EMS 4th Element - Environmental Requirements

Environmental Requirements – Describes process for identifying, interpreting, and effectively communicating environmental requirements to affected organization personnel and ensuring that facility activities conform to those requirements; established processes to ensure communication with regulatory agencies regarding environmental requirements and regulatory compliance.

IV-1 Introduction

IV-2 Executive Order 13148 – Greening the Federal Government Through Leadership in Environmental Management

IV-3 Federal Environmental Laws [Public Policy Purpose and Objectives]

IV-4 Federal and Texas Environmental Laws and Regulations Governing Various Aspects of DFW Airport Operations, Projects and Activities

IV-5 Facility Specific Compliance Priorities

IV-6 DFW Government and Legislative Affairs Department

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IV-8 Regulatory Enforcement/Compliance Orders

  4.8.1 Administering Agency Participation – TNRCC Region 4 Enforcement Staff
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  4.8.5 Memorandum Of Agreement – TNRCC/DFW Board (5-23-2000) Re: SIP
  4.8.6 Voluntary Cleanup Program
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  4.8.8 US Attorney/FBI/EPA Criminal Investigation Concluded 6-2001
  4.8.9 Voluntary Cleanup Program Application Re: Northeast and Northwest Cargo Areas
  4.8.10 United States of America, ex rel. Susan Heath vs. DFW Airport Board, et al.
IV-9 References

4.9.1 TNRCC Commission Resolution of TNRCC Docket No. 2000-0799-IWD-E; SWR No. 72593 Re: Trigg Lake fish kill and glycol detention pond leak

4.9.2 May 22, 2001 DOJ letter concluding the DOJ, FBI, US EPA, TNRCC criminal investigation of alleged environmental and Title 18 violations by DFW Board, Board employees and tenants

IV-10 Appendices


4.10.2 May 23, 2001 TNRCC/DFW Board Memorandum Of Agreement Re: stipulated DFW Board reduction in NOx emissions as part of the Texas State Implementation Plan [SIP]

4.10.3 False Claims Act Civil Suits; Susan Heath, et. al

4.10.4 DFW International Airport Compliance History Documentation
4.1 Introduction

In regard to environmental compliance and environmental stewardship, it is essential that we know our business and those environmentally relevant aspects of the companies with which we do business. A vital starting point is to develop a working knowledge and familiarity with the Federal, state and local laws and regulations that govern those aspects of our business activities that are environmentally regulated; or present environmental risk arising from potential spills and releases.

- The following is a selected compilation of provisions excerpted from Federal and Texas Legislative enactment(s) and accompanying brief narrative of some of the relevant sections and content of these environmental laws and implementing regulations. The following text has been selectively paraphrased from three sources\(^1,2,3\) (Citations fully set out in DFW’s EMS Manual, 4th Element).

4.2 Executive Order 13148 – Greening The Government Though Leadership in Environmental Management

EXECUTIVE ORDER 13148, Greening the Government Through Leadership in Environmental Management (signed April 21, 2000; 65 FR 24595, April 26, 2000) espouses the essential purposes of DFW’s Environmental Management System. Aggressive and enthusiastic commitment to environmental leadership through sustainable environmental excellence as DFW’s standard is the bottom line compelling implementation of DFW’s EMS.

Each DFW Department manager would be well served to model their environmental management activities after the goals enumerated in the Greening the Federal Government Executive Order.

§ 101 [Executive Order 13148; 65 FR 24595] entitled Federal Environmental Leadership states in relevant part:

Environmental management considerations must be a fundamental and integral component of Federal Government policies, operations, planning, and management. The goals of this Executive Order lay out the various elements of managing environmental activities to a standard of excellence. Excerpts are provided for insight and inspiration as follows:

- **Environmental Management.** Through development and implementation of environmental management systems;

- **Environmental Compliance.** Each agency shall comply with environmental regulations by establishing and implementing environmental compliance audit programs and policies that emphasize pollution prevention;

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\(^3\)Environmental Compliance in Texas, Volumes I & II; Business & Legal Reports, Inc. [BRL]; Robert L. Brady, J.D., Publisher, et. al., 2001
• **Pollution Prevention.** Each agency shall strive to reduce or eliminate harm to human health and the environment from releases of pollutants to the environment. Each agency shall advance the national policy that, whenever feasible and cost-effective, pollution should be prevented or reduced at the source;

• **Release Reduction: Toxic Chemicals.** Through innovative pollution prevention, effective facility management, and sound acquisition and procurement practices, each agency shall reduce its reported Toxic Release Inventory (TRI) releases and off-site transfers of toxic chemicals for treatment and disposal. . .

• **Use Reduction: Toxic chemicals and Hazardous Substances and Other Pollutants.** Through identification of proven substitutes . . . including pollution prevention, each agency shall reduce its use of selected toxic chemicals, hazardous substances, and pollutants, or its generation of hazardous and radioactive waste types at its facilities. . ;

• **Reductions in Ozone-Depleting Substances.** Through maximizing the purchase and use of safe, cost effective, and environmentally preferable alternatives, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances. . .

• **Environmentally and Economically Beneficial Landscaping.** Each agency shall strive to promote the sustainable management of Federal facility lands through the implementation of cost-effective, environmentally sound landscaping practices. . .

• **Application of Life Cycle Assessment Concepts.** Each agency shall establish a pilot program to apply life cycle assessment and environmental cost accounting principles.

• **Pollution Prevention Return-on-Investment Programs.** Each agency shall develop and implement a pollution prevention program at its facilities that compares the life cycle costs of treatment and/or disposal of waste and pollutant streams to the life cycle costs of alternatives that eliminate or reduce toxic chemicals or pollutants at the source.

• **Policies, Strategies, and Plans.** Each agency shall ensure that the goals and requirements of this order are incorporated into existing agency environmental directives, policies, and documents affected by the requirements and goals of this order.

• **Annual Reports.** Each agency shall submit an annual progress report to the Administrator on implementation of this order.

• **Facility Compliance Audits.** Within 12 months of the date of this order, each agency shall develop and implement a program to conduct facility environmental compliance audits. . . Each agency shall conduct internal reviews and audits and shall take such other steps, as may be necessary, to monitor its facilities’ compliance with these environmental management goals.
● **Environmental Leadership and Agency Awards Programs.** The Administrator shall establish a Federal Government environmental leadership program and recognize outstanding environmental management performance in agencies and facilities.

● **Management Leadership and Performance Evaluations.** To ensure awareness and support for the environmental requirements of this order, each agency shall include training on the provisions of the Greening the Government Executive Order in standard senior level management training as well as training for program managers, contracting personnel, procurement and acquisition personnel, facility managers, contractors, concessionaires and other personnel and appropriate.*

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### 4.3 Federal Environmental Laws [Public Policy Purpose & Objectives]

**Clean Air Act [CAA] (42 USCA §§ 7401 - 7642)**

The CAA established ambient air quality standards for six pollutants. Each state was required to develop an implementation plan to maintain the standards. Areas within a state that do not meet the standards are called “non-attainment areas”. The state must develop a strategy expressed in a state implementation plan to bring these areas into attainment. Major sources in both attainment and non-attainment areas must obtain Title V permits.

**Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA] (42 U.S.C.A. §§ 9601 - 9675); Superfund Amendments and Reauthorization Act of 1986 (SARA); National Oil and Hazardous Substances Pollution Contingency Plan (NCP)**

CERCLA [Superfund legislation] was designed to help clean up inactive and abandoned hazardous waste sites. CERCLA was amended to also require private industries to disclose to their communities what hazardous substances they use and store.

The NCP is a key component of the enabling legislation. NCP provisions form the heart of many response action compliance criteria. [42 U.S.C. § 9605(a)(10)].

**OSWER and OERR Policy Guidance Directives**

The US EPA Office of Solid Waste and Emergency Response (OSWER) and Office of Emergency and Remedial Response (OERR) issue internal policy guidance directives intended to encourage uniform and consistent policy implementation by the ten US EPA Regional Administrators and their enforcement staffs. These OSWER and OERR policy guidance directives are also promulgated to provide public and private sector stakeholder information.

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*Environmental Reporter; the Bureau of National Affairs, Inc., 81:0701-810707, 5-19-2000*
Preemption

CERCLA was not enacted by Congress as preemptive legislation. Consequently, CERCLA does not invalidate state legislation adopted to govern the same subject matter area(s). The intent of Congress not to enact CERCLA and many other environmental statutes as preemptive legislation has the effect of leaving intact state legislation applicable to regulating releases of hazardous substances within their jurisdictional boundaries. State legislation is, therefore, applicable to the extent that its provisions are not inconsistent with nor less restrictive than the controlling Federal legislation.

State Involvement [CERCLA § 121(f)]

The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. . . [42 USC. § 9621(f)(1)]. The regulations are required to provide a substantial and meaningful opportunity for State involvement in removal, pre-remedial, remedial, and enforcement response activities.

Emergency Planning and Right-To-Know Act of 1986 [EPCRA] (42 USC §§ 11001 - 11050)

§ 301 [42 USC 11001] Establishment of State commissions, planning districts, and local committees.

§ 302 [42 USC 11002] Substances and facilities covered and notification.

§ 303 [42 USC 11003] Comprehensive emergency response plans.

§ 311 [42 USC 11021] Material Safety Data Sheets (MSDSs)

EPCRA requires states to establish a process for developing chemical emergency preparedness programs and to receive and disseminate information on hazardous chemicals present at facilities. The Emergency Response Plan identifies facilities subject to the EPCRA; methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of extremely hazardous substances; methods for determining the occurrence of a release, and the area or population likely to be affected by such release; evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes; training programs, including schedules for training of local emergency response and medical personnel; provision of information for each facility subject to the requirements of this subtitle.


The purposes of the Endangered Species Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be
appropriate to achieve the purposes of specified treaties and conventions. It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species, shall utilize their authorities in furtherance of the purposes of this Act, and shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species. [Federal Environmental Laws, West Group].


FIFRA is essentially a registration program for pesticides. FIFRA authorizes action against pesticide products already on the market if the pesticide poses a risk to humans and the environment.

Federal Water Pollution Control Act [FWPCA], aka Clean Water Act (CWA); (33 USC §§ 1251 - 1387)

The CWA is a comprehensive program for protecting the nation’s waters. The CWA prohibits the unauthorized discharge of pollutants into the navigable waters of the United States. The NPDES permit program implements this goal. NPDES permits are required by any point source that discharges one or more pollutants into the navigable waters of the United States. The U.S. Army Corps of Engineers regulates the discharge of dredge and fill materials into U.S. waters.

CWA § 101 [33 USC 1251] declares the goals and policy of the Clean Water Act of 1977 are to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution. . . [Federal Environmental laws, West Group].

EPA is responsible for establishing controls on pollutants discharged from point sources and non-point sources into water of the United States. The National Pollutant Discharge Elimination System (NPDES) program [including issuance of NPDES permits] is a key element of EPA's effort to achieve its goal of clean and safe water.

Lead Contamination Control Act of 1988 [see Public Health Service Act §§ 1461 - 1465 (42 USCA §§ 300j-21 - 300j-25)]

National Environmental Policy Act of 1969 [NEPA] (42 USCA §§ 4321 - 4370b)

NEPA declares a national policy to promote efforts to prevent or eliminate damage to the environment and biosphere; stimulate the health and welfare of man and enrich the understanding of the ecological systems and natural resources important to the Nation. Congress recognized the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-
density urbanization, industrial expansion, resource exploitation and new and expanding technological advances and recognized further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man. [Federal Environmental Laws, West Group].

Noise Control Act of 1972 [NCA] (42 USCA §§ 4901 - 4918)

Oil Pollution Act of 1990 [OPA] (33 USCA §§ 2701 - 2761)

The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants with the authorities of CERCLA and the CWA. The purpose of the NCP is to provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

Pollution Prevention Act of 1990 [PPA]

Policy

The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Pollution Prevention [P2] Program

Pollution prevention (P2) is designed to prevent contaminants from entering the environment, in contrast to risk management and remediation, which are designed to control pollutants that have already been introduced. Under the Pollution Prevention Act of 1990, it is the policy of the United States, ‘that pollution should be prevented or reduced at the source whenever feasible.’ P2 can be more effective in reducing health and environmental risks to the extent that it 1) reduces releases to the environment; 2) reduces the need to manage pollutants; 3) avoids shifting pollutants from one media (air, water, land) to another; and 4) protects natural resources for future generations by cutting waste and conserving materials. [Federal Environmental Laws, West Group].

Resource Conservation and Recovery Act of 1976 [RCRA] [see also Solid Waste Disposal Act (42 USC §§ 6901 - 6991i)]

RCRA regulates hazardous waste operations through a “cradle-to-grave” program that applies to persons and facilities that currently generate; transport; and treat, store or dispose of hazardous waste.
The Congress finds with respect to the environment and health, that –

(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;

(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

(3) as a result of the Clean Air Act, the Water Pollution Control Act, and other Federal and state laws respecting public health and the environment, greater amounts of solid waste have been created. Similarly, inadequate and environmentally unsound practices, for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;

(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming. . . . [Federal Environmental Laws, West Group].

Safe Drinking Water Act [SDWA] [see Public Health Service Act §§ 1401 - 1451 (42 USCA §§ 300f - 300j-11)]

40 CFR § 141.1 et seq. establish primary drinking water regulations pursuant to the Public Health Service Act, as amended by the Safe Drinking Water Act and related regulations applicable to public water systems.

40 CFR §§ 142.4 et seq. provide that a State has primary enforcement responsibility for public water systems in the State during any period for which the Administrator determines . . . that such State, pursuant to appropriate State legal authority:

(a) Has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations;

(b) Has adopted and is implementing adequate procedures for the enforcement of such State regulations;

(c) Has established and will maintain record keeping and reporting of its activities. [Federal Environmental Laws, West Group].
Solid Waste Disposal Act [SWDA] (42 USCA §§ 6901 - 6991i)

Superfund Amendments and Reauthorization Act (SARA) amended CERCLA in 1986. SARA Title III contains the Emergency Planning and Community Right-to-Know ACT (EPCRA). EPCRA requires facilities to disclose the hazardous substances they use and store.

Toxic Substances Control Act [TSCA] (15 USCA §§ 2601 - 2692)

US EPA Identification Number Requirements
Generator ID number; transporter ID number; facility owner and operator ID number; used oil management ID number.

Congress declares it is the policy of the United States that:

(1) adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment. [Federal Environmental Laws, West Group].

4.4 Federal and Texas Environmental Laws and Regulations Governing Various Aspects of DFW International Airport Departmental Operations, Projects and Activities

4.4.1 Air Emissions

1990 Clean Air Act Amendments (CAAA) 42 USC 7401 – 7515 & 7661 – 7661f

Permits by rule: 30 TAC 106
Permits for New Construction or Modification: 30 TAC 116.10 – 116.1070
New source review permits: 30 TAC 116.110 – 116.176
Electric generating facilities: 30 TAC 116.910 – 116.931
Federal operating permits: 30 TAC 122.110 – 122.360
General operating permits: 30 TAC 122.501 – 122.516

US EPA granted final interim approval for the Texas Federal operating permit program that became effective July 25, 1996. In general, Texas follows Federal Part 70 rules but, in addition to public notice requirements,
provides that applicants must post signs at the site that indicate an application
for an operating permit has been filed and gives TNRCC contact information.
Texas provides one-stop permitting for construction of new sites and
operation of sources subject to New Source Review [NSR] requirements.

New source review pre-construction permits: 40 CFR 51.160
Title V operating permits: 40 CFR 70, 71
Compliance assurance monitoring: 40 CFR 64
New source performance standards: 40 CFR 60

**Title V Operating Permits**

Title V requires all existing major stationary sources to apply for an operating
permit. The permit is a compilation of all source’s current air permitting
requirements and is designed to provide a facility-wide operating permit. The
purpose of the Title V permit is to reduce violations of air pollution regulations.
[Environmental Compliance in Texas Vol 1; Business & Legal Reports].

4.4.2 **Asbestos**

**CAA 42 USC 7401, 7412, 7414, 7416, 7600**
Asbestos Hazard Emergency Response Act of 1986 [see Toxic
Substances Control Act §§ 201 - 214 (15 USC §§ 2641 - 2654)]
Asbestos as a hazardous air pollutant: Toxic Substances Control Act
(TSCA), Title II, 15 USC 2601
National Emissions Standards for Hazardous Air Pollutants (NESHAP)
40 CFR 61.140 et. seq.
Asbestos Hazard Emergency Response Act of 1986 (AHERA) 15 USC
2641 – 2656 [schools]
Asbestos labeling: 29 CFR 1910.1001(j)(4) & 61.149
Asbestos transport: 49 CFR 171-172; Hazardous Materials
Transportation Act of 1975 49 USC 1801 – 1819

**Texas Asbestos Health Protection Act (TAHPA): 71 Texas Revised Civil
Statutes 4477-3a**
Texas asbestos health protection rules: 25 TAC 295.31 – 295.73

**Asbestos disposal: 30 TAC 330.136**

The Texas Department of Health [TDH] has been delegated authority to
administer and enforce the Federal Asbestos Hazard Emergency Response
Act (AHERA). TDH enforces the state’s asbestos abatement rules, including
state asbestos registration and licensing requirements. Under a
Memorandum of Understanding (MOU) between TNRCC and TDH, effective
9-5-1999, the TNRCC accepted responsibility for inspecting asbestos waste
disposal sites under its jurisdiction. The Texas asbestos sections apply to all
buildings that are subject to public occupancy, or to which the general public
has access, and to all persons disturbing, removing, encapsulating or
enclosing asbestos within public buildings for any purpose.
In addition, TDH has adopted the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) by reference 25 TAC 295.33 & 25 TAC 295.71. All facilities, even those that are not public buildings, must comply with state rules that were adopted to satisfy Federal NESHAP rules.

For all demolitions and renovations, owners and operators must determine if and how much asbestos is present at the site. The US EPA regional office and/or delegated state agency must be notified whenever demolition takes place, even if no asbestos is present at the site. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

4.4.3 Community Right-To-Know

Emergency Planning and Community Right-to-Know Act (EPCRA) 42 USC 11001 – 11050; regulations at 40 CFR 350 – 372
Hazardous Chemical Reporting: 40 CFR 370
Threshold planning quantities: 40 CFR 355 Appendices A & B; 40 CFR 372.25
Emergency and hazardous chemical inventory form (Tier I and Tier II): 42 USC 11-22; regulations at 40 CFR 370.40 & 40 CFR 372
Toxic chemical release form: 42 USC 11023; regulations at 40 CFR 372
Toxic chemicals and chemical categories: 40 CFR 372.65

Texas Non-manufacturing Facilities Community Right-to-Know Act [THSC]: THSC 507.001 – 507.013; regulations at 25 TAC 295.183
Texas Toxic Chemical Release Reporting Act: Texas Code annotated, Water Code Title 2, Chapter 26

Texas follows the Federal community right-to-know regulations. Texas also requires facilities to use a state-specific Tier II reporting form and pay reporting fees. TNRCC has adopted a set of regulations for source reduction and waste minimization that have an impact on all hazardous waste generators and many facilities that manufacture, use or store hazardous substances. TRI reporters are required to prepare a source reduction and waste minimization plan and file progress reports by March 1 of each year. Tier II forms must be mailed to the Hazard Communication Branch of the Texas Department of Health. TNRCC administers and enforces the toxic chemical release inventory reporting rules. TRI forms should be sent to EPA and TNRCC.

EPCRA requires facilities to plan for emergencies, report the presence of hazardous chemicals in the workplace to state and local authorities, and to provide information on permitted and accidental releases of hazardous substances. EPCRA is intended to provide local governments and affected communities with information concerning potential chemical hazards and permitted or accidental releases of hazardous substance and the type, amount, location, use and disposal of hazardous substances.
**Community Right-to-Know Reporting**

Facilities that store, use, or produce certain amounts of hazardous chemicals are required to provide state and local authorities with copies of the material safety data sheets (MSDSs) or, alternatively, a list of hazardous chemicals. The Emergency Land Hazardous Chemical Inventory Form requires annual information on the quantity and location of hazardous chemicals at the facility. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

Tier II forms require submission of more detailed, location and chemical-specific information. Tier II forms include specification of hazardous substance types, amounts and storage locations.

**4.4.4 Effluent Limitations**

Clean Water Act (CWA) 33 USC 1311 – 1312; 33 USC 1317; regulations at 40 CFR 122.2,122.44, 129, 401 – 471

Continuous pH monitoring requirements 40 CFR 401.17

Compliance conditions for toxic pollutants 40 CFR 129.5, 129.7

Conventional pollutant standards for wastewater 40 CFR 401.16

Effluent Guidelines Plan (Notice) 65 FR 53008 (8-31-00)

**Texas Pollutant Discharge Elimination System (TPDES) 30 TAC 305.541** (adoption of the Federal rules 40 CFR 400 – 471, except to the extent that they are less stringent than the Texas Water Code or the rules of the TNRCC).

Texas facilities must follow the state regulations as well as the Federal regulations. When a TPDES permit is issued, TNRCC will establish monitoring parameters on a case-by-case basis. Texas has established water quality-based requirements that apply to surface waters.

Texas water quality-based discharge standards address and prohibit discharges that exceed limits in the following areas: Aesthetic parameters (taste, odor production, floating debris, total suspended solids [TSS], turbidity and color, oil, grease and related residues); toxic parameters; nutrient parameters; temperature; salinity and dissolved oxygen and aquatic life uses; and bacteria (fecal coliform bacteria) [30 TAC 307.4].

Effluent limitations represent the maximum quantity, rate, and concentration of specific pollutants allowed to be discharged from industrial point sources (pipes, ditches, channels, wells, containers, etc.) into receiving waters of the United States.

Federal regulations define effluent limitations as “... any restriction established by a state or EPA on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean”. Effluent limitations apply to industrial discharges of wastewater directly into streams, lakes, rivers, ponds or any water body that ultimately ends up in receiving waters of the state or the United States. A
facility’s National Pollutant Discharge Elimination System (NPDES) or delegated Texas Pollutant Discharge Elimination System (TPDES) permit may require additional and more stringent effluent limitation standards. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

4.4.5 Environmental Impact Statement

The National Environmental Policy Act of 1969 (NEPA) as amended: 42 USC 4321 – 4347

1 TAC 5.191
TNRCC 30 TAC 261.21 – 261.26; 30 TAC 261.41 – 261.43; 30 TAC 281 – 281.24

NEPA contains a declaration of national environmental policies and goals; the establishment of a process to compel Federal agencies to look at environmental impacts of their actions; and the creation of the Council On Environmental Quality (CEQ). While NEPA ostensibly applies only to Federal agencies, Federal agency actions [permits or funding], this legislation can also impact state, local and private actions requiring these actions to follow NEPA requirements.

Under Texas law, state regulatory agencies may require a statement of environmental, social and economic impacts to clarify that the project is not detrimental to the environment or to the public interest, health or welfare. Examples of adverse impacts include: 1) disruption of historical or archeological sites; 2) affect natural, cultural or scenic resources; 3) disrupt established communities or their development plans; 4) result in deterioration of air or water quality, or flood protection; 5) endanger vital species of plant and animal life, or habitat; 6) contribute to a series of related projects that involve minor but collectively significant, adverse impacts.

Environmental Impact Statements (EISs) should demonstrate that a logical process was used in assessing environmental, social and economic impacts; that all reasonable alternatives were considered and that the assessment was relied upon to support decisions made in planning the project.

Categorical Exemptions

Categorical exemptions apply to a category of actions that do not have a significant effect on the human environment, and therefore, require neither an Environmental Assessment (EA) nor an EIS. Although a category may be exempt within an agency’s procedures, it may still be necessary to examine the proposed action for potential environmental impacts.

EIS Requirement

NEPA requires all Federal agencies to prepare an EIS for proposed major actions that significantly affect the quality of the human environmental. The EIS requirement is the core of NEPA that includes
the public in the Federal agency decision-making process.

EISs are required for any proposal that is deemed to require major Federal action and typically include: 1) a state, local or private project that are Federally funded and 2) Private projects that require Federal permits. Federal funding usually comes in the form of categorical grants, block grants, or some form of revenue sharing. Federal categorical grants to nonfederal projects usually require NEPA compliance. The need for permits, licenses or other federal approval is enough to trigger significant Federal involvement.

The EA is a brief public document with sufficient evidence and analysis to help determine whether an EIS is necessary or whether a Finding Of No Significant Impact (FONSI) can be made.

Once it has been determined that the proposal will significantly affect the environment and an EIS is required, a Notice of Intent (NOI) is published in the Federal Register. Federal Register publication of the proposed project serves as an invitation for stakeholders to participate in the review process.

EIS Content

The EIS addresses 1) the purpose of and need for the proposed action; 2) the environmental impact of the proposed action; 3) unavoidable, adverse environmental impacts; 4) alternatives to the proposed action; 5) the relationship between short-term uses and long-term productivity; 6) any irreversible and irretrievable resources that may be affected by the proposed action. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

4.4.6 Hazardous Waste - Small Quantity Generators
Conditionally Exempt Small Quantity Generator

RCRA 42 USC 6922 & 42 USC 6924

30 Texas Administrative Code (TAC) 335.69
[Texas follows the federal accumulation time rules]

Generator annual report requirements: 30 TAC 335.9
Generator biennial report requirements: 30 TAC 335.71
Treatment, storage and disposal facility (TSDF) annual report requirements: 30 TAC 335.154
Generator monthly reports: 30 TAC 335.13(b)
TSDF monthly reports: 30 TAC 335.15 & 30 TAC 330.1371(l)
A generator of hazardous waste may accumulate (store) hazardous waste on-site without a storage permit provided that the generator complies with the “accumulation rule” for generators. Small Quantity Generators (SQGs) generate more than 100kg but less than 1000 kg of hazardous waste and less than 1 kg of acutely hazardous waste per month. SQGs may store hazardous waste on-site up to 180 days without a storage facility permit if the quantity does not exceed 6,000 kg.

- Conditionally Exempt Small Quantity Generators (CESQGs) may not accumulate more than 1000 kg of hazardous waste at any time. CESQGs may not exceed an on-site accumulation of a total of 1 kg of acute hazardous waste and a total of 100 kg of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of acute hazardous wastes. A CESQG is exempt from submitting the information required by the annual report if the generator meets all of the requisite conditions. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

4.4.7 Hazardous Substance Storage

- Oil Pollution Act of 1990 (OPA) 33 USC 2701 - 2761
- Clean Water Act (CWA) 33 USC 1251 – 1387
- Hazardous Substance Act 15 USC 1261
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 USC 9611 –9675
- Transportation and storage of hazardous materials 49 CFR 171 – 179
- Storage of hazardous chemicals and petroleum products in underground storage tanks 40 CFR 280 – 281
- Pollution Prevention Act (PPA) 42 USC 13101 – 13109
- Emergency Planning and Community Right-To-Know Act (EPCRA) 42 USC 11001 – 11050
- Extremely hazardous substances 40 CFR 355 Appendix A

**Above Ground Petroleum Storage**

The Oil Pollution Act of 1990 and the Spill Prevention, Control and Countermeasure Plan (SPCC) rules require owners of aboveground storage tanks (ASTs) to prepare SPCC plans detailing actions to be taken in the event of a storage tank release.

**Hazardous Wastes**

The storage of hazardous waste is regulated under the Federal RCRA’s container and hazardous waste storage tank rules. Containers, usually 55-gallon drums, and hazardous waste storage tanks, which include aboveground, inground, onground and underground tanks must meet Federal RCRA operating rules.
RCRA authorizes EPA to regulate hazardous waste from “cradle-to-grave”. This legislative enactment authorizes EPA to regulate hazardous waste from generation through transporting, treating, storing and disposal of hazardous waste.

RCRA also authorizes EPA to delegate regulatory enforcement authority to the states. State hazardous waste management rules must be at least as restrictive as and consistent with the Federal rules. TNRCC has received RCRA authorization from EPA. RCRA authorization allows TNRCC’s Industrial and Hazardous Waste Division to enforce the state’s hazardous waste management rules.

Hazardous waste generators in Texas must comply with the Federal rules and the state’s more restrictive rules for generator classifications, waste type classifications, notification, registration, annual reports, hazardous waste activity records, manifests, monthly shipment summaries, waste minimization plans and generator fees. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

4.4.8 Hazardous Air Pollutants

Clean Air Act amendments of 1990 (CAAA) § 112; 40 USCS 7412
List of hazardous air pollutants (HAP); CAAA 112(b)
National emission standards for HAPs (NESHAP); 40 CFR 61 & 40 CFR 63


The TNRCC has been delegated authority by EPA to implement and enforce NESHAP.

Source Categories

EPA published a list of source categories that include major sources [potential to emit 10 tons per year of any listed hazardous air pollutant] or 25 tons per year of a combination of listed hazardous air pollutants, lesser quantity major sources and area sources [emit less than the 10/25 tpy]; area sources that emit less than 10 tpy of a single air toxic or less than 25 tpy of a combination of air toxics. Most area source emissions are small, but the collective volume can be hazardous in densely developed areas where large numbers of such facilities are packed tightly into urban neighborhoods and industrial areas. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].
4.4.9 Incineration

New Source performance standards (NSPS) for incinerators 40 CFR 60.50 – 60.55
National emission standards (NESHAP) for hazardous waste combustors 40 CFR 63.1200 – 63.1213
Guidelines for the thermal processing of solid wastes 40 CFR 240.100 – 240.211

Texas regulates incineration under the state and Federal air requirements and the Federal hazardous waste requirements. In addition, TNRCC has established requirements for independent state requirements for several types of incinerators.
The Federal hazardous waste rules define an incinerator as an enclosed device that either uses controlled flame combustion and is not a boiler, sludge dryer or a carbon regeneration unit, or meets the definition of an infrared or plasma arc incinerator.

Fixed hearth incinerators typically contain two furnace chambers: a primary and a secondary chamber. Ash and waste are pushed with rams through the system. The primary chamber operates at temperatures around 1000ºF. Wastes are burned further in the secondary chamber at temperatures between 400 - 2000ºF. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

4.4.10 Manifests

Resource Conservation and Recovery Act 42 USC 6922
Rules for generators 40 CFR 262.20 – 262.23
Manifest form and instructions 40 CFR Appendix to Part 262-Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 & 8700-22A and their instructions)
Exception reports 40 CFR 262.42
Unmanifested waste report 40 CFR 264.76 & 40 CFR 265.76 (interim status)

Hazardous waste generator manifest requirements 30 TAC 335.10
Hazardous waste transporter manifest requirements 30 TAC 335.11
Hazardous waste TSDF manifest requirements 30 TAC 335.12

Texas uses its own manifest form that requires generators to provide additional information including identification numbers assigned under Texas state law. Generators, transporters and TSDFs in Texas must use a manifest for shipments of Class I waste as well as for hazardous waste.

The Uniform Hazardous Waste Manifest is the shipping document that travels with hazardous waste from the point of generation through transport to the final Treatment, Storage & Disposal Facility [TSDF]. Each party in the chain of shipping, including the generator, signs and keeps one of the manifest copies, creating a “cradle-to-grave” tracking of the hazardous waste.
waste. The manifest, if properly filled out, provides sufficient information to safely load, store and handle hazardous wastes and to enable emergency personnel to safely respond to a spill or release during transport.

Everyone who is involved with the hazardous waste must comply with the manifest requirements. The manifest form is initially completed either by the hazardous waste generator or by the owner or operator of a TSDF. EPA has exempted conditionally exempt small quantity generators (CESQGs) from the hazardous waste manifest system requirements provided they comply with the rules applicable to maintaining their CESQG status. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

### 4.4.11 Material Safety Data Sheets [MSDS]

- **Emergency Planning and Community Right-To-Know Act** 42 USC 11021; 42 USC 11041; 40 CFR 370.21
- **Texas Hazard Communication Act (THCA); Texas Health and Safety Code, §§ 502.001 – 507.007**

MSDS standards are covered in the THCA, which is not Federally approved. The Texas Act governs public employers only (state and local government). The THCA does, however, comply entirely with OSHA standards.

A material safety data sheet (MSDS) is a written description of each hazardous chemical used in a workplace. MSDSs are the primary source of information about workplace chemicals for employers and workers. Each MSDS contains comprehensive technical information about a particular substance and explains the risks, precautions and solutions that might come from hazardous chemicals, both during normal work shifts and in emergency situations. The MSDS is at the core of OSHA’s Hazard Communication Standard.

Chemical manufacturers and importers must obtain or develop an MSDS for each hazardous chemical they produce and provide copies to employers that use the substance. Distributors must also ensure that MSDSs are provided with their initial shipment and with the first shipment after an MSDS is updated. MSDSs must be retained as long as the hazardous chemical is used at the facility. The latest MSDS for each hazardous substance has to be kept on file in the workplace and be readily accessible to employees. As part of the overall training required by the Hazard Communication Standard, employees must be taught how to read and interpret MSDSs. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].
4.4.12 Mobile Sources

Clean Air Act Amendments of 1990  42 USC 7401 – 7671
Vehicle inspection and maintenance program  40 CFR 51.350 – 51.373
Compression ignition nonroad engines  40 CFR 89.1 – 89.1008
Spark ignition nonroad engines  40 CRR 90.1 – 90.1207
Aircraft engines  40 CFR 87.1 – 87.89
Volatile Gasoline  40 CFR 80.27
Sulfur content in fuels  40 CFR 80.195 – 80.620

Congress amended the 1970 CAA to include provisions to address ground-level ozone, particulate emissions, toxic pollutant emissions and acid rain. Contributors to these emissions of concern include motor vehicles, non-road engines (lawn mowers and construction equipment). The 1990 CAA Amendments significantly strengthened mobile source emissions requirements through the implementation of mandatory programs and the establishment of voluntary programs. The 1990 CAAA established the requirement for states to develop an inspection and maintenance (I/M) program as part of a state implementation plan (SIP) to attain and subsequently maintain compliance with the National Ambient Air Quality Standards (NAAQS). I/M programs are required in both ozone and carbon monoxide (CO) nonattainment areas. Each I/M program will establish a performance standard to evaluate vehicle performance. The parameter values vary depending on the type of I/M program being implemented, which is dependent on the population and nonattainment classification of the area or inclusion in an ozone transport region (OTR).

Basic I/M Program

In areas of ozone nonattainment, the performance standard must be met for volatile organic compounds (VOCs). In addition, there must be no increase in nitrogen oxide (NOx) emissions in the area as a result of the program.

Aviation Equipment

From 1984 to 1997, EPA regulation of aircraft was limited to smoke and fuel venting emissions for all commercial jet aircraft and organic compound emission limits for certain newly manufactured gas turbine engines. In 1997, EPA, in cooperation with the Federal Aviation Administration and the Department of Transportation, developed NOx and CO standards to conform to the voluntary standards for commercial aircraft adopted by the United Nations International Civil Aviation Organization (ICAO).
Airport Ground Support Equipment

GSE sources have been targeted for emissions control programs as well. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

4.4.13 New Source Review

1990 Clean Air Act Amendments 42 USC 7401 et seq.
New source review regulations 40 CFR 51.160

Standard permits 30 TAC 116.601 – 116.621
Flexible permits 30 TAC 116.710 – 116.760
New Source Review permits 30 TAC 116.11- - 116.175
Nonattainment review 30 TAC 116.150 & 30 TAC 116.151
Nonattainment areas 40 CFR 81.344

Texas provides one-stop permitting for construction of new sites and operation of sources subject to new source review requirements. Texas has designated specific regions of the state as nonattainment areas on the basis of whether the regions have met the Federal National Ambient Air Quality Standards for the various criteria pollutants. In Texas, any person who plans to construct any new source or modify any existing source that emits air contaminants into the atmosphere must obtain a permit before any actual work is begun on the source.

The 1977 Clean Air Act established a Federal air quality permitting program called the New Source Review (NSR) to help both nonattainment and attainment areas clean up or maintain their air quality. NSR is a pre-construction permitting process for new major sources of pollution and major modifications.

The pre-construction permitting process is divided into two programs: the prevention of significant deterioration (PSD) program and the nonattainment NSR program. Which program a source needs to comply with depends upon whether the facility is located in an attainment area for the criteria pollutants the facility proposes to emit.

If the new facility or modification is major, then the facility must apply for and obtain a permit prior to construction. New major sources and major modifications are required to apply the lowest achievable emissions rate to the new project, obtain emission offsets for the criteria pollutants making the project major, prepare an alternate site analysis and complete a compliance certificate. [Environmental Compliance in Texas Vol. 1; Business & Legal Reports].

4.4.14 National Pollutant Discharge Elimination System Permit [NPDES]

Clean Water Act 33 USC 1342; 33 USC 1316; 40 CFR 121 – 122
NPDES permit requirements 40 CFR 123 – 125
Effluent limitations 40 CFR 401 – 471
National oil and hazardous substances pollution contingency plan requirements 40 CFR 300
Nonpoint source management 33 USC 1329
Revisions to Water Quality and Planning Regulations 65 FR 43586 – 43670

Texas Consolidated Permit Rules 30 TAC 305.1; 30 TAC 305.48

The NPDES permit program was established under § 402 of the Clean Water Act (CWA) which prohibits the unauthorized discharge of pollutants from a point source (pipe, ditch, well, etc.) to receiving waters of the United States, including municipal, commercial and industrial wastewater discharges. NPDES permits establish effluent limitations for pollutants that determine what can be discharged and how much. Permittees are required to verify compliance with permit requirements by monitoring their effluent, maintaining records and filing periodic reports.

Texas assumed the authority to administer the NPDES program on September 14, 1998. TNRCC’s TPDES program now has authority over discharges of pollutants to Texas surface water with some source exceptions. Texas requirements are similar to Federal permit requirements. Texas recently received Federal authorization to administer its own stormwater discharge permit program as well.

**Best Management Practices [BMPs] 40 CFR 122.2**

The function of BMPs is to prevent or reduce the pollution of waters of the United States. BMPs may specify any of the following practices or combination of practices:

- Scheduling of certain activities
- Prohibition of specified practices
- Proper maintenance procedures
- Treatment requirements and operating procedures
- Practices to control runoff, spillage, leaks and drainage from raw material storage
- Sludge or waste disposal practices

**Waters of the United States**

- all waters susceptible to use in interstate/foreign commerce
- interstate waters, including interstate wetlands (swamps, marshes, bogs)
- other waters, if degraded, could affect interstate/foreign commerce (intrastate lakes, rivers, streams, mudflats, sandflats)
wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds)

- all impoundment(s) of waters otherwise defined as waters of the United States
- tributaries of waters identified above
- wetlands adjacent to waters identified above

Waste treatment systems, including treatment ponds or lagoons, are not waters of the United States. This exclusion applies only to artificial bodies of water.

### Pretreatment Program

EPA established the National Pretreatment Program as a component of the NPDES permit program requiring publicly owned treatment works (POTWs) to establish local pretreatment programs. The programs must enforce all local limits necessary to protect site-specific conditions at the POTW in addition to enforcing all national pretreatment standards. Persons discharging pollutants directly from point sources into surface waters must obtain an NPDES discharge permit. Direct discharges include industrial and commercial wastewater and industrial stormwater discharges. NPDES permits are required for most discharges of industrial process water, non-contact cooling water and collected or channeled storm water runoff.

### Types of Permits

Individual (site-specific) permits cover a particular facility’s point source discharge. General Permits [permit by rule] are issued by EPA or from the state environmental regulatory agency (if EPA has delegated NPDES administering authority to the state).

### Effluent Limitations/Monitoring

NPDES permits generally place limitations on how much of a specific pollutant may be contained in a discharge of wastewater. Effluent limitations may be established by specifying numerical limits for discharges. Narrative effluent limitations can also be required in an NPDES permit specifying BMPs; common to stormwater discharges. [Environmental Compliance inTexas Vol. 1; Business & Legal Reports].

4.4.15 Occupational Safety And Health Act (OSHA)

Texas Occupational Safety Act, Texas Revised Civil Statutes Annotated 5182a
OSHA was enacted in 1970 to assure the nation’s workforce safe and healthful working conditions. The Act authorizes the secretary of labor to issue occupational health and safety standards that apply to each employer in the private sector. The Act exempts public sector (municipal, state or Federal government) employers.

Texas is not a state-plan state. The Texas occupational safety and health program has not been approved by federal OSHA. Federal OSHA, therefore, pre-empts Texas state law regarding safety and health and governs the private sector workplace. OSHA encourages states to develop their own safety and health plans, but individual state’s plans are required to be at least as restrictive as the federal OSHA and must be approved by federal OSHA. The Texas Occupational Safety Act, which has adopted the Federal OSHA standards in all important respects, applies to the public sector workplace only [emphasis added].

States must conduct inspections to enforce their respective standards, cover public (state and local government) employees and operate occupational safety and health training and education programs.

**Inspections, Consultations and Reviews [Texas]**

Inspections, Consultations and Reviews Section processes and analyzes data to identify employers whose injury rate substantially exceeds that which might be expected for the employer’s business or industry. Identified public employers participate in the mandatory Hazardous Employer program. The Section also conducts an informal dispute resolution process for identified employers and participates in formal dispute resolution with the state office of Administrative Hearings. Section inspectors conduct inspections of identified public sector employers to verify implementation of the accident prevention plans. Public sector employers (state and local governments) must follow the Texas Occupational Safety Act, administered and enforced by the Texas Workers’ Compensation Commission and the Texas Department of Health. Environmental Compliance in Texas Vol. II; Business & Legal Reports.

4.4.16 Polychlorinated Biphenyls (PCBs)

**Toxic Substances Control Act (TSCA)** 15 USC 2605 & 40 CFR 761.1 – 761.398

PCB management: 30 TAC 335.4 – 335.6
Used oil containing PCBs 30 TAC 324.16
Special waste disposal 30 TAC 330.5
Site operating plan 30 TAC 330.114
In addition to the Federal regulations governing PCB wastes, Texas has additional regulations governing such waste. TNRCC has jurisdiction over all hazardous wastes and wastes produced by generators of "industrial solid waste". PCBs are not themselves defined as hazardous waste. A waste containing PCBs can be a hazardous waste only if it is mixed with a listed hazardous waste or derived from a listed hazardous waste; or exhibits one or more characteristic of a hazardous waste: ignitability, corrosivity, reactivity or toxicity. In addition to the Federal regulations governing PCB wastes, Texas has additional PCB wastes that are hazardous or industrial Class 1 wastes and must be disposed of subject to the following requirements:

- General prohibitions 30 TAC 335.4
- Notification requirements 30 TAC 335.6
- Record keeping, reporting and shipping requirements 30 TAC 335.9

PCBs are a class of chemicals used as insulating material in electrical transformers and capacitors, in hydraulic and heat transfer fluids, and in many heat and fire-sensitive applications. PCBs are very stable and, therefore, do not break down in the environment. PCBs have good chemical resistance and low volatility, flammability and conductivity. PCBs are halogenated organic compounds classified by EPA as suspected carcinogens. EPA rules establish a tracking system for PCB wastes.

Substances that are regulated include dielectric fluids, solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints or coatings, sludges, slurries, sediments, dredge spoils, soils, materials that contain PCBs as a result of spills, and other chemical substances or products and any by-product, intermediate or impurity manufactured at any point in the process.

PCB articles are any manufactured PCB item that contains PCBs and whose surface has been in direct contact with PCBs. PCB articles include capacitors, transformers, electric motors, circuit breakers, reclosers, voltage regulators, switches, electromagnetics, cable, hydraulic machines, pumps and pipes.

In addition to requirements under the CWA and CERCLA, PCB spills must be reported to the Office of Prevention, Pesticides and Toxic Substances (OPPTS) as soon as possible but, in no event, not later than 24 hours after discovery. [Environmental Compliance in Texas Vol. II; Business & Legal Reports].
4.4.17 Pesticides

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 7 USC 136
Regulations for pesticide registration, storage, labeling, exporting, use and disposal
40 CFR 152 - 186 [40 CFR 170 Not applicable to DFW Airport activities]
National Emissions Standards for Hazardous Air Pollutants (NESHAP) for pesticide active ingredient production  40 CFR 63.1360 – 63.1369

Listed wastes (adoption of the federal rules)  30 TAC 335.1
Classification of pesticides  4 TAC 7.30
Applicator certification  4 TAC 7.21
Licensing  4 TAC 7.24
Forbidden pesticide practices  4 TAC 7.38
Notification  4 TAC 7.37
Storage and disposal  4 TAC 7.34 & 30 TAC 330.136

Texas rules for pesticides mirror Federal regulations (FIFRA) for pesticide management and RCRA for disposal of pesticides that are hazardous wastes. The Texas Department of Agriculture administers and enforces the rules covering pesticide applicators, application, storage and some disposal rules. TNRCC administers and enforces the disposal rules for pesticides that are hazardous wastes. Texas promulgated new pesticide regulations in December, 1997 consolidating requirements for pesticides, herbicides and workers protection by merging the prior laws and regulations into one comprehensive set of requirements.

Effective September 1, 1997, applicators that work for schools, cemeteries or city, county or state governments and apply pesticides on lawns, trees or shrubs outdoors can obtain licenses from either Texas Department of Agriculture (TDA) or the Structural Pest Control Board (SPCB). TDA issues non-commercial licenses to applicators employed by government agencies and persons applying pesticides on their employer’s property but who do not qualify as a private or commercial applicator.

Regulated Facilities

Facilities using pesticides in their operations, including farms, nurseries . . . upkeep of parks, public lawns and facilities that deal with the mechanical treatment of cleaning, adjusting, handling or repairing parts that contain pesticide residues.

Worker Protection Standard

Facilities that use pesticides in their operations must comply with the FIFRA worker protection standard. The standard is designed to reduce the risks of illness or injury resulting from agricultural workers’ occupational exposures to pesticides by requiring workplace practices to reduce or eliminate exposure to pesticides and establishing procedures for responding to exposure-related emergencies.
Training must be given by a certified trainer to employees who handle pesticides. At a minimum, training programs must cover:

- Reading pesticide labels and precautionary statements;
- Hazardous effects on humans;
- Routes by which pesticides can enter the body;
- Signs and symptoms of pesticide poisoning;
- Obtaining emergency medical care;
- Routine and emergency decontamination measures;
- Use of personal protective equipment;
- Safety requirements for handling, transporting, storing, and disposing of pesticides. [Environmental Compliance in Texas Vol. II; Busniness & Legal Reports].

4.4.18 Pollution Prevention

Pollution Prevention Act of 1990 [PPA] 42 USC 13101 – 13109
Notice of the National Pollution Prevention Strategy (PPS) 56 Federal Register (FR) 7849 – 7864 (2/26/91)
Hazardous waste minimization:  RCRA 42 USC 6902(a),(b); rules at 40 CFR 262.41(a)(7) & 40 CFR 264.75(h) & 40 CFR 262.23
Toxic Release Inventory (TRI) reporting 40 CFR 372
Hazardous waste land disposal, advanced notice of proposed rule making 65 FR 37932 (6/19/00)

Regulations: 30 TAC 335.471 – 335.480

Texas public policy requires pollution source reduction and reduction of the risk to public health and the environment and to continue to enhance the quality of air, land and waters of the state where feasible.

Conditionally exempt small-quantity generators, et al. are required to develop and implement a Source Reduction and Waste Minimization Plan and to submit to the TNRCC an annual report by March 1 of each succeeding year and a current executive summary according to any schedule developed under the plan.

The Federal Pollution Prevention Act of 1990 established pollution prevention as a national public policy. The PPA declares that pollution should be prevented or reduced at the source. In the absence of feasible prevention or recycling opportunities, pollution by-products should be treated. Disposal or other release into the environment should be used only as a last resort and in an environmentally prudent manner.
SWP3s

Facilities subject to EPA stormwater discharge permit requirements are required to develop and implement stormwater pollution prevention plans, based on best management practices (BMPs). [Environmental Compliance in Texas Vol. II; Business & Legal Reports].

4.4.19 Spill Prevention & Countermeasures Plan [SPCC]

Clean Water Act 33 USC 1251 – 1376 [33 USC 1321, oil and hazardous substances]
Oil Pollution Act of 1990 33 USC 2701 –2761
Discharge of oil regulations 40 CFR 110
Oil pollution prevention regulations 40 CFR 112
National Contingency Plan [NCP] 40 CFR 300
One plan contingency plan guidance 61 FR 28642 (6/5/96)
Oil Pollution Prevention and Response 62 FR 63812 (12/2/97)

Texas Oil Spill Prevention and Response Act of 1991
Texas Natural Resources Code 40.1 – 40.304
Texas Water Code 26
Spill Prevention, Control and Countermeasure plan requirements 30 TAC 327.1 – 327.31;
31 TRAC 19.1 – 21.52

Texas follows Federal Spill Prevention, Control and Countermeasures (SPCC) plan requirements. TNRCC’s Office of Environmental Policy, Analysis and Assessment is responsible for the administration and enforcement of the SPCC plan along with EPA.

Applicability

Texas certification regulations define a facility as “any pipeline, structure, equipment or device used for handling oil” including: underground and aboveground tanks, impoundment(s), mobile or portable drilling or workover rigs and portable fueling facilities located offshore or adjacent to coastal waters.

Texas SPCC Plan Requirements Do Not Apply To:

- Spills or discharges from activities subject to the jurisdiction of the Texas Railroad Commission pursuant to Texas Water Code 26.131;
- Releases only to air;
- The lawful application of specified materials including fertilizers and pesticides to land or water.
Abatement

In the event of an oil spill, the responsible party must immediately abate and contain the spill or discharge with effective response actions. EPA requires that certain facilities develop and implement spill prevention, containment and countermeasure (SPCC) plans to prevent petroleum spills from discharging to receiving waters of the United States. SPCCs are required if a facility is unable to provide secondary containment around vessels storing petroleum products. A copy of the entire SPCC plan must be maintained at the facility and be made available for EPA review during a site inspection.

SPCC plans must be reviewed and certified by a registered professional engineer. The SPCC plan must be reviewed at least once every three years and amended, as appropriate, to include more effective prevention and control technology to reflect any significant changes in the facility’s design, construction, operation or maintenance within six months of the change.

Discharges and Releases

A regulated facility must notify the EPA regional administrator within 60 days if any of the following occur:

- A discharge exceeding 1000 gallons of oil in a single event.
- Two reportable spills within a 12-month period.
- A discharge of a harmful quantity of oil into navigable waters.

[Environmental Compliance in Texas Vol. II; Business & Legal Reports].

4.4.20 Storm Water Discharge Permits [NPDES; TPDES]

Clean Water Act 33 USC 1251 et seq. And regulations at 40 CFR 122 & 40 CFR 124
NPDES 33 USC 1342
NPDES permit application regulations for storm water discharges (Phase I final rule) 55 FR 47990 (11/16/90)
EPA storm water implementation rules a 57 FR 11394 (4/2/92)
Phase II storm water rule 60 FR 40230 (8/7/95); 63 FR 1536 (1/9/98 proposed rule); 65 FR 17009 – 17107 (3/30/00 proposed re-issuance of MSGP for industrial activities)
Storm water discharges from construction activities 62 FR 29785 – 29825 (6/2/97); 62 FR 35054 (6/27/97); 63 FR 7858 (2/17/98); 63 FR 11253 – 11257 (notice of intent form); 65 FR 25122 (4/28/00).

Texas surface water quality standards 30 TAC 307; 57 FR 41236 – 41257 & 57 FR 41327 – 41328
Texas is authorized by EPA to implement its Texas Pollutant Discharge Elimination System (TPDES) permit program. [Environmental Compliance in Texas Vol. II; Business & Legal Reports].

4.4.21 Surface Impoundments

Resource Conservation and Recovery Act 42 USC 6924
Liner construction quality assurance plan 40 CFR 264.19 & 40 CFR 265.19 (interim status)
Response action plan 40 CFR 264.223 & 40 CFR 265.223 (interim status)

Hazardous waste surface impoundment rules (adoption of the federal rules) 30 TAC 335.152(a)(9) & 30 TAC 335.112(a)(10) (interim status); 30 TAC 335.168
Construction quality assurance program 30 TAC 335.152(a)(l) & 30 TAC 335.112(a)(l) (interim status).
Response action plan 30 TAC 335.152(a)(9) & 30 TAC 335.112(a)(10) (interim status)
Closure requirements 30 TAC 335.169

Texas follows Federal surface impoundment rules and regulations.

EPA broadly defines a surface impoundment to include holding, storage, settling and aeration pits, ponds and lagoons. RCRA defines a surface impoundment as a facility or part of a facility that is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Owners and operators of a surface impoundment must be in compliance with RCRA’s general facility requirements for hazardous waste treatment, storage and disposal facilities (TSDFs) and be permitted by EPA or the authorized state agency. The specific design and operating practices will be specified in the surface impoundment permit. [Environmental Compliance in Texas Vol. II; Business & Legal Reports].
4.4.22 Title V

Clean Air Act 42 USC 7661 – 7661f
Regulations for Title V operating permits 40 CFR 70
Federal Operating permit program 40 CFR 71
Chemical accident prevention program 40 CFR 68
Compliance assurance monitoring 40 CFR 64

New source review permit applicability 30 TAC 116.110
Federal operating permits 30 TAC 122 et seq.
Application and required information 30 TAC 122.132
Permit content requirements 30 TAC 122.145

EPA granted final interim approval for the Texas Federal operating permit program that became effective July 25, 1996. The purpose of Title V is to reduce violations of air pollution laws at major sources and improve enforcement of those laws. This is accomplished through an operating permit.

EPA’s regulations require each state to develop an operating permit program and to issue permits. The Part 70 regulations serve as guidance for states and include the minimum requirements for state programs. State operating permits cannot be less stringent than necessary to meet all applicable Federal requirements. EPA reserves the right to veto state-issued operating permits. [Environmental Compliance in Texas Vol. II; Business & Legal Reports].

4.4.23 Underground Storage Tanks (USTs) And Above Ground Storage Tanks (ASTs)

Resource Conservation and Recovery Act 42 USC 6991
Underground storage tank design, construction and operating standards and corrective action requirements 40 CFR 280
Approval of state UST programs 40 CFR 281
Codification of individual state and territorial UST programs 40 CFR 282
Spill Prevention, Control and Countermeasure (SPCC) Plans 40 CFR 112

Aboveground Storage Tanks

- National Fire Protection Association (NFPA) Code 30 & NFPA Code 30A
- Texas flammable liquids code 9 H&S Code 753.001 et seq.; 2 TWC 26.341 et seq.; 30 TAC 334.121 – 334.322
EPA granted final approval to Texas to operate its state UST program on April 17, 1995. Texas UST regulations are similar to the Federal requirements with enhanced requirements relative to specific notification, registration and certification as well as UST installer registration and licensing rules and fees.

RCRA’s Subtitle I requirements govern USTs containing regulated substances including petroleum products and those hazardous substances included in the Comprehensive Environmental Response, Compensation and Liability Act of 1980. USTs used to store hazardous wastes are regulated under RCRA’s Subtitle C hazardous waste regulations.

EPA’s UST regulations apply to any person who owns or operates a UST or UST system. Both owners and operators are responsible for complying with the technical design and construction requirements, corrective action requirements and financial responsibility requirements. An owner is defined as anyone who owns a UST used for the storage, use or dispensing of regulated substances, including petroleum and hazardous chemicals. An operator is any person in control of, or having responsibility for, the daily operation of the UST.

ASTs

ASTs are not regulated by a comprehensive legislative enactment. Federal laws that regulate ASTs in some manner include the Clean Water Act, Oil Pollution Act, Clean Air Act and Resource Conservation and Recovery Act. Larger ASTs may require SPCC plans. Vaulted or double-walled ASTs should be installed with a spill catchment basin, an overfill alarm, and a spill kit for at least 25 gallons of product. ASTs must be designed to be tightness-tested and expandable for remote maintenance monitoring. [Environmental Compliance in Texas Vol. II; Business & Legal Reports].

4.4.24 Wetlands

Clean Water Act § 308 (inspections, monitoring, entry) 33 USC 1318
CWA § 309 (federal enforcement) 33 USC 1318
CWA § 401 (certification) 33 USC 1341
CWA § 403 (ocean discharge criteria) 33 USC 1343
CWA § 404 (discharge of dredged and fill material into waters of the United States, including wetlands) 33 USC 1344
CWA § 502 (general definitions) 33 USC 1362
§ 10, Rivers & Harbors Appropriation Act of 1899 (regulates activities affecting navigation in United States waters including wetlands) 33 USC 403 (Army Corps of Engineers, § 10 program)
Federal Agriculture Improvement and Reform Act of 1996 rules related to the conservation of wetlands on agricultural lands 7 CFR 650
Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) 16 USC 39f51 et seq.
North American Wetlands Conservation Act (NAWCA) 16 USC 4401 et seq.
§ 404(b)(1) guidelines established by EPA constitute the substantive environmental criteria used in evaluating activities regulated under § 404 [40 CFR 230]
Permit regulations established by the Corps of Engineers specifying the procedures and criteria for the issuance of § 404 permits 33 CFR 320 – 330
Program definitions and permit exemptions 40 CFR 232
Enforcement regulations for § 404 compliance 40 CFR 22
State assumption regulations for § 404 compliance programs 40 CFR 233

Texas Wetlands Act, Texas Water Code 11.501 – 11.506
Texas Coastal Public Lands Management Act, Texas Natural Resources Code 33.001 – 33.612
Texas coastal public lands regulations 31 TAC 155.1 – 155.15
Texas surface water quality standards 31 TAC 307.2 – 307.10
Reclamation engineer permit (floodplain) TWC 16.236
Hazardous waste management units; Texas H&S Code 361.099
Oil and gas activities 16 TAC 3.1 – 3.107
Texas coastal management program 31 TAC 501

Under the Texas Wetlands Act, a wetland is defined as an area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support the growth and regeneration of hydrophytic vegetation.

Wetlands are natural areas that are in between deep open water and dry land. Wetlands have many different appearances, plant mixtures and locations. They can be shallow open water with underwater and edge plants, support the growth of trees or shrubs, look like a meadow, occur on a slope, surround a larger lake or stream or a combination of the above.

**CWA § 404**

§ 404 regulates discharges to U.S. waters including filling, soil movement and the placement of certain pilings in wetlands and establishes a permit program to ensure that such discharges comply with environmental requirements. The Army Corps of Engineers administers the Federal permit program. EPA and the Corps share enforcement authority.

**Corps Enforcement**

Inspection and surveillance activities are carried out by the Army Corps of Engineers District Engineer. Corps employees are instructed in regard to observation and reporting of suspected unauthorized activities in U.S. waters and of violations of issued permits. The public is encouraged to participate as well. The laws that serve as the basis for the Corps regulatory program contain several enforcement provisions that provide for criminal, civil and administrative penalties. In concert with EPA, any person responsible for an unpermitted discharge may be prosecuted for a violation of the Clean Water Act by the Army Corps of Engineers. This may include the owner, non-owner discharger and contractors who are involved in the discharge.
Watershed

A watershed (drainage basin) is the area in which all water, sediments and dissolved materials flow or drain from the land into a common river, lake, ocean or other body of water. Wetlands are important elements of a watershed because they serve as the link between land and water resources. Wetlands protection programs are most effective when coordinated with other surface and groundwater protection programs and with other resource management programs such as flood control, water supply, control of storm water and non-point source pollution. [Environmental Compliance in Texas Vol. II; Business & Legal Reports].

4.5 Facility-Specific Compliance Priorities

Stormwater discharges generally have the potential to become sources of water pollution to receiving waters adjacent to areas used for industrial purposes. To address this concern, Congress enacted the Clean Water Act Amendments of 1987 which required US EPA to develop a regulatory program for stormwater discharges associated with industrial activity.

DFW Airport is subject to the stormwater regulations due to the Airport’s standard industrial classification (SIC) code of 4581. The DFW Airport Board submitted a Notice of Intent on October 14, 1998 for coverage under the MSGP. US EPA provided notice of coverage under identification number TXR05F714.

The Multi-Sector General Permit (MSGP, September 29, 1995 as amended February 9, 1996 and September 30, 1998) requires the development and implementation of a Stormwater Pollution Prevention Plan (SWP3) for the entire Airport facility. Tenants or activities on Airport property which fall within other sectors of the MSGP must also be addressed in the SWP3 for the Airport facility. This Master SWP3 for DFW identifies potential sources of pollution which may affect the quality of storm water discharged from DFW. The SWP3 also describes Best Management Practices (BMPs) and provides for their implementation to reduce pollutants in the storm water that are associated with DFW operations.

Non-compliance with the terms and conditions of the SWP3 may constitute a violation of the Clean Water Act (CWA) and potentially be grounds for criminal, civil, or administrative enforcement sanctions.


US EPA stated that storm water discharges from all facilities at an airport which engage in activities such as vehicle maintenance, painting, washing, fueling or de-icing need to be addressed. Tenants having an SIC code of 45xx must obtain NPDES permit coverage which could be accomplished by submittal of an NOI requesting MSGP coverage or by obtaining coverage under an individual permit. Tenants such as car rental agencies (SIC code 7514) with an SIC code other than those listed at 40 CFR may [emphasis added] obtain NPDES permit coverage. However, these tenants may also be addressed through agreements between the
airport authority and the tenant with regards to appropriate storm water pollution control. U.S. EPA encourages airport authorities and [sic] work cooperatively with tenants in implementing the requirements of the MSGS. For example, one SWPPP could be developed for the entire airport which addresses the pollution control activities to be implemented by the airport authority and all its tenants. Each individual tenant would only be responsible for implementing the portion of the SWPPP which applied to his or her specific facility. In addition, the MSGP requires monitoring for an airport as a whole, and this could be accomplished most easily by permittees working together. Facilities which are not co-permittees under the MSGP, or which receive individual permits would have to comply with the monitoring and SWPPP requirements of the MSGP for their individual storm water NPDES permit on their own.

4.6 DFW Government and Legislative Affairs Department

Responsibilities

The Government and Legislative Affairs department is responsible for all governmental, legislative, regulatory and political matters affecting DFW Airport on a local, regional, state and national level. The department is responsible for ongoing communications and dialogue among the Airport Board and members of the Texas Legislature, the United States Congress and their respective staffs and officers and employees of various state and Federal governmental agencies. The department is also responsible for monitoring and analyzing pending legislation, regulations and international aviation agreements to determine the potential impact upon DFW Airport, airports in general, and the aviation industry as a whole. The Government and Legislative Affairs Department informs DFW Departments of significant proposed and pending legislation to enlist their input and to provide an opportunity for advance compliance preparation as deemed prudent.

From an advocacy standpoint, the department is responsible for communicating the Airport Board’s position(s) relative to legislative and administrative matters, testifying before congressional committees and subcommittee, negotiating on behalf of the Airport Board matters regarding pending legislation and regulations, and representing the general interests of the Airport Board at all levels of the local, state and Federal government. The department is further responsible for advocating the Airport Board’s positions to airport industry trade organizations including Airports Council International (ACI) and the American Association of Airport Executives (AAAE). On a local level, the Government and Legislative Affairs Department serves as a liaison between the Airport Board and its owner cities, and is responsible for improving communications between the Airport Board and other local government entities in the North Texas Region.

4.7 Federal Aviation Administration -Southwest Region

The FAA is required under the National Environmental Policy Act to consider environmental impacts associated with a Federal action and issue an environmental determination for such actions. Federal actions covered by this guidance document include funding consideration of a proposed project and/or approval of an Airport Layout Plan or its revision.
This FAA guidance provides information for preparing documentation to support whether an environmental assessment (EA) is needed for a proposed project or if it may be categorically excluded (CE) from further environmental review. The document also describes what information should be included in an EA. This document is not a substitute for formal FAA guidance such as orders, advisory circulars, or reports; particularly Order 5050.4A, Airport Environmental Handbook.

4.8 Regulatory Enforcement/Compliance Orders

TNRCC Policy, Enforcement, Regulatory Staff

Jeffrey A. Saitas, P.E., Executive Director [(Austin) [MC-109]
Gilbert Angelle, Enforcement Coordinator Enforcement Division (Austin) [MC-134]
Frank Espino, Regional Manager Field Operations, Region 4 (Arlington Regional Office) [MC-004]
Samuel Barrett, Waste Section Manager, Region 4 (Arlington)
Karen W. Smith, Water Quality Team Leader, Region 4, (Arlington)
Julianne Owens, Environmental Investigator, Region 4 (Arlington)
Sid Slocum, Water Section Manager, Region 4 (Arlington)

Agreed Order Effective Date [8-31-2000]

On 7-6-2000. the DFW CEO executed an Agreed Order [Docket No. 1999-1171-MLM-E] in response to an enforcement action concerning DFW [TNRCC ID No. 72593]. The Agreed Order was entered into in response to TNRCC allegations that DFW Airport violated the Texas Water Code § 26.121 to wit: failure to prevent the unauthorized discharge of jet fuel into or adjacent to waters in the State as evidenced by record review and site inspections specified to have been conducted variously in 1996, 1997 and 1999; and Texas Water Code § 26.039; failure to report an accidental release of sewage, as documented during an inspection on 2-10-1999.

The Agreed Order mandated that DFW complete a Response Action Plan [RAP] and submit the RAP for TNRCC approval within 375 days after the effective date of the Agreed Order [August 31, 2000]. The RAP must evaluate the nature and extent of the jet fuel contamination at Terminals A, B, C, and E, as well as proposed Terminals D and F, in accordance with the provisions of the Texas Risk Reduction Program [TRRP; 30 Tex. Admin. Code, Chapter 350].

The DFW Airport Board must also submit a Remedial Investigation Plan [RIP] for TNRCC approval within ninety (90) days following the effective date of the Agreed Order since DFW selected the TRRP procedures to investigate the terminal areas [Risk Reduction Standards set forth in 30 Tex. Admin. Code Chapter 335, Subchapter S].

TNRCC Approved Response Action Plan (RAP)

☑ A Soil Investigation Work Plan [SIWP] designed to define the horizontal and vertical extent of hydrocarbon contaminated surface and unsaturated zone soil in the above specified terminal areas;
A Groundwater Investigation Work Plan [GIWP] designed to define the horizontal extent and vertical boundaries of dissolved-phase and phase-separated hydrocarbons in the groundwater in the above specified terminal areas;

Develop a Sampling and Analytical Plan [SAP] to direct soil and groundwater sampling activities specified in the approved SIWP and GIWP;

Well Installation and Construction Details compliant with installation standards or alternative procedures allowed by the provisions of 30 Tex. Admin. Code § 238.80;

Provide an Annual Well System Inspection Program [AWSIP] implemented to assure an effective O & M program for groundwater monitoring wells utilized as part of the GIWP;

The DFW Airport Board shall submit a Remedial Investigation Report [RIR] within 120 days following the TNRCC’s approval of the RIP. The RIR shall describe the results of the RIP activities and include any information from previous investigations that contributes to the characterization of contamination at DFW Airport.

Additional Agreed Order requirements include remediation of contaminated soil and groundwater; preparation and submittal of a Base Line Risk Assessment [BLRA] for TNRCC approval; a Corrective Measures Study [CMS] utilizing the RIR results as the basis for developing remedial alternatives; and a Response Action Completion Report as required by statute. Within 90 days from the effective date of the Agreed Order, DFW shall submit an administratively complete application to acquire permit authorization in accordance with 30 Tex. Admin. Code Ch. 305 for six (6) specified Outfalls. EAD and DFW Board consultants have met agreed order response action mandates to date.

TNRCC Agreed Order – Environmental Study Response Actions

09-07-2000 DFW Official Board Action/Resolution authorized CEO to execute Modification No. 4 Contract No. 8500182 with Argus Consulting, Inc. and to approve a project budget NTE $4,059,109;

Project authorization to proceed 9-2000;

Performance period of 375 days per contract and TNRCC Agreed Order;

Project designed to address jet fuel contamination in the Central Terminal Area;

Requires investigation and determination of Response Action Plan;
Contractor intends to use new Texas Risk Reduction Program [TRRP] approach allowing greater flexibility in considering exposures and complying with current TNRCC project controls;

Draft Project Deliverables Schedule submitted to EAD 9-5-2000;

DFW authorized payment of $31,350.00 in administrative penalties to the TNRCC;

DFW/EAD Legal Oversight and direction provided by Cantey & Hanger, Sarah Walls, Esq.

Memorandum Of Agreement (MOA); TNRCC/DFW Airport Board (Adopted by the TNRCC Commission May 23, 2001) [refer to EMS 4th Element Appendices, infra].

The intent of the above referenced MOA is to memorialize the agreement between DFW's Board and the TNRCC to reduce emissions of oxides of nitrogen (NOx) at DFW Airport by 1.305 tons per day (tpd); an amount necessary to cover the difference between the 90% reduction required by the TNRCC and the lower percentage reduction proposed by certain airlines, pursuant to the Texas State Implementation Plan (SIP).

The four county region of the Dallas/Fort Worth area has been designated as a serious non-attainment area for ozone by the EPA;

Under § 110 of the Federal Clean Air Act, 42 USC § 7410, each state that has a non-attainment area must submit a plan to the EPA demonstrating strategies to come into compliance with the National Ambient Air Quality Standards (NAAQS);

DFW Airport consists of one or more sources as defined in Texas Health & Safety Code § 382.003(12);

On April 19, 2000, the TNRCC Commission adopted a SIP revision for the Dallas/Fort Worth non-attainment area. The SIP revision includes a rule which requires a ninety percent (90%) reduction of NOx emissions from ground service equipment (GSE). In order to reduce GSE emissions by 90%, there must be a reduction of 6.12 tpd of NOx in the non-attainment area.

In accordance with the terms of this MOA, DFW's Board agrees to implement the following strategies to obtain reductions in the NOx emission reduction of 0.895 tpd:

- Bussing operations to and from a consolidated rental car facility which are estimated to achieve a NOx emission reduction of 0.895 tpd;
- Use of thirty (30) compressed natural gas busses to transport airport patrons to and from Board-controlled airport parking which is estimated to achieve a reduction in NOx emissions of 0.163 tpd; and
Use of sixteen (16) compressed natural gas employee busses to transport airport and airline employees to and from Board-controlled employee parking which is estimated to achieve a reduction in NOx emissions of 0.231 tpd.

The Board agreed to identify, by May 1, 2002, strategies to achieve an additional 0.016 tpd which would be implemented by December 31, 2004. EAD submitted the required strategic plan on schedule. Together with the strategies identified herein above, the reductions achieved by DFW’s Board are estimated to total 1.305 tpd. If any of the strategies identified herein are already counted as part of a Voluntary Mobile Emission Program in the SIP, in whole or in part, DFW’s Board agreed to identify replacement strategies to achieve the amount already counted.

DFW’s Board may comply with all or any part of its commitments through the use of NOx emission control measures which have been achieved within the non-attainment area, or the purchase of NOx emission reduction credits or offsets, as long as such actions are creditable pursuant to the TNRCC emission Banking Program as defined in 30 TAC § 101.29, or successor regulations, and DFW’s Board can reasonably demonstrate that such measures have resulted in NOx emission reductions at least equal to those required or expected for the commitment being substituted. The Board agreed to provide additional documentation as needed for submittal to EPA.

TNRCC agrees to support this MOA as a revision to the SIP and to recommend that the Governor submit it as such to the EPA. The TNRCC will not require DFW’s Board to regulate the activities of entities that use DFW airport.

The term of this MOA shall begin upon signature and approval by all Parties and shall expire on December 31, 2007 unless sooner terminated by mutual written consent of both Parties or in the event that EPA does not agree to incorporate this Memorandum of Agreement into the SIP or disapproves the DFW attainment demonstration in the SIP of which this agreement is a part.


On 6-26-2000, the TNRCC sent a Notice of Enforcement letter [Certified Mail No. 7000 0600 0026 9908 1608] to DFW/EAD. The NOE indicated the following:

TNRCC noticed two alleged violations of applicable wastewater and solid waste requirements observed during TNRCC field investigations on 2-22-2000 and 3-23-2000, respectively.

The alleged violations are described as follows:

Unauthorized discharge of wastewater into Trigg Lake on Feb. 22, 2000, resulting in a fish kill. Low dissolved oxygen and elevated fecal coliform bacteria concentrations were documented.
Unauthorized discharge of ethylene and propylene glycol wastewater into Big Bear Creek on March 23, 2000. Distressed vegetation was observed downstream of glycol holding pond and elevated glycol levels were documented.

This matter was partially resolved as evidenced by TNRCC Commission Agreed Order Docket No. 2000-0799-IWD-E; heard before the Commission on 1-16-2002 and Order entered 1-25-2002. This matter was partially resolved by DFW Airport Board completing a Supplemental Environmental Project involving the distribution of “water saver kits” by Metroplex school children, in lieu of paying an administrative penalty.

**Voluntary Cleanup Program [VCP]**

9-1-2000 TNRCC letter acknowledging DFW’s intention to submit future Voluntary Cleanup Program [VCP] applications for the Northwest and Northeast Cargo Areas. TNRCC stated that the cargo areas are presently eligible to enter the VCP subject to subsequent termination if future site assessments determine that cargo area contamination is associated with the Central Terminal Area contamination.

Voluntary cleanup issues vis a vis TNRCC NOE affecting central terminal area (CTA) leaves the issue of asserted hydrocarbon release and a sewer line break open to a subsequent NOE and Agreed Order. In response to the latter, EAD submitted an Application for Northwest and Northeast Cargo Areas into the Voluntary Compliance Program (VCP) as authorized and executed by DFW’s CEO, Jeffrey P. Fegan, on March 29, 2002, pursuant to TNRCC oversight. TNRCC Approved DFW’s VCP applications on May 2, 2002.

**United States Department of Justice (DOJ), US Attorney Northern District of Texas; United States Environmental Protection Agency (US EPA), Federal Bureau Of Investigation, (FBI) Texas Natural Resource Conservation Commission (TNRCC) joint investigation concluded May 22, 2001**

The one and one-half (1 ½) year DOJ, United States Attorney Office Criminal Enforcement Division, FBI, US EPA, and TNRCC joint criminal investigation for alleged violations of various environmental and Title 18 statutes by DFW’s Board, various tenants and individual DFW Board employees resulted in a finding that no Federal criminal prosecution will be sought at this time.

Plaintiff in this False Claims Act [Qui Tam] law suit alleges that “. . . DFW Airport. . . knowingly misrepresented to the FAA that DFW Airport was in compliance with all applicable federal and state water pollution laws and regulations, including the Clean Water Act and the Texas Water Code, in order to secure a finding from the FAA that the requirements imposed by applicable environmental statutes and regulations had been satisfied. A finding of satisfactory compliance is required for federal funding. The Plaintiff further alleges that . . . DFW Airport. . . intentionally concealed and omitted material information from the environmental assessments and knowingly failed to disclose that DFW Airport’s industrial wastewater (‘IW’) and storm water system grossly violated the Clean Water Act and the Texas Water Code because the system was constructed in such a way as to periodically discharge large amounts of untreated IW containing petroleum solvents, ethylene glycol and other pollutants directly into the waters of the United States and the waters in the State of Texas during routinely foreseeable rain events . . .”

The DFW Airport Board is represented in this matter by the law firm of White, Sims and Wiggins, LLP, et al. Motions to dismiss have been filed by the Board and it’s individual co-defendants in the United States District Court for the Northern District of Texas. The United States Environmental Protection Agency has declined to intervene this civil action in behalf of the People of the United States at this time.