

Chapter 7.
Permitting and Licensing Requirements

7 PERMITTING AND LICENSING REQUIREMENTS

Table 7.1 identifies and summarizes statutes, regulations, executive orders, and permitting requirements potentially applicable to construction and operation of the TCEP.

Table 7.1. Summary of Federal, State, and Local Laws, Regulations, Policies, and Plans Potentially Applicable to the TCEP

Laws, Regulations, Policies, and Plans	Description
FEDERAL	
Accidental Release Prevention Program/Risk Management Plans (40 C.F.R. Part 68)	These Clean Air Act regulations apply to facilities that may store quantities of toxic or flammable chemicals above listed thresholds. The requirements include conducting process hazards analyses, implementation of work practices to prevent releases, and development of site-specific risk management plans.
Acid Rain Permit (40 C.F.R. Parts 72 and 75)	This permit is required for utility units exceeding threshold limits specified in the regulations. The overall goal of the Acid Rain Emission Program is to achieve significant environmental and public health benefits through reductions in emissions of SO ₂ and NO _x , the primary causes of acid rain. This permit requirement is a part of the larger Title V permit, issued pursuant to the Clean Air Act.
American Indian Religious Freedom Act of 1978 (42 U.S.C. § 1996)	This act ensures the protection of sacred locations and access of Native Americans to those sacred locations and traditional resources that are integral to the practice of their religions.
Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. §§ 668–668d)	This law prohibits the take, possession, and commerce of golden eagles and bald eagles, their nests, and eggs except under certain specified conditions.

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Clean Air Act, Title I, IV, and V (40 C.F.R. Parts 50–95)	<p>This act establishes NAAQS set by EPA for certain pervasive pollutants. Specific permits required under the Clean Air Act are addressed separately.</p> <p><i>Applicable Titles:</i></p> <p><i>Title I, Air Pollution Prevention and Control, provides the basis for air quality and emission limitations, PSD permitting program, state implementation plans, New Source Performance Standards, and National Emissions Standards for HAPs.</i></p> <p><i>Title IV, Acid Deposition Control, establishes limitations on SO₂ and NO_x emissions, permitting requirements, monitoring programs, reporting and recordkeeping requirements, and compliance plans for emission sources. This title requires that emissions of SO₂ from utility sources be limited to the amounts of allowances held by the sources.</i></p> <p><i>Title V, Permitting, provides the basis for the Operating Permit Program and establishes permit conditions, including monitoring and analysis, inspections, certification, and reporting.</i></p> <p><i>State-administered programs for Clean Air Act compliance:</i></p> <p><i>Clean Air Interstate Rule (30 TEX. ADMIN. CODE Chapter 101, Subchapter H, Division 7) applies to any stationary, fossil fuel-fired gas turbine meeting the applicability requirements under 40 C.F.R. Part 96, Subpart AA or Subpart AAA. Clean Air Interstate Rule remains in effect, although it is under litigation.</i></p> <p><i>Clean Air Mercury Rule (30 TEX. ADMIN. CODE Chapter 101, Subchapter H, Division 8) requires new and existing coal-fired electric generating units to participate in an EPA-administered nationwide cap-and-trade system to reduce Hg emissions.</i></p> <p><i>General Air Operating Permit (30 TEX. ADMIN. CODE Chapter 122) is required for nonmajor sources designated by EPA, through rulemaking, and as specified by federal requirements. If EPA designated the TCEP as a nonexempt, nonmajor source, it would be required to obtain a federal, not a state, operating permit. Texas has no state operating permit program.</i></p>

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Clean Water Act, Title IV (33 U.S.C. §§ 1251 <i>et seq.</i> ; 40 C.F.R. Parts 104–140)	<p>This act focuses on improving the quality of water resources by providing a comprehensive framework of standards, technical tools, and financial assistance to address the many causes of pollution and poor water quality, including municipal and industrial waste water discharges, polluted runoff from urban and rural areas, and habitat destruction.</p> <p><i>Applicable Sections:</i></p> <p><i>Section 401, Water Quality Certification, provides states with the opportunity to review and approve, condition, or deny all federal permits or licenses that might result in a discharge to state or tribal waters, including wetlands. The major federal permit subject to Section 401 review is a Section 404 permit (see below). Every applicant for a Section 404 permit must request state certification that the proposed activity would not violate state or federal water quality standards.</i></p> <p><i>Section 402, National Pollutant Discharge Elimination System Permit, requires sources to obtain permits to discharge effluents and storm waters to surface waters. The Clean Water Act authorizes EPA to delegate permitting, administrative, and enforcement duties to state governments, with EPA retaining oversight responsibilities. The State of Texas has been delegated National Pollutant Discharge Elimination System authority and therefore would issue the National Pollutant Discharge Elimination System permit.</i></p> <p><i>Section 404, Permits for Dredged or Fill Material, regulates the discharge of dredged or fill material in the jurisdictional wetlands and waters of the U.S. The U.S. Army Corps of Engineers has been delegated the responsibility for authorizing these actions.</i></p> <p><i>State-administered programs for Clean Water Act compliance:</i></p> <p><i>Hydrostatic Test Water Discharge Permit (Texas Water Code, Chapter 26) if hydrostatic test water is discharged. A TPDES General Permit No. TXG670000 would be required.</i></p> <p><i>TPDES General Construction Storm Water Permit (Texas Water Code, Chapter 26) requires a TPDES permit if a storm water discharge occurs from construction sites disturbing 1 ac (0.5 ha) or more of land.</i></p> <p><i>TPDES General Industrial Storm Water Permit (Texas Water Code, Chapter 26) is required for storm water discharges associated with industrial activity.</i></p> <p><i>Guidance:</i></p> <p><i>EPA and the U.S. Army Corps of Engineers issued draft guidance on how agencies should identify waters protected by the Clean Water Act (Notice of Availability of draft guidance issued for comment on May 2, 2011; 76 Federal Register 24479) and how they should implement the Supreme Court’s decisions on this topic (i.e., Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (531 U.S. 159 (2001)) and Rapanos v. United States (547 U.S. 715 (2006)). When finalized, this guidance will supercede previously issued guidance on this matter.</i></p>
Compliance Assurance Monitoring Program (40 C.F.R. Part 64)	<p>The federal regulations implementing this program apply to major sources that must obtain a Title V operating permit pursuant to 40 C.F.R. Part 70. The compliance assurance modeling rules are primarily aimed at emission units that are individually above major source thresholds and that utilize control devices to comply with an emission limitation (40 C.F.R. § 64.2).</p>

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Determining Conformity of General Federal Actions to State or Federal Implementation Plans (40 C.F.R. Part 51, Subpart W and 40 C.F.R. Part 93)	States and local authorities are responsible for bringing their regions into compliance with NAAQS or in compliance with more stringent standards they may adopt. State implementation plans are EPA-approved plans that set forth the pollution control requirements applicable to the various sources addressed by each state implementation plan. Federal actions must be evaluated for conformity to the local state implementation plan if the project 1) is located in an EPA-designated nonattainment or maintenance area, 2) would result in emissions above major source threshold quantities of a criteria pollutants, 3) is not a listed exempt action, and 4) has not been accounted for in an EPA-approved state implementation plan.
Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §§ 11001 <i>et seq.</i> ; 40 C.F.R. Parts 302–372)	This act requires that inventories of specific chemicals used or stored on-site be reported on a periodic basis to appropriate local, state, and federal agencies. These regulations also require facilities that store, dispense, use, or handle extremely hazardous materials in excess of specified thresholds to report quantity data to specific agencies and organizations. The plant would manufacture, process, or otherwise use a number of substances subject to the act’s reporting requirements.
Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531 <i>et seq.</i> ; 50 C.F.R. Part 402)	Section 7 of this act requires any federal agency authorizing, funding, or carrying out any action to ensure that the action is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. Section 7 also imposes consultation requirements.
Exempt Wholesale Generator Status (15 U.S.C. §§ 79z–5a(e))	This exempts private generation from certain requirements for public utilities.
Farmland Protection Policy Act (7 U.S.C. §§ 4201 <i>et seq.</i>)	This act directs federal agencies to identify and quantify adverse impacts of federal programs on farmland. The act’s purpose is to minimize the number of federal programs that contribute to the unnecessary and irreversible conversion of agricultural land to nonagricultural uses.
Federal New Source Review/PSD Permit (40 C.F.R Part 51 and 40 C.F.R. § 52.21)	A component of the Clean Air Act, the PSD program was developed to prevent significant deterioration in the air quality of those areas that meet the NAAQS. In general, the New Source Review/PSD rules define a “major source” as any source with the potential to emit 250 tn (227 t) per year or more of a criteria pollutant. A more stringent threshold is defined for a limited number of “categorical sources,” source categories for which the PSD applicability threshold is 100 tn (91 t) per year of any criteria pollutant.
Plant Protection Act (7 U.S.C. §§ 7701 <i>et seq.</i>)	This act was established to control the spread of noxious weeds. It prohibits their movement in interstate or foreign commerce, except under permit.
Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. §§ 2901 <i>et seq.</i>)	This act encourages federal agencies to conserve and promote conservation of nongame fish and wildlife species and their habitats.
Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. §§ 661 <i>et seq.</i>)	This act requires federal agencies undertaking projects affecting water resources to consult with the USFWS and the state agency responsible for fish and wildlife resources.
GHG Reporting Program (40 C.F.R. Part 98)	Suppliers of fossil fuel or industrial GHGs, manufacturers of vehicles and engines, and facilities that emit 25,000 tn (22,680 t) or more per year of GHG emissions are required to submit annual reports to EPA in accordance with this Clean Air Act requirement.

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Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703–711)	This act protects birds that have common migration patterns between the U.S. and Canada, Mexico, Japan, and Russia. The act regulates the take and harvest of migratory birds, their nests, and eggs.
National Emissions Standards for HAPs rules (40 C.F.R. Parts 61 and 63)	A component of the Clean Air Act, National Emissions Standards for HAPs rules address health concerns that are considered too localized to be included under the scope of NAAQS. In general, the National Emissions Standards for HAPs rules apply to affected sources that are located at (or are themselves) major sources of HAP emissions, as defined in 40 C.F.R. § 63.2, that is, any stationary source that emits or has the potential to emit (considering controls in the aggregate) 10 tn (9 t) per year or more of any single HAP or 25 tn (23 t) per year or more of any combination of HAP.
NEPA of 1969, as amended (42 U.S.C. §§ 4321 <i>et seq.</i>)	NEPA requires federal agencies to analyze and describe the possible environmental impacts of major federal actions significantly affecting the quality of the human environment. This EIS was prepared in compliance with NEPA.
National Historic Preservation Act of 1996 (16 U.S.C. §§ 470 <i>et seq.</i> ; 36 C.F.R. Part 800)	Under Section 106 of this act, a federal agency is required to assess the potential impacts of a federal undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the NRHP. The federal agency must also afford the Advisory Council on Historic Preservation established under Title II of the act a reasonable opportunity to comment with regard to such undertaking.
Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. § 3001)	<p>This act directs the Secretary of the Interior to guide the repatriation of federal archaeological collections and collections that are culturally affiliated with Native American tribes and held by museums that receive federal funding. Major actions to be taken under this law include the following:</p> <p><i>The establishment of a review committee with monitoring and policymaking responsibilities</i></p> <p><i>The development of regulations for repatriation, including procedures for identifying lineal descent or cultural affiliation needed for claims</i></p> <p><i>The oversight of museum programs designed to meet the inventory requirements and deadlines of this law</i></p> <p><i>The development of procedures to handle unexpected discoveries of graves or grave goods during activities on federal or tribal land</i></p> <p><i>This act would only be applicable to the TCEP if human remains or artifacts are unearthed during construction activities.</i></p>
New Source Performance Standards (40 C.F.R. Part 60)	<p>The federal New Source Performance Standards, promulgated under the Clean Air Act, are technology-based standards applicable to new and modified stationary sources of regulated air emissions. Whereas the NAAQS emphasize on air quality in general, the New Source Performance Standards focus on particular sources of pollutants. The New Source Performance Standards program sets uniform emission limitations for approximately 70 industrial source categories or subcategories of sources that are designated by size as well as type of process.</p> <p>The New Source Review programs are administered by the State of Texas (Control of Air Pollution by Permits for New Construction or Modification, 30 TEX. ADMIN. CODE Chapter 116).</p>

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Noise Control Act of 1972, as amended (42 U.S.C. §§ 4901 <i>et seq.</i>)	This act directs federal agencies to carry out programs in their jurisdictions “to the fullest extent within their authority” and in a manner that furthers a national policy of promoting an environment free from noise that jeopardizes health and welfare.
Notice to the FAA (14 C.F.R. Part 77)	The FAA must be notified if any structure more than 200 ft (61 m) high would be constructed. The FAA would then determine if the structures would or would not be an obstruction to air navigation.
Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §§ 651 <i>et seq.</i>)	<p>This act requires employers to maintain condition standards or adopt practices reasonably necessary and appropriate to protect workers on the job.</p> <p><i>Applicable Rules:</i></p> <p><i>OSHA General Industry Standards (29 C.F.R. Part 1910) define the standards that employers must meet regarding various safety and health measures and/or issues. Examples of the general industry standards include requirements for walking and working surfaces; means of egress; powered platforms and lifts; occupational health and environmental controls; hazardous materials; personal protective equipment; general environmental controls; medical first aid; fire protection; compressed gas and air equipment; materials handling and storage; machinery and machinery guarding; hand and portable powered tools and other handheld equipment; welding, cutting, and brazing; electrical; commercial diving operations; and toxic and hazardous substances. The standards for special industries include provisions for electric power generation, transmission, and distribution, as well.</i></p> <p><i>OSHA Construction Industry Standards (29 C.F.R. Part 1926) define the standards that must be met, in addition to the general industry standards, specific to construction activities. Construction-specific standards are defined for general safety and health; occupational health and environmental controls; personal protective and life saving equipment; fire protection and prevention; signs, signals, and barricades; materials handling, storage, use, and disposal; hand and power tools; welding and cutting; electrical; scaffolds; fall protection; helicopters, hoists, elevators, and conveyors; motor vehicles, mechanized equipment, and marine operations; excavations; concrete and masonry construction; steel erection; underground construction, caissons, cofferdams, and compressed air; demolition; blasting and use of explosives; power transmission and distribution; rollover protective structures and overhead protection; ladders; commercial diving operations; and toxic and hazardous substances.</i></p>
Pollution Prevention Act of 1990 (42 U.S.C. §§13101 <i>et seq.</i>)	This act establishes a national policy for waste management and pollution control that focuses first on source reduction, and then on environmentally safe waste recycling, treatment, and disposal.
Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 <i>et seq.</i> and 40 C.F.R. Parts 239–299)	<p>This act regulates the treatment, storage, and disposal of solid and hazardous wastes. Resource Conservation and Recovery Act Title II, Solid Waste Disposal (known as the Solid Waste Disposal Act), regulates the disposal of solid wastes. Title II, Subtitle C—Hazardous Waste Management, provides for a regulatory system to ensure the environmentally sound management of hazardous wastes from the point of origin to the point of final disposal. Title II, Subtitle D—State or Regional Solid Waste Plans, requires all states to implement 'Solid Waste Plans' that maximize waste reduction and recycling.</p> <p>EPA has delegated authority for implementing Resource Conservation and Recovery Act to the State of Texas through 40 C.F.R. § 272.2201. Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units (30 TEX. ADMIN. CODE Chapter 305).</p>

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Safe Drinking Water Act of 1974 (42 U.S.C. §§ 300 <i>et seq.</i> : 40 C.F.R. Part 144)	This act gives EPA the authority to regulate public drinking water supplies by establishing drinking water standards, delegating authority for enforcement of drinking water standards to the states, and protecting aquifers from hazards such as injection of wastes and other materials into wells. The State of Texas implements the Safe Drinking Water Act in Texas (30 TEX. ADMIN. CODE § 290).
EXECUTIVE ORDERS	
Executive Order No. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations	This order directs federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.
Executive Order No. 13112, Invasive Species	This order directs federal agencies to 1) prevent the introduction of invasive (non-native) species or to monitor and control invasive (non-native) species, 2) provide for restoration of native species, 3) conduct research, 4) promote educational activities, and 5) exercise care in taking actions that could promote the introduction or spread of invasive species.
Executive Order No. 13175, Consultation and Coordination with Indian Tribal Governments	This order directs federal agencies to establish regular and meaningful consultation and collaboration with tribal governments in the development of federal policies that have tribal implications to strengthen U.S. government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates on tribal governments.
Executive Order No. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds	<p>This order requires federal agencies to avoid or minimize the negative impacts of their actions on migratory birds and to take active steps to protect birds and their habitats. Each federal agency taking an action having or likely to have a negative impact to migratory bird populations is directed to work with the USFWS to develop an agreement to conserve those birds.</p> <p>Further, federal agencies must avoid or minimize impacts to migratory bird populations, take reasonable steps that include restoring and enhancing habitat, prevent or abate pollution affecting birds, and incorporate migratory bird conservation into agency planning processes whenever possible.</p> <p>This order requires environmental analyses of federal actions to evaluate effects of those actions on migratory birds, to control the spread and establishment in the wild of exotic animals and plants that could harm migratory birds and their habitats, and either to provide advance notice of actions that could result in the <i>take</i> of migratory birds, or to report annually to the USFWS on the numbers of each species taken during the conduct of agency actions.</p>
Executive Order No. 13423, Strengthening Federal Environmental, Energy, and Transportation Management	Executive Order No. 13423 directs federal agencies to conduct their environmental, transportation, and energy-related activities in an environmentally, economically, and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.

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Executive Order No. 13514, Federal Leadership in Environmental, Energy, and Economic Performance	Executive Order No. 13514 sets sustainability goals for federal agencies and focuses on making improvements in their environmental, energy, and economic performance. This order establishes an integrated strategy promoting sustainability in the federal government, makes reduction of GHG emissions a priority for federal agencies, and sets goals in the areas of energy efficiency, acquisition, renewable energy, toxics reductions, recycling, renewable energy, sustainable buildings, electronics stewardship, fleets, and water conservation.
STATE	
Injection Wells (Texas Water Code, Chapter 27; 30 TEX. ADMIN. CODE Chapter 331)	It is the policy of this state and the purpose of this chapter to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries, taking into consideration the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy. Authorization from the RRC is required for injection into a reservoir that is productive of oil, gas, or geothermal resources. This permit will be required if Summit elects to dispose of waste water in an underground injection control well.
On-site Sewage Disposal Systems Septic Permit (30 TEX. ADMIN. CODE Chapter 285; Texas Health and Safety Code, Chapter 366)	A permit would be required for an on-site sewage facility.
Permit for Groundwater Withdrawal and Monitoring Wells (Texas Water Code, Chapter 36)	Permits would be required if the Underground Water Conservation District determines that ground water withdrawals need to be monitored as a result of the TCEP. Currently, no ground water conservation district has been established in Ector County.
Fluid Injection into Productive Reservoirs (16 TEX. ADMIN. CODE § 3.46)	The RRC has jurisdiction over wells into which fluids are injected for enhanced recovery of oil or natural gas as well as jurisdiction over injection wells for geologic storage of CO ₂ (16 TEX. ADMIN. CODE Rule § 3.30). A permit from the RRC is required for fluid injection operations in reservoirs productive of oil, gas, or geothermal resources.
Underground Storage of Gas in Productive or Depleted Reservoirs (16 TEX. ADMIN. CODE § 3.96)	The RRC has jurisdiction over wells into which fluids are injected for enhanced recovery of oil or natural gas as well as jurisdiction over injection wells for geologic storage of CO ₂ (16 TEX. ADMIN. CODE § 3.30). A permit from the RRC is required for operation of a gas storage project.
Registration of Power Generation Companies and Self-Generators (Public Utility Commission Substantive Rule § 25.109)	Power-generation plants operating in the state of Texas must register with the Public Utility Commission of Texas.
Texas Threatened and Endangered Species Regulations (31 TEX. ADMIN. CODE Chapter 65, Subchapter G and Texas Parks and Wildlife Code Chapter 68)	These laws and regulations protect threatened and endangered species in Texas by prohibiting the taking, possession, transportation, or sale of protected species without the issuance of a permit.
LOCAL	
City of Midland Zoning (Municipal Code 11-1)	The City of Midland Municipal Code: Zoning dictates the types of development or facilities that are allowed in various portions of the city.