED DISCHARGE AND ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Sec. 7.154. RECKLESS UNAUTHORIZED DISCHARGE AND ENDANGERMENT.

(a) A person commits an offense if the person, acting recklessly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(E).

Sec. 7.155. VIOLATION RELATING TO DISCHARGE OR SPILL.

(a) A person commits an offense if the person:

- (1) operates, is in charge of, or is responsible for a facility or vessel that causes a discharge or spill as defined by Section 26.263 and does not report the spill or discharge on discovery; or
- (2) knowingly falsifies a record or report concerning the prevention or cleanup of a discharge or spill.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is a felony of the third degree.

Sec. 7.156. VIOLATION RELATING TO UNDERGROUND STORAGE TANK.

(a) A person or business entity commits an offense if:

- (1) the person or business entity engages in the installation, repair, or removal of an underground storage tank and the person or business entity:

- (A) does not hold a registration under Section 26.452; and

(B) is not under the substantial control of a person or business entity who holds a registration under Section 26.452;

(2) the person or business entity:

(A) authorizes or allows the installation, repair, or removal of an underground storage tank to be conducted by a person or business entity who does not hold a registration under Section 26.452; or

(B) authorizes or allows the installation, repair, or removal of an underground storage tank to be performed or supervised by a person or business entity who does not hold a license under Section 26.456; or

(3) the conduct of the person or business entity makes the person or business entity responsible for a violation of Subchapter K, Chapter 26, or of a rule adopted or order issued under that subchapter.

(b) A person commits an offense if the person performs or supervises the installation, repair, or removal of an underground storage tank unless:

(1) the person holds a license under Section 26.456; or

(2) another person who holds a license under Section 26.456 is substantially responsible for the performance or supervision of the installation, repair, or removal.

(c) A person commits an offense if the person is an owner or operator of an underground storage tank regulated under Chapter 26 into which any regulated substance is delivered unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

(d) An offense under this section is a Class A misdemeanor.

[Note: if a corporation is convicted of a violation, see Penal Code Sec. 12.51 to assure that the provision for imposing a possibly greater fine is understood.]

Sec. 7.1565. PRESUMPTION.

If in the exercise of good faith a person depositing or causing to be deposited a regulated substance into an underground storage tank regulated under Chapter 26 receives a certificate of compliance for that underground storage tank under Section 26.346, the receipt of the certificate of compliance shall be considered prima facie evidence of compliance with this section.

Sec. 7.157. VIOLATION RELATING TO INJECTION WELLS.

(a) A person commits an offense if the person knowingly or intentionally violates Chapter 27 or a rule adopted or an order or a permit issued under Chapter 27.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Sec. 7.158. VIOLATION RELATING TO PLUGGING WELLS.

(a) A person commits an offense if the person is the owner of a well that is required to be cased or plugged by Chapter 28 and the person:

(1) fails or refuses to case or plug the well within the 30-day period following the date of the commission's order to do so; or

(2) fails to comply with any other order issued by the commission under Chapter 28 within the 30-day period following the date of the order.

(b) An offense under this section is a misdemeanor and is punishable under Section 7.187(1)(A).

[Note: if a corporation is convicted of a violation, see Penal Code Sec. 12.51 to assure that the provision for imposing a possibly greater fine is understood.]

Sec. 7.159. VIOLATION RELATING TO WATER WELLS OR DRILLED OR MINED SHAFTS.

(a) A person commits an offense if the person knowingly or intentionally violates Chapter 28 or a commission rule adopted or an order or a permit issued under that chapter.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Sec. 7.160. VIOLATION RELATING TO CERTAIN SUBSURFACE EXCAVATIONS.

(a) A person commits an offense if the person knowingly or intentionally violates Chapter 31 or a commission rule adopted or an order or a permit issued under that chapter.

(b) An offense under this section is punishable under Section 7.187(1)(B).

Sec. 7.161. VIOLATION RELATING TO SOLID WASTE IN ENCLOSED CONTAINERS OR VEHICLES.

(a) An operator of a solid waste facility or a solid waste hauler commits an offense if the operator or hauler disposes of solid waste in a completely enclosed container or vehicle at a solid waste site or operation permitted as a Type IV landfill:

(1) without having in possession the special permit required by Section 361.091, Health and Safety Code;

(2) on a date or time not authorized by the commission; or

(3) without a commission inspector present to verify that the solid waste is free of putrescible, hazardous, and infectious waste.

(b) An offense under this section is a Class B misdemeanor.

(c) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under Section 361.091, Health and Safety Code, issued by the commission, on certification to the commission by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the commission to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the commission that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(d) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Sec. 7.162. VIOLATIONS RELATING TO HAZARDOUS WASTE.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

(1) transports, or causes or allows to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have all required permits;

(2) stores, processes, exports, or disposes of, or causes to be stored, processed, exported, or disposed of, any hazardous waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;

(3) omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, plan, or other document filed, maintained, or used to comply with any requirement of Chapter 361, Health and Safety Code, applicable to hazardous waste;

(4) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous waste, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document required to be maintained or filed to comply with the rules of the appropriate regulatory agency adopted under Chapter 361, Health and Safety Code;

(5) transports without a manifest, or causes or allows to be transported without a manifest, any hazardous waste required by rules adopted under Chapter 361, Health and Safety Code, to be accompanied by a manifest;

(6) tampers with, modifies, disables, or fails to use required pollution control or monitoring devices, systems, methods, or practices, unless done in strict compliance with Chapter 361, Health and Safety Code, or with an order, rule, or permit of the appropriate regulatory agency;

(7) releases, causes, or allows the release of a hazardous waste that causes or threatens to cause pollution, unless the release is made in strict compliance with all required permits or an order, rule, or permit of the appropriate regulatory agency; or

(8) does not notify or report to the appropriate regulatory agency as required by Chapter 361, Health and Safety Code, or by a rule adopted or an order or a permit issued by the appropriate regulatory agency under that chapter.

(b) An offense under Subsection (a)(1) or (a)(2) is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(G) or both. An offense under Subsection (a)(3), (a)(4), or (a)(5) is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(E) or both. An offense under Subsection (a)(6), (a)(7), or (a)(8) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, an offense under Subsection (a)(1) or (a)(2) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(G) or both, and an offense under Subsection (a)(3), (a)(4), or (a)(5) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(F) or both.

(d) An offense under Subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) is punishable for a person other than an individual under Section 7.187(1)(D). If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under Subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), the offense is punishable under Section 7.187(1)(E). An offense under

Subsection (a)(6), (a)(7), or (a)(8) is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.163. VIOLATIONS RELATING TO HAZARDOUS WASTE AND ENDANGERMENT.

(a) A person commits an offense if:

(1) acting intentionally or knowingly, the person transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of Chapter 361, Health and Safety Code, and by that action knowingly places another person in imminent danger of death or serious bodily injury;

(2) acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of Chapter 361, Health and Safety Code, and by that action places another person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency;

(3) acting intentionally or knowingly with respect to the person's conduct, releases or causes or allows the release of a hazardous waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or a rule adopted by the appropriate regulatory agency; or

(4) acting recklessly with respect to the person's conduct, releases or causes or allows the release of a hazardous waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or a rule adopted by the appropriate regulatory agency.

(b) An offense under Subsection (a)(1) is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(H) or both. An offense under Subsection (a)(1) is punishable for a person other than an individual under Section 7.187(1)(F). If an offense committed by an individual under Subsection (a)(1) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(F) or Section 7.187(2)(J) or both. If an offense committed by a person other than an individual under Subsection (a)(1) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(G). For purposes of Subsection (a)(1), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under Subsection (a)(2) is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. An offense under Subsection (a)(2) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed under Subsection (a)(2) results in death or serious bodily injury to another person, an individual may be punished under Section 7.187(1)(E) or

Section 7.187(2)(G) or both. If an offense committed by a person other than an individual under Subsection (a)(2) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

(d) An offense under Subsection (a)(3) is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. An offense under Subsection (a)(3) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by an individual under Subsection (a)(3) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both. If an offense committed by a person other than an individual under Subsection (a)(3) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

(e) An offense under Subsection (a)(4) is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. An offense under Subsection (a)(4) is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by an individual under Subsection (a)(4) results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(E) or both. If an offense committed by a person other than an individual under Subsection (a)(4) results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Sec. 7.164. VIOLATIONS RELATING TO MEDICAL WASTE: LARGE GENERATOR.

(a) A person commits an offense if the person is a large quantity generator and the person, acting intentionally or knowingly with respect to the person's conduct:

(1) generates, collects, stores, processes, exports, or disposes of, or causes or allows to be generated, collected, stored, processed, exported, or disposed of, any medical waste without all permits required by the appropriate regulatory agency or in knowing violation of a material condition or requirement of a permit or of an applicable interim status rule or standard; or

(2) generates, collects, stores, treats, transports, or disposes of, or causes or allows to be generated, collected, stored, treated, transported, or disposed of, or otherwise handles any medical waste, and knowingly destroys, alters, conceals, or does not file a record, report, manifest, or other document required to be maintained or filed under rules adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(G) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(I) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable by Section 7.187(1)(C).

Sec. 7.165. VIOLATIONS RELATING TO MEDICAL WASTE: SMALL GENERATOR.

(a) A person commits an offense if the person is a small quantity generator and the person, acting intentionally or knowingly with respect to the person's conduct:

(1) generates, collects, stores, processes, exports, or disposes of, or causes or allows to be

generated, collected, stored, processed, exported, or disposed of, any medical waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard; or
(2) generates, collects, stores, treats, transports, or disposes of, or causes or allows to be generated, collected, stored, treated, transported, or disposed of, or otherwise handles any medical waste, and knowingly destroys, alters, conceals, or does not file a record, report, manifest, or other document required to be maintained or filed under rules adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(A). If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C).

Sec. 7.166. VIOLATIONS RELATING TO TRANSPORTATION OF MEDICAL WASTE.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

- (1) transports, or causes or allows to be transported, for storage, processing, or disposal, any medical waste to a location that does not have all required permits;
- (2) transports without a manifest, or causes or allows to be transported without a manifest, any medical waste required to be accompanied by a manifest under rules adopted by the appropriate regulatory agency; or
- (3) operates a vehicle that is transporting medical waste, or that is authorized to transport medical waste, in violation of a rule adopted by the appropriate regulatory agency, including cleaning and safety regulations, that specifically relates to the transportation of medical waste.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(F).

Sec. 7.167. FALSE STATEMENTS RELATING TO MEDICAL WASTE.

(a) A person commits an offense if the person knowingly:

- (1) makes a false material statement, or knowingly causes or knowingly allows to be made a false material statement, to a person who prepares a regulated medical waste label, manifest, application, permit, plan, registration, record, report, or other document required by an order or a

rule of the appropriate regulatory agency; or

(2) omits material information, or causes or allows material information to be omitted, from a regulated medical waste label, manifest, application, permit, plan, registration, record, report, or other document required by an order or a rule of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both. If it is shown on the trial of an individual that the individual has been previously convicted of an offense under this section, the offense is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(B). If it is shown on the trial of a person other than an individual that the person has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C).

Sec. 7.168. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND KNOWING ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, medical waste in violation of Chapter 361, Health and Safety Code, and by that action knowingly places another person in imminent danger of death or serious bodily injury.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(H) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(F) or Section 7.187(2)(J) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(F). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(G).

Sec. 7.169. INTENTIONAL OR KNOWING VIOLATION RELATING TO MEDICAL WASTE AND ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of medical waste in violation of Chapter 361, Health and Safety Code, and by that action places another person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Sec. 7.170. INTENTIONAL OR KNOWING RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND

ENDANGERMENT.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, releases or causes or allows the release of a medical waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is done in strict compliance with all required permits or an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Sec. 7.171. RECKLESS RELEASE OF MEDICAL WASTE INTO ENVIRONMENT AND ENDANGERMENT.

(a) A person commits an offense if the person, acting recklessly with respect to a person's conduct, releases or causes or allows the release of a medical waste into the environment and by that action places another person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or an order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the offense is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(E) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the offense is punishable under Section 7.187(1)(F).

Sec. 7.172. FAILURE OF SEWAGE SYSTEM INSTALLER TO REGISTER.

(a) A person commits an offense if the person violates Section 366.071, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

[Note: if a corporation is convicted of a violation, see Penal Code Sec. 12.51 to assure that the provision for imposing a possibly greater fine is understood.]

Sec. 7.173. VIOLATION RELATING TO SEWAGE DISPOSAL.

(a) A person commits an offense if the person violates a rule adopted by the commission under Chapter 366, Health and Safety Code, or an order or resolution adopted by an authorized agent under Subchapter C, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both. [Note: if a corporation is convicted of a violation, see Penal Code Sec. 12.51 to assure that the provision for imposing a possibly greater fine is understood.]

Sec. 7.1735. VIOLATION RELATING TO MAINTENANCE OF SEWAGE DISPOSAL SYSTEM.

(a) A person commits an offense if the person knowingly violates an order or resolution adopted by an authorized agent under Section 366.0515, Health and Safety Code.

(b) An offense under this section is a Class C misdemeanor.

Sec. 7.174. VIOLATION OF SEWAGE DISPOSAL SYSTEM PERMIT PROVISION.

(a) A person commits an offense if the person begins to construct, alter, repair, or extend an on-site sewage disposal system owned by another person before the owner of the system obtains a permit to construct, alter, repair, or extend the on-site sewage disposal system as required by Subchapter D, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both. [Note: if a corporation is convicted of a violation, see Penal Code Sec. 12.51 to assure that the provision for imposing a possibly greater fine is understood.]

Sec. 7.175. EMERGENCY REPAIR NOT AN OFFENSE.

An emergency repair to an on-site sewage disposal system without a permit in accordance with the rules adopted under Section 366.012(a)(1)(C), Health and Safety Code, is not an offense under Section 7.172, 7.173, or 7.174 if a written statement describing the need for the repair is provided to the commission or its authorized agent not later than 72 hours after the repair is begun.

Sec. 7.176. VIOLATIONS RELATING TO HANDLING OF USED OIL.

(a) A person commits an offense if the person:

(1) intentionally discharges used oil into:

(A) a sewer or septic tank; or

(B) a drainage system, surface water or groundwater, a watercourse, or marine water unless the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040;

(2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills, unless the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals;

(3) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil within the state:

(A) in violation of standards or rules for the management of used oil; or

(B) without first complying with the registration requirements of Chapter 371, Health and Safety Code, and rules adopted under that chapter;

(4) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(5) violates an order of the commission to cease and desist an activity prohibited by this section or a rule applicable to a prohibited activity; or

(6) intentionally makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of program compliance.

(b) It is an exception to the application of this section that a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(c) It is an exception to the application of Subsection (a)(2) that the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the dismantling or mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

(d) Except as provided by this subsection, an offense under this section is punishable under Section 7.187(1)(B) or Section 7.187(2)(F), or both. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(C) or Section 7.187(2)(H) or both.

Sec. 7.177. VIOLATIONS OF CLEAN AIR ACT.

(a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, violates:

(1) Section 382.0518(a), Health and Safety Code;

(2) Section 382.054, Health and Safety Code;

(3) Section 382.056(a), Health and Safety Code;

(4) Section 382.058(a), Health and Safety Code; or

(5) an order, permit, or exemption issued or a rule adopted under Chapter 382, Health and Safety Code.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(C) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Sec. 7.178. FAILURE TO PAY FEES UNDER CLEAN AIR ACT.

(a) A person commits an offense if the person intentionally or knowingly does not pay a fee required by Chapter 382, Health and Safety Code, or by a rule adopted or an order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(H) or Section 7.187(2)(B) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(H).

Sec. 7.179. FALSE REPRESENTATIONS UNDER CLEAN AIR ACT.

(a) A person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or does not file or maintain a notice, application, record, report, plan, or other document required to be filed or maintained by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.180. FAILURE TO NOTIFY UNDER CLEAN AIR ACT.

(a) A person commits an offense if the person intentionally or knowingly does not notify or report to the commission as required by Chapter 382, Health and Safety Code, or by a rule adopted or a permit or order issued under that chapter.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.181. IMPROPER USE OF MONITORING DEVICE.

(a) A person commits an offense if the person intentionally or knowingly tampers with, modifies, disables, or fails to use a required monitoring device; tampers with, modifies, or disables a monitoring device; or falsifies, fabricates, or omits data from a monitoring device, unless the act is done in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Sec. 7.182. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT.

(a) A person commits an offense if the person recklessly, with respect to the person's conduct, emits an air contaminant that places another person in imminent danger of death or serious bodily injury, unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E).

Sec. 7.183. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND KNOWING ENDANGERMENT.

(a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, emits an air contaminant with the knowledge that the person is placing another person in

imminent danger of death or serious bodily injury unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(E) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(F).

Sec. 7.1831. AAVIOLATION OF LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS.

(a) A person commits an offense if the person violates a rule adopted by the commission concerning locally enforced motor vehicle idling limitations.

(b) Notwithstanding any other law, an offense under this section is a Class C misdemeanor.

Sec. 7.184. VIOLATIONS RELATING TO LOW-LEVEL RADIOACTIVE WASTE.

(a) A person commits an offense if the person:

(1) intentionally or knowingly violates a provision of Chapter 401, Health and Safety Code, other than the offense described by Subdivision (2); or

(2) intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of low-level radioactive waste without a license issued under Chapter 401, Health and Safety Code.

(b) Except as provided by this subsection, an offense under Subsection (a)(1) is a Class B misdemeanor. If it is shown on the trial of the person that the person has previously been convicted of an offense under Subsection (a)(1), the offense is a Class A misdemeanor.

(c) Except as provided by this subsection, an offense under Subsection (a)(2) is a Class A misdemeanor. If it is shown on the trial of the person that the person has previously been convicted of an offense under Subsection (a)(2), the offense is punishable under Section 7.187(1)(D) or Section 7.187(2)(D) or both.

Sec. 7.185. KNOWING OR INTENTIONAL UNAUTHORIZED DISPOSAL OF LEAD-ACID BATTERIES.

(a) A person commits an offense if the person knowingly or intentionally disposes of a lead-acid battery other than as provided by Section 361.451, Health and Safety Code.

(b) An offense under this section is a Class A misdemeanor.

[Note: If a corporation is convicted of this offense, see Penal Code Sec. 12.51 for imposing a fine of up to \$10,000.]

Sec. 7.186. SEPARATE OFFENSES.

Each day a person engages in conduct proscribed by this subchapter constitutes a separate offense.

Sec. 7.187. PENALTIES.

(a) Except as provided by Subsection (b), a person convicted of an offense under this subchapter is punishable by:

(1) a fine, as imposed under the section creating the offense, of:

(A) not more than \$1,000;

(B) not less than \$1,000 or more than \$50,000;

(C) not less than \$1,000 or more than \$100,000;

(D) not less than \$1,000 or more than \$250,000;

- (E) not less than \$2,000 or more than \$500,000;
- (F) not less than \$5,000 or more than \$1,000,000;
- (G) not less than \$10,000 or more than \$1,500,000; or
- (H) not more than twice the amount of the required fee;

(2) confinement for a period, as imposed by the section creating the offense, not to exceed:

- (A) 30 days;
- (B) 90 days;
- (C) 180 days;
- (D) one year;
- (E) two years;
- (F) five years;
- (G) 10 years;
- (H) 15 years;
- (I) 20 years; or
- (J) 30 years; or

(3) both fine and confinement, as imposed by the section creating the offense.

(b) Notwithstanding Section 7.177(a)(5), conviction for an offense under Section 382.018, Health and Safety Code, is punishable as:

- (1) a Class C misdemeanor if the waste is not a substance described by Subdivision (3);
- (2) a Class B misdemeanor if the violation is a second or subsequent violation under Subdivision (1);
- (3) a Class A misdemeanor if the violation involves the burning of tires, insulation on electrical wire or cable, treated lumber, plastics, non-wood construction or demolition materials, heavy oils, asphaltic materials, potentially explosive materials, furniture, carpet, chemical wastes, or items containing natural or synthetic rubber.

[Note: Please consult with your County Attorney for guidance before filing misdemeanor burning cases as C Misdemeanors since Section 382.018, Health and Safety Code contains no offenses.]

Sec. 7.188. REPEAT OFFENSES.

If it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this subchapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

Sec. 7.189. VENUE.

Venue for prosecution of an alleged violation under this subchapter is in:

- (1) the county in which the violation is alleged to have occurred;
- (2) the county where the defendant resides;
- (3) if the alleged violation involves the transportation of a discharge, waste, or pollutant, any county to which or through which the discharge, waste, or pollutant was transported; or
- (4) Travis County.

Sec. 7.190. DISPOSITION OF FINES.

A fine recovered through a prosecution brought under this subchapter shall be divided equally between

the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, the court may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Sec. 7.191. NOTICE OF CONVICTION.

In addition to a sentence that may be imposed under this subchapter, a person other than an individual that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court considers appropriate.

Sec. 7.192. JUDGMENT OF CONVICTION.

On conviction under this subchapter, the clerk of the court in which the conviction is returned shall send a copy of the judgment to the commission.

Sec. 7.193. PEACE OFFICERS.

For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are peace officers. Those agents and employees are empowered to enforce this subchapter the same as any other peace officer and for that purpose have the powers and duties of peace officers assigned by Chapter 2, Code of Criminal Procedure.

Sec. 7.194. ALLEGATIONS.

In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

Sec. 7.195. SUMMONS AND ARREST.

(a) After a complaint is filed or an indictment or information presented against a private corporation under this subchapter, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a *capias* except that:

- (1) it shall summon the corporation to appear before the court named at the place stated in the summons;
- (2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and
- (3) it shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made on the secretary of state, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a.m. of the Monday next after the expiration of 30 days after the secretary of state is served with summons.

(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

Sec. 7.196. SERVICE OF SUMMONS.

(a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or cannot with reasonable diligence be found at the registered office, the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice president of the corporation.

(b) If the peace officer certifies on the return that the peace officer diligently but unsuccessfully attempted to effect service under Subsection (a) or if the corporation is a foreign corporation that has no certificate of authority, the peace officer shall serve the summons on the secretary of state. On receipt of the summons copy, the secretary of state shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) The secretary of state shall keep a permanent record of the date and time of receipt and the disposition of each summons served under Subsection (b) together with the return receipt.

Sec. 7.197. ARRAIGNMENT AND PLEADINGS.

In any criminal action instituted against a private corporation under this subchapter:

- (1) appearance is for the purpose of arraignment; and
- (2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

Sec. 7.198. APPEARANCE.

(a) A defendant private corporation appears through counsel or its representative.

(b) If a private corporation does not appear in response to summons or appears but does not plead, the corporation is considered to be present in person for all purposes, and the court shall enter a plea of not guilty on the corporation's behalf and may proceed with trial, judgment, and sentencing.

(c) After appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, the corporation is considered to be present in person for all purposes, and the court may proceed with trial, judgment, or sentencing.

Sec. 7.199. FINE TREATED AS JUDGMENT IN CIVIL ACTION.

If a person other than an individual is found guilty of a violation of this subchapter and a fine is imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the person, and the fine shall be of the same force and effect and be enforced against the person in the same manner as if the judgment were recovered in a civil action.

Sec. 7.200. EFFECT ON CERTAIN OTHER LAWS.

Conduct punishable as an offense under this subchapter that is also punishable under another law may be prosecuted under either law.

Sec. 7.201. DEFENSE EXCLUDED.

It is not a defense to prosecution under this subchapter that the person did not know of or was not aware of a rule, order, or statute.

Sec. 7.202. PROOF OF KNOWLEDGE.

In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury under Section 7.168, 7.169, 7.170, or 7.171, the defendant is responsible only for the defendant's actual awareness or actual belief possessed.

Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, however, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

Sec. 7.203. CRIMINAL ENFORCEMENT REVIEW.

(a) This section is applicable to criminal prosecution of alleged environmental violations of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction committed by a defendant holding a permit issued by the commission or a defendant employed by a person holding such a permit and that is related to the activity for which the permit was issued. This section does not apply to an alleged environmental violation that clearly involves imminent danger of death or bodily injury under an endangerment offense specified in Section 7.252. Nothing in this section limits the power of a peace officer to arrest a person for an alleged offense.

(b) Before a peace officer, as that term is defined in Section 7.193 or Chapter 2, Code of Criminal Procedure, may refer any alleged criminal environmental violation by a person holding a permit issued by the commission or an employee of that person of this code, of the Health and Safety Code, or of any other statute, rule, order, permit, or other decision of the commission that is within the commission's jurisdiction to a prosecuting attorney for criminal prosecution, the peace officer shall notify the commission in writing of the alleged criminal environmental violation and include with the notification a report describing the facts and circumstances of the alleged criminal environmental violation. This section does not prohibit a peace officer from issuing a citation or making an arrest.

(c) As soon as practicable and in no event later than the 45th day after receiving a notice and report under Subsection (b), the commission shall evaluate the report and determine whether an alleged environmental violation exists and whether administrative or civil remedies would adequately and appropriately address the alleged environmental violation. In making its evaluation and determination, the commission shall consider the factors prescribed in Section 7.053. If the commission does not make a determination within the 45-day period required by this subsection:

- (1) the appropriate prosecuting attorney may bring an action for criminal prosecution; and
- (2) notwithstanding Subsection (e), the commission or the state is not entitled to receive any part of an amount recovered through a prosecution brought by that prosecuting attorney.

(d) If the commission determines that an alleged environmental violation exists and that administrative or civil remedies are inadequate or inappropriate to address the violation, the commission shall notify the peace officer in writing of the reasons why administrative or civil remedies are inadequate or inappropriate and recommending criminal prosecution, and the prosecuting attorney may proceed with the criminal prosecution of the alleged violation. In all other cases, the commission shall issue written notification to the peace officer that the alleged environmental violation is to be resolved through administrative or civil means by the appropriate authorities and the reasons why administrative or civil remedies are adequate or appropriate. A prosecuting attorney may not prosecute an alleged violation if the commission determines that administrative or civil remedies are adequate and appropriate.

(e) Any fine, penalty, or settlement recovered through a prosecution subject to this section and brought in the name and by authority of the State of Texas, whether recovered through any form of pretrial resolution, plea agreement, or sentencing after trial, shall be apportioned 70 percent to the state to cover the costs of instituting the procedures and requirements of Subsections (a)-(d) and 30 percent to any local government significantly involved in prosecuting the case. In a case where the procedures described in this section do not apply, the provisions of Section 7.190 apply.

SUBCHAPTER F. DEFENSES

Sec. 7.251. ACT OF GOD.

If a person can establish that an event that would otherwise be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit.

Sec. 7.252. DEFENSES TO ENDANGERMENT OFFENSES.

It is an affirmative defense to prosecution under Section 7.152, 7.153, 7.154, 7.163, 7.168, 7.169, 7.170, 7.171, 7.182, or 7.183 that:

- (1) the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of the person's occupation, business, or profession or a medical treatment or medical or scientific experimentation conducted by professionally approved methods and the person endangered had been made aware of the risks involved before giving consent; or
- (2) the person charged was an employee who was carrying out the person's normal activities and was acting under orders from the person's employer, unless the person charged engaged in knowing and wilful violations.

Sec. 7.253. DEFENSES AVAILABLE TO PERSON RESPONSIBLE FOR SOLID WASTE VIOLATIONS.

(a) For purposes of an enforcement action initiated under this chapter, a person responsible for solid waste under Section 361.271, Health and Safety Code, is liable for a violation of a statutory or regulatory prohibition against releasing or creating an imminent threat of releasing solid waste unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by an act or omission of a third person and that the defendant:

- (1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and
- (2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(b) The defense under Subsection (a) does not apply if the third person:

- (1) is an employee or agent of the defendant; or
- (2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship. The term "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(c) A defendant who enters into a contractual relationship as provided by Subsection (b)(2) is not liable under a statute or rule within the commission's jurisdiction if:

- (1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or
- (2) the defendant acquired the real property on which the facility requiring the remedial action is located after the disposal or placement of the hazardous substance on, in, or at the facility, and the defendant establishes by a preponderance of the evidence that:

- (A) the defendant exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and
- (B) the defendant took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions; or
- (C) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;
- (D) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or
- (E) the defendant acquired the facility by inheritance or bequest.

(d) To demonstrate the condition under Subsection (c)(2)(C), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

- (1) any specialized knowledge or experience of the defendant;
- (2) the relationship of the purchase price to the value of the property if the property were uncontaminated;
- (3) commonly known or reasonably ascertainable information about the property;
- (4) the obvious presence or likely presence of contamination of the property; and
- (5) the defendant's ability to detect the contamination by appropriate inspection.

(e) This section does not decrease the liability of a previous owner or operator of a facility who is liable under a statute or rule within the commission's jurisdiction. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(f) Subsections (c), (d), and (e) do not affect the liability, under a statute or rule within the commission's jurisdiction, of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility.

Sec. 7.254. DEFENSE TO USED OIL OFFENSES.

It is an affirmative defense to prosecution under Section 7.176 that the person unknowingly disposed of used oil into the environment because the used oil had not been properly segregated or separated by the generator from other solid wastes.

Sec. 7.255. DEFENSE EXCLUDED.

Unless otherwise provided by this chapter, the fact that a person holds a permit issued by the commission does not relieve that person from liability for the violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute.

Sec. 7.256. COMPLIANCE WITH FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS.

If a person can establish that an act or event that otherwise would be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued by the commission under such a

statute was caused solely by compliance with the general duty clause of the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 654), the act or event is not a violation of that statute, rule, order, or permit.

Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS.

(a) A person, as defined by Section 382.003, Health and Safety Code, who is subject to an administrative, civil, or criminal action brought under this chapter for nuisance or trespass arising from greenhouse gas emissions has an affirmative defense to that action if the person's actions that resulted in the alleged nuisance or trespass were authorized by a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the commission or the federal government or an agency of the federal government and:

- (1) the person was in substantial compliance with that rule, permit, order, license, certificate, registration, approval, or other authorization while the alleged nuisance or trespass was occurring; or
- (2) the commission or the federal government or an agency of the federal government exercised enforcement discretion in connection with the actions that resulted in the alleged nuisance or trespass.

(b) This section does not apply to nuisance actions solely based on a noxious odor.

SUBCHAPTER G. REVOCATION AND SUSPENSION OF PERMITS, LICENSES, CERTIFICATES, AND REGISTRATIONS

Sec. 7.301. DEFINITION. In this subchapter:

- (1) "License," "certificate," "registration," and "exemption" have the meanings assigned by commission rule.
- (2) "Permit holder" or "holder of a permit" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20 percent of the permit holder.

Sec. 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.

Sec. 7.303. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, CERTIFICATE, OR REGISTRATION.

- (a) This section applies to a license, certificate, or registration issued:
 - (1) by the commission under:
 - (A) Section 26.0301;
 - (B) Chapter 37;
 - (C) Section 361.0861, 361.092, or 361.112, Health and Safety Code;
 - (D) Chapter 366, 371, or 401, Health and Safety Code; or
 - (E) Chapter 1903, Occupations Code;
 - (2) by a county under Subchapter E, Chapter 361, Health and Safety Code; or
 - (3) under a rule adopted under any of those provisions.
- (b) After notice and hearing, the commission may suspend or revoke a license, certificate, or registration the commission or a county has issued, place on probation a person whose license, certificate, or registration has been suspended, reprimand the holder of a license, certificate, or registration, or refuse to renew or reissue a license, certificate, or registration on any of the following grounds:
 - (1) having a record of environmental violations in the preceding five years;
 - (2) committing fraud or deceit in obtaining the license, certificate, or registration;
 - (3) demonstrating gross negligence, incompetency, or misconduct while acting as holder of a license, certificate, or registration;
 - (4) making an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the commission by the holder of the license, certificate, or registration;
 - (5) failing to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute;
 - (6) being indebted to the state for a fee, payment of a penalty, or a tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(7) with respect to a license or registration issued under Section 26.0301 or Chapter 37, violating a discharge permit of a sewage treatment plant, unless:

(A) the holder of the license or registration is unable to properly operate the sewage treatment or collection facility due to the refusal of the permit holder to authorize necessary expenditures to operate the sewage treatment or collection facility properly; or

(B) failure of the sewage treatment or collection facility to comply with its discharge permit results from faulty design of the facility;

(8) with respect to a license or registration issued under Chapter 37 of this code or Chapter 366, Health and Safety Code, violating either chapter or a rule adopted under either chapter; or

(9) with respect to a license issued under Subchapter E, Chapter 361, Health and Safety Code, violating that chapter or another applicable law or a commission rule governing the processing, storage, or disposal of solid waste.

Sec. 7.304. SUSPENSION OF REGISTRATION OR REIMBURSEMENT PAYMENT ISSUED UNDER WASTE TIRE RECYCLING PROGRAM.

Notwithstanding Sections 7.303, 7.305, and 7.306, the commission may suspend a registration of or reimbursement payment to a waste tire processor, waste tire transporter, waste tire generator, waste tire recycling facility, or waste tire energy recovery facility, without notice or hearing, on the initiation of an enforcement proceeding under this chapter and while the proceeding is pending for a violation of Subchapter P, Chapter 361, Health and Safety Code, or a rule adopted or order issued under that subchapter.

Sec. 7.305. PROCEDURES.

The commission by rule shall establish procedures for public notice and any public hearing under this subchapter. The procedures shall provide for notice to a county that issued a license, certificate, or registration that is the subject of the hearing.

Sec. 7.306. HEARINGS.

A hearing under this subchapter shall be conducted in accordance with the hearing rules adopted by the commission and the applicable provisions of Chapter 2001, Government Code.

Sec. 7.307. CONSENT.

If the holder of a permit, license, certificate, or registration requests or consents to the revocation or suspension of the permit, license, certificate, or registration, the executive director may revoke or suspend the permit, license, exemption, certificate, or registration without a hearing.

Sec. 7.308. OTHER RELIEF.

A proceeding brought by the commission under this subchapter does not affect the commission's authority to bring suit for injunctive relief or penalty or both under this chapter.

Sec. 7.309. PROBATION REQUIREMENTS.

If a license, certificate, or registration suspension is probated, the commission may require the holder of the license, certificate, or registration:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit activities to the areas prescribed by the commission; or

(3) to continue or renew professional education until the registrant attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

Sec. 7.310. REVOCATION OR SUSPENSION BY COUNTY.

With respect to a license, certificate, or registration issued by a county under a statute or rule within the commission's jurisdiction, the issuing county may suspend or revoke the license, certificate, or registration on the grounds provided under Section 7.303.

SUBCHAPTER H. SUIT BY OTHERS

Sec. 7.351. CIVIL SUITS.

(a) If it appears that a violation or threat of violation of Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code, a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction, or Chapter 1903, Occupations Code, or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

(b) If it appears that a violation or threat of violation of Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government, an authorized agent as defined in that chapter may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

Sec. 7.352. RESOLUTION REQUIRED.

In the case of a violation of Chapter 26 of this code or Chapter 382, Health and Safety Code, a local government may not exercise the enforcement power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.

Sec. 7.353. COMMISSION NECESSARY PARTY.

In a suit brought by a local government under this subchapter, the commission is a necessary and indispensable party.

Sec. 7.354. COSTS AND FEES.

A penalty collected in a suit under this subchapter for a violation of Chapter 28 of this code or Chapter 401, Health and Safety Code, shall be paid to the state. If the suit is brought by a local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, the court shall include in any final judgment in favor of the local government or affected person an award to cover reasonable costs and attorney's fees.

Sec. 7.355. COMPLAINTS.

In the case of a violation of Chapter 401, Health and Safety Code, a local government or person affected may file with the commission a written complaint and may request an investigation of an alleged violation by a person who holds a permit subject to the commission's jurisdiction.

Sec. 7.356. COMMISSION REPLY.

The commission shall reply to the local government or person affected who filed a complaint under Section 7.355 in writing not later than the 60th day after the complaint is received and shall provide a copy of any investigation report relevant to the complaint together with a determination of whether the alleged violation was committed.

Sec. 7.357. PROSECUTION.

A local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter may bring suit in the county in which the alleged violation occurred or is about to occur, if the commission does not have a suit filed before the 121st day after the date on which the written complaint is filed under Section 7.355.

Sec. 7.358. OTHER REQUIREMENTS.

In the case of a violation of Chapter 1903, Occupations Code, the regulatory authority of any local government may require compliance with any reasonable inspection requirements or ordinances or regulations designed to protect the public water supply and pay any reasonable fees imposed by the local government relating to work performed within its jurisdiction.