

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §116.10, General Definitions; §116.110, Applicability; §116.116, Changes to Facilities; §116.603, Public Participation in Issuance of Standard Permits; §116.620, Installation and/or Modification of Oil and Gas Facilities; §116.621, Municipal Solid Waste Landfills; §116.710, Applicability; §116.715, General and Special Conditions; §116.721, Amendments and Alterations; §116.722, Distance Limitations; §116.750, Flexible Permit Fee; and new §116.119, De Minimis Facilities or Sources; §116.1010, Applicability; §116.1011, Multiple Plant Permit Application; §116.1014, Application Review Schedule; §116.1015, General and Special Conditions; §116.1020, Modifications; §116.1021, Amendments and Alterations; §116.1040, Multiple Plant Permit Public Notice; §116.1041, Multiple Plant Permit Public Comment Procedures; §116.1050, Multiple Plant Permit Application Fee; §116.1060, Multiple Plant Permit Renewal; and §116.1070, Delegation. Sections 116.10, 116.110, 116.116, 116.603, 116.620, 116.621, 116.710, 116.715, 116.722, and 116.750 are proposed as revisions to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE PROPOSED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the new source review authorizations under the Texas Clean Air Act (TCAA) and created the new program for the voluntary permitting of grandfathered facilities. Prior to the revisions by SB 766, the TCAA authorized the commission to issue permits for the construction or modification of facilities that will emit air contaminants; standard permits adopted by rule; and exemptions from permitting, also adopted by rule. SB 766 modified this structure by authorizing the commission to issue standard permits using a

process that does not require each standard permit to be in a rule. SB 766 provided a new name, permits by rule, for authorizations of certain types of facilities which would not make a significant contribution of air contaminants to the atmosphere. Exemptions from permitting now authorize only changes at insignificant facilities. Finally, the commission is now authorized to develop criteria for facilities that emit a de minimis amount of air contaminants that do not need preconstruction authorization. Within the category of permits, SB 766 created two new permitting options: the voluntary emission reduction permit (VERP) program for permitting of grandfathered facilities, and the multiple plant permit (MPP). SB 766 also amended TCAA, §382.0621(d) to require the increase of emission fees for the largest grandfathered facilities which do not have a permit application pending on or after September 1, 2001.

The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures.

This proposal implements the elements of SB 766 relating to MPPs and de minimis criteria, and administrative revisions relating to exemptions from permitting and permits by rule. This proposal also corrects several typographical errors and incorrect references. Other elements of SB 766, including exemptions from permitting, permits by rule, and emission fees are being addressed in concurrent proposals for new and amended sections in 30 TAC Chapter 101 and Chapter 106. TCAA, §382.051(b)(6) allows the commission to issue an MPP for existing facilities at multiple locations

subject to TCAA, §382.0518, Preconstruction Permit, or §382.0519, Voluntary Emissions Reduction Permit. TCAA, §382.05194, Multiple Plant Permit, provides for an MPP, which is a single permit for multiple plant sites that are owned or operated by the same person, if certain emission limits and public participation criteria are met. TCAA, §382.05101, De Minimis Air Contaminants, allows the commission to develop, by rule, the criteria for establishing a de minimis level of air contaminants for facilities or groups of facilities below which a permit under TCAA, §382.0518 or §382.0519, a standard permit under TCAA, §382.05195, or a Permit by Rule under TCAA, §382.05196 is not required. Essentially, the commission may establish a level of emissions of air contaminants for certain facilities or sources below which no preconstruction authorization is needed.

SECTION BY SECTION DISCUSSION

The proposed changes to §116.10 would modify existing definitions to reflect the recategorized air quality preconstruction permitting structure of the commission and to make nonsubstantive corrections. Section 116.10(2), the definition of “Allowable emissions” would be amended to reflect the new permits by rule, to clarify that §116.10(2)(C) pertains to “qualified” grandfathered facilities, and to reflect the current nomenclature for standard permit registration. Section 116.10(5), the definition of “Federally enforceable” would be amended to include permit requirements under Subchapter C of Chapter 116 (sources of hazardous air pollutants), which was inadvertently excluded in an earlier rulemaking. Section 116.10(9), the definition of “Modification of existing facility” would be amended to reflect TCAA, §382.003(9) by including reference to the new MPP.

The proposed changes to §116.110 would include references to the new permits by rule and the new criteria for de minimis facilities or sources as mechanisms under which construction or modification of a facility can occur and remove the redundant reference to “an existing flexible permit” in §116.110(b). The amendments also add the new permit by rule to the existing prohibition on the use of Chapter 106 authorizations for construction or modification of affected sources under Subchapter C of this chapter, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63).

Amendments to §116.116(c)(4) and (5) would correct an incorrect reference to a section which no longer exists. The correct reference is to §116.111(a)(2)(C), which discusses best available control technology. Amendments to §116.116(d) would include the necessary references to the new permits by rule under Chapter 106, and rearranges some wording for consistency.

The proposed new §116.119 establishes the criteria under which a facility would be considered de minimis and thus would not need a preconstruction authorization. The commission considers de minimis to refer to very small additions to background concentrations of air contaminants which cause no discernable or unacceptable impact to public health and for which permitting would be an ineffective use of commission resources. There would be four options for a facility or source to be considered de minimis. First, the commission will maintain a list of categories of facilities and sources that are considered de minimis. The list will not be incorporated into the rule, but will be maintained in the commission’s Office of Permitting, Remediation, and Registration in Austin with copies in each of the

commission's regional offices and on the commission's home page on the World Wide Web. The draft List of De Minimis Facilities or Sources is available on the commission's web page. The commission will finalize the list upon adoption of the rule. Once the rule is adopted and the list is finalized, the commission will consider the criteria listed in the rule for amendment of the list. Any person could petition the executive director to amend the list, and the executive director would consider the following when amending the list to ensure that facilities or sources included on the list are de minimis: typical operating scenarios, typical design and location, types and rates of air contaminants emitted, engineering judgement and experience, and toxicological or health impacts. Second, facilities or sources which use no more than prescribed amounts of the following materials at a site would be considered de minimis: cleaning and stripping solvents, coatings, dyes, bleaches, fragrances, and water-based surfactants or detergents. The amounts and materials in the rule were determined by input from the commission's regional offices, that are responsible for site inspections, and by engineering and toxicological review, including, in some cases, air dispersion modeling compared with the commission's effects screening levels (ESLs), which are described as follows, using typical design, location, and emission rates of facilities or sources using the materials. Third, de minimis facilities would also include those that are located inside a building and meet established emission rate caps, without the use of a control device, for individual and multiple substances. The emission rate caps are based on ESLs compared with off-property impacts using air dispersion modeling of a very small site. ESLs are substance-specific guideline comparison values used to determine whether measured air concentrations would be expected to result in adverse health or welfare effects. Finally, an individual facility or source, or groups of facilities or sources, could also be determined by the executive director,

on a case-by-case basis, to be de minimis considering: proximity to receptors, emission rates, engineering judgement and experience, and determination that no adverse toxicological effects would occur off-property. De minimis facilities or sources that are subsequently determined by the executive director to be in violation of any commission rule, permit, order, or statute would no longer be considered de minimis and would be required to obtain authorization under this chapter or under Chapter 106, Permits by Rule.

The amendment to §116.603 would also correct a reference to §39.411, Text of Public Notice, to the correct §122.506, Public Notice for General Operating Permits. The reference to the public notice procedures, for general operating permits, instead of to Chapter 39, does not reduce the amount of notice but merely clarifies the notice process to be used.

The amendments to §116.620 and §116.621 would reflect the new permits by rule and the subsequently revised title of Chapter 106.

The amendment to §116.710 would correct an incorrect reference. The correct reference is to §116.110(d), which discusses change in ownership.

Amendments to §§116.715, 116.721, and 116.750 would reflect the new permits by rule and the subsequently revised title of Chapter 106.

The amendment to §116.722 would correct an incorrect reference. The correct reference is to §116.112, which discusses distance limitations.

The proposed new §116.1010 contains conditions defining applicability for facilities eligible to be issued an MPP. TCAA, §382.051(b)(6) allows the commission to issue an MPP for existing facilities at multiple locations subject to TCAA, §382.0518, Preconstruction Permit, or §382.0519, Voluntary Emissions Reduction Permit. TCAA, §382.05194, Multiple Plant Permit, provides for an MPP which is a single permit for multiple plant sites that are owned or operated by the same person, if certain emission limits and public participation criteria are met. Consequently, to be eligible for consolidation under an MPP, the plant sites to be permitted must be owned or operated by the same person or persons under common control.

The aggregate rate of emission of air contaminants cannot exceed the total authorized in existing permits and the rate that would be authorized under any VERPs. There must also be no indication that emissions from the facilities will contravene the intent of the TCAA, including protection of the public's health and property. The MPP may not authorize emissions from any facility that would exceed that facility's highest historic annual rate or levels authorized in the most recent permit.

Consistent with commission practice, the highest historic rate would be determined one of two ways:

- 1) using data that shows the maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971 for 12 consecutive months, including any increases authorized by a permit by rule; or
- 2) best engineering judgement in the absence of records, i.e., using data related

to emissions (e.g., production, fuel firing, throughput, sulfur content, etc.) as appropriate, which are selected by the applicant and agreed upon by the executive director, to reasonably approximate the actual annual emission rate from any operational year. The executive director will use the emission rate data to establish emission rate limitations for each facility, the sum of which would not exceed the aggregate rate of emissions of air contaminants allowed under the MPP. This would be consistent with the commission's belief that the MPP would provide a flexible mechanism for permitting grandfathered facilities at multiple sites. Applicants would have the flexibility to over-control facilities at sites where the installation of controls is the most cost-effective. Once the rates are established in an MPP, permit holders would be required to amend or alter the permit, as appropriate, to move emissions from facility to facility or site to site.

Emission control equipment may not be removed except to maintain or upgrade existing controls or to reduce the impact of emissions. Applications for an MPP would be submitted on a Form PI-1M, Multiple Plant Permit Application.

The proposed new §116.1011 would implement the requirement in TCAA, §382.05194(g) that the commission establish, by rule, the procedures for application and approval for the use of an MPP. Applications would have to include information to demonstrate that applicable conditions of §116.711, Flexible Permit Application, are met. This demonstration would ensure that any applicable federal requirements are complied with and that information is available to determine what type of monitoring or recordkeeping would be required. For grandfathered facilities that would be included in an MPP

which is applied for prior to September 1, 2001, the applicant would be required to submit the information required for a VERP application under §116.811, Voluntary Emission Reduction Permit Application. For existing permitted facilities, applicants would need to provide a copy of the relevant permit. In addition, the commission would require information, as necessary, to verify that emissions of air contaminants from each facility would not adversely impact the public's health and physical property. Finally, since the aggregate emission rate under an MPP would be determined by the sum of existing permitted emission rates and VERP emission rates, applications for grandfathered facilities filed after September 1, 2001 would need authorization under Subchapter B of this chapter prior to being included in an MPP.

The new §116.1014 would commit the commission to reviewing MPP applications in accordance with §116.614, Application Review Schedule.

The new §116.1015 would allow for the inclusion of general and special conditions in MPPs and would require permit holders to comply with those general and special conditions, including special conditions which provide emission limitations for each facility and which specify the aggregate rate of emissions of air contaminants. Permit holders would also be required to comply with any applicable conditions contained in §116.115, General and Special Conditions.

TCAA, §382.05194 contains no provisions for modification of facilities under a multiple plant permit, as “modification of existing facilities” is defined in §116.10(9), General Definitions. Therefore, the new §116.1020 requires authorization under Subchapter B of this chapter before work is begun on the construction of the modification of any facility permitted under a multiple plant permit.

The new §116.1021 provides a mechanism to amend MPPs as necessary to include revised general and special conditions that reflect changes that cause a change in the method of control of emissions, the character of emissions, or will result in a significant increase in emissions. Permittees would submit a Form PI-1M to request such amendments. For certain changes, an MPP alteration would be allowed in lieu of amendment for those changes which do not require an MPP amendment. Alterations which involve changes of a general or special condition, or affect control equipment performance requires prior executive director approval. For alterations due to other changes, the executive director would be notified within ten days of the change, unless a different time frame is specified in the MPP. Any alteration request or notification would include information necessary to demonstrate that the change does not interfere with protection of the public’s health and physical property. Changes to a facility which meet an authorization under Chapter 106 would not require amendment or alteration of an MPP, as long as the aggregate emissions cap or an individual emission limitation would not be exceeded.

To implement the requirements of TCAA, §382.05194(d), the proposed new §116.1040 would require the commission to publish notice of a proposed MPP in a newspaper of general circulation in the area(s) to be affected and in the *Texas Register*. If the MPP will have statewide effect, the notice will be

published in the daily newspaper of largest circulation in Dallas and Houston. The notice will contain an invitation for written comments and will be published at least 30 days before the commission issues the MPP.

TCAA, §382.05194(e) requires the commission to hold a public meeting regarding proposed MPPs. Under the proposed new §116.1041, the commission would hold a public meeting on the proposed MPP with notice of the meeting provided in the same notice required under §116.1040 at least 30 days before the meeting. Consistent with TCAA, §382.05194(f), the commission would respond to public comment received related to the issuance of the MPP at the same time the commission issues or denies the MPP. The response would be made available to the public and each commenter will be mailed a response. Finally, consistent with TCAA, §382.05194(h), the proposed new section also states that applications for an MPP, amendments to an MPP, or revocation of an MPP which are filed before September 1, 2001 are not subject to Texas Government Code, Chapter 2001, meaning no contested case hearing would be allowed.

The new §116.1050 would require a fee of \$450 for an application for an MPP or MPP amendment. TCAA, §382.062(b) allows the commission to charge and collect a fee for MPPs. The flat fee would encourage the permitting of grandfathered facilities under an MPP, and \$450 is consistent with the fee charged under the VERP program.

The new §116.1060 would require MPPs to be renewed consistent with Subchapter D of this chapter.

Consistent with TCAA, §382.05194(i), the new §116.1070 allows the commission to delegate to the executive director any authority regarding MPPs.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed new sections and amendments are in effect there will be no significant fiscal implications for the commission and other units of state and local government as a result of administration or enforcement of the proposed new sections and amendments. The proposed amendments to Chapter 116, Control of Air Pollution By Permits For New Construction Or Modification, would implement certain provisions of SB 766, 76th Legislature, 1999, relating to the issuance of certain permits for the emission of air contaminants. The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures. These proposed amendments are the second phase of the implementation of SB 766. Other elements of SB 766 are addressed in concurrent proposals for new and amended sections in Chapters 101 and 106.

The proposed amendments would implement elements of SB 766 relating to the new MPPs, the new criteria for de minimis facilities/sources, the new nomenclature for referring to permits by rule and exemptions from permitting under Chapter 106, and administrative changes and corrections. The proposed amendments allow the commission to issue an MPP for existing facilities at multiple locations subject to the preconstruction permit or VERP provisions of the TCAA. An MPP is a single permit for multiple plant sites that are owned or operated by the same person or persons under common control, that may be issued if certain emission limits and public participation criteria are met. SB 766 also authorized the commission to establish a de minimis level of emissions of air contaminants for certain facilities or sources below which no authorization is required. A new section in Chapter 116 relating to De Minimis Air Contaminants contains the criteria for establishing a minimum level of air contaminants for facilities or groups of facilities below which a permit, a standard permit, or a permit by rule under TCAA is not required.

The purpose of the proposed amendments is to provide an additional permitting option under the MPP and to remove the need for preconstruction or other authorizations for de minimis facilities or sources. These new sections and amendments are intended to increase permitting options and flexibility, as well as make administrative changes and corrections in Chapter 116. The proposed amendments do not require additional emission controls, and the commission does not anticipate significant additional costs for persons or businesses applying the provisions of the proposed amendments. Owners or operators of grandfathered facilities that do not apply for an MPP by September 1, 2001 would not be eligible to

consolidate the facility under an MPP unless the facility was permitted under a new source review permit. However, participation in the MPP program is voluntary.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed new sections and amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be a potential reduction of air contaminants and an incentive for owners or operators of grandfathered facilities to obtain a permit under the MPP program, by September 1, 2001. Existing grandfathered facilities that are not permitted by this date would have to obtain a new source review permit in order to be eligible for consolidation under an MPP. The new de minimis category could encourage reductions in air contaminants in order to qualify for exclusion from permitting requirements.

These new sections and amendments are intended to increase permitting options and flexibility, as well as make administrative changes and corrections. The MPP and de minimis options are voluntary. Controls, consistent with the VERP program, would be required for inclusion of grandfathered facilities in an MPP. The cost of VERP controls was discussed in the Fiscal Note section of the proposed Chapter 116 preamble during the first phase of the SB 766 implementation (September 10, 1999 issue of the *Texas Register* (24 TexReg 78148)). The MPP is an additional option that essentially provides for flexibility in permitting grandfathered facilities, and the commission does not expect any significant costs for persons or businesses applying the provisions of the proposed amendments. Owners or

operators of grandfathered facilities that do not apply for an MPP by September 1, 2001 would not be eligible to consolidate the facility under an MPP unless the facility was permitted under a new source review permit. However, participation in the MPP program is voluntary.

SMALL AND MICRO-BUSINESS ANALYSES

No significant adverse effects are anticipated to small or micro-businesses as a result of implementing these new amendments. It is estimated that from 150 to 200 small or micro-businesses in Texas have grandfathered facilities. It is anticipated that none of these businesses are candidates for the MPP since most small businesses only have one site. It is anticipated that some small or micro-businesses will qualify as a de minimis facility. The proposed new sections concerning de minimis facilities or sources will remove the need for authorizations for these facilities, which could result in positive fiscal implications for some small and micro-businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These amendments provide additional permitting options and remove the

need for authorizations for de minimis sources. The proposed MPP and de minimis options in the proposed amendments are voluntary and the proposed amendments do not authorize any new emissions that will have an adverse effect on the environment. In addition, the proposed amendments do not impose any additional regulatory requirements beyond those that currently exist. These new sections and amendments do not meet the definition of “major environmental rule” because there is no adverse material effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1. exceed a standard set by federal law, unless the rule is specifically required by state law; 2. exceed an express requirement of state law, unless the rule is specifically required by federal law; 3. exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4. adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.” Specifically, these new sections and amendments do not exceed a standard set by state or federal law, but are proposed under the Texas Health and Safety Code, concerning De Minimis Air Contaminants; and Multiple Plant Permits. The proposed amendments do not exceed a requirement of a delegation agreement and were not developed solely under the general powers of the agency, but were specifically developed to implement the provisions of SB 766. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ANALYSIS

The commission has prepared a takings impact assessment for these proposed rules under Texas Government Code, §2007.043. The following is a summary of that assessment. These proposed rules expand permitting and authorization options for new and existing facilities. The proposed rules do not restrict or limit an owner's right to property that would otherwise exist in the absence of governmental action and therefore do not constitute a takings.

The proposed amendments concerning de minimis criteria, establish parameters for emissions, below which, a facility or site would be considered de minimis and thus not required to obtain preconstruction authorization. The new procedures for obtaining multiple plant permit provide an additional option for permitting of grandfathered facilities. The corrections cross-references and the insertion of the new term "permits by rule" are administrative in nature. These actions are reasonably taken to fulfill an obligation mandated under state law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable

goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the proposed new sections relating to de minimis, multiple plant permits, and permits by rule, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This action does not authorize any new emissions. This action is consistent with Title 40 Code of Federal Regulations because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during the public comment period on the consistency of the proposed rules with the CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in Austin at 10:00 a.m. on May 4, 2000 in Room 201A of Texas Natural Resource Conservation Commission Building B, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-029B-116-AI. Comments must be received by 5:00 p.m., May 8, 2000. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendment is also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the

commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed amendment implements §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

SUBCHAPTER A : DEFINITIONS

§116.10

§116.10. General Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Allowable emissions** - The authorized rate of emissions of an air contaminant from a facility as determined in accordance with this section. This rate cannot exceed any applicable state or federal emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title.

(A) **Permitted facility** - For a facility with a [preconstruction] permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a MAERT and any emission limit contained in representations in the permit application which was relied upon in

issuing the permit, plus any allowable emissions authorized [by an exemption] under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]).

(B) **Facility permitted by rule** [Exempted facility] - For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule [exemption], or the federally enforceable emission rate established on a PI-8 form.

(C) **Qualified grandfathered** [Grandfathered facility] - For a qualified grandfathered facility, the allowable emissions shall be the maximum annual emissions rate after the implementation of any air pollution control methods to become a qualified facility, plus 10% of the maximum annual emissions rate prior to the implementation of such control methods, but in no case shall the allowable emissions be greater than the maximum annual emissions rate prior to the implementation of such control methods. The maximum annual emissions rate is the emissions rate at the maximum annual capacity according to the physical or operational design of the facility, data from actual operations over a period of no more than 12 months that demonstrates the maximum annual capacity, or other information that demonstrates the maximum annual capacity. Except where a grandfathered facility has been modified, the allowable emissions for the modification shall be determined as a permitted facility.

(D) **Standard permit facility** - For a facility authorized by standard permit, other than §116.617(2) of this title (relating to Standard Permits for Pollution Control Projects), the allowable emissions shall be the maximum emissions rate represented in the registration to use [for] the standard permit.

(E) - (F) (No change.)

(3) - (4) (No change.)

(5) **Federally enforceable** - All limitations and conditions which are enforceable by the EPA, including:

(A) - (C) (No change.)

(D) any permit requirements established under 40 CFR §52.21; [or]

(E) any permit requirements established under regulations approved under 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program; or

(F) any permit requirements established under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(6) - (8) (No change.)

(9) Modification of existing facility - Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) - (E) (No change.)

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) (No change.)

(10) - (15) (No change.)

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 1 : PERMIT APPLICATION

§§116.110, 116.116, 116.119

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require pre-construction authorization; and TCAA, §382.051 and 382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments and new section are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere §382.061, which authorizes the

commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed amendments and new section implement §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.110. Applicability.

(a) Permit to construct. Before any actual work is begun on the facility, any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall either:

- (1) (No change.)

(2) satisfy the conditions for a standard permit under the requirements in:

(A) (No change.)

(B) Chapter 321, Subchapter B [K] of this title (relating to Concentrated Animal Feeding Operations);

(C) - (D) (No change.)

(3) satisfy the conditions for a flexible permit under the requirements in Subchapter G of this chapter (relating to Flexible Permits); [or]

(4) satisfy the conditions for facilities permitted by rule [exempt facilities] under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting.]); or

(5) satisfy the criteria for a de minimis facility or source under §116.119 of this title (relating to De Minimis Facilities or Sources).

(b) Modifications to existing permitted facilities. Modifications to existing permitted facilities may be handled through the amendment of an existing permit [or an existing flexible permit].

(c) Exclusion. Owners or operators of affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are not authorized to use:

(1) a permit by rule [an exemption] under Chapter 106 of this title;

(2) - (3) (No change.)

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

§116.116. Changes to Facilities.

(a) - (b) (No change.)

(c) Permit alteration.

(1) - (3) (No change.)

(4) A request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(a)(2)(C) [§116.111(3)] of this title.

(5) Permit alterations are not subject to the requirements of §116.111(a)(2)(C) [§116.111(3)] of this title.

(d) Permits by rule [and exemptions from permitting] under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]) in lieu of permit amendment or alteration.

(1) (No change.)

(2) All [exempted] changes authorized under Chapter 106 of this title to [, and permits by rule associated with,] a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.

(e) Changes to qualified facilities.

(1) - (4) (No change.)

(5) As used in this subsection, the term “physical and operational change” does not include:

(A) (No change.)

(B) changes to procedures regarding monitoring, determination of emissions, and recordkeeping that are required by a permit.

(6) - (8) (No change.)

(f) (No change.)

§116.119. De Minimis Facilities or Sources.

(a) Facilities or sources that meet the conditions of one or more of the paragraphs of this subsection are considered by the commission to be de minimis, which means that registration or authorization prior to construction is not required:

(1) categories of facilities or sources included on the list entitled “De Minimis Facilities or Sources;”

(2) facilities or sources at a site which, in combination, use the following materials at no more than the rate prescribed in subparagraphs (A) - (F) of this paragraph:

(A) cleaning and stripping solvents, 50 gallons per year;

(B) coatings (excluding plating materials), 100 gallons per year;

(C) dyes, 1,000 pounds per year;

(D) bleaches, 1,000 gallons per year;

(E) fragrances (excluding odorants), 250 gallons per year;

(F) water-based surfactants/detergents, 2,500 gallons per year;

(3) facilities or sources located inside a building at a site which meet the following emission rate caps based on effects screening levels (ESLs) without the addition of control devices, as defined in §101.1 of this title (relating to Definitions).

Figure: 30 TAC §116.119(a)(3)

Figure: 30 TAC §116.119(a)(3)

ESL of Substance(s)	Emission Rate Cap for Individual Substances, Sitewide		Emission Rate Cap for Multiple Substances, Sitewide	
	(pounds/day)	(tons/year)	(pounds/day)	(tons/year)
≥3500	5	0.9	10	2.4
1200-3499	3	0.5	6	1.3
400-1199	1	0.2	3	0.5
100-399	0.25	0.05	1	0.2

(4) any individual facility, source, or group of facilities or sources which the executive director determines to be de minimis based upon:

(A) proximity to receptors;

(B) rate of emission of air contaminants;

(C) engineering judgment and experience; and

(D) determination that no adverse toxicological or health effects would occur off property.

(b) De minimis facilities or sources at a site which are subsequently determined by the executive director to be in violation of any commission rule, permit, order, or statute within the commission's jurisdiction, will no longer be considered de minimis and must obtain registration or authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule).

(c) The "List of De Minimis Facilities or Sources" will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin, with copies maintained in the commission's regional offices, and on the commission's home page on the World Wide Web.

(1) Persons may petition the executive director to amend the "List of De Minimis Facilities or Sources" or the executive director may amend the list as necessary.

(2) When amending the list to add or delete categories of facilities, sources, or groups of facilities or sources, the executive director will consider, at a minimum, the following:

(A) typical operating scenarios;

(B) typical design and location;

(C) the types and rates of air contaminants emitted;

(D) engineering judgment and experience; and

(E) toxicological or health impacts.

SUBCHAPTER F : STANDARD PERMITS

§116.603, 116.620, 116.621

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require pre-construction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting

authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed amendments implement §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.603. Public Participation in Issuance of Standard Permits.

(a) (No change.)

(b) The contents of a public notice of a proposed standard permit shall be in accordance with §122.506 [§39.411] of this title (relating to Public Notice for General Operating Permits [Text of Public Notice]) except where clearly not applicable. Each notice will include an invitation for written comments by the public regarding the proposed standard permit. The public notice will specify a

comment period of at least 30 days and the public notice will be published not later than the 30th day before the commission issues a standard permit.

(c) - (f) (No change.)

§116.620. Installation and/or Modification of Oil and Gas Facilities.

(a) Emission specifications.

(1) - (3) (No change.)

(4) New or modified internal combustion reciprocating engines or gas turbines permitted under this standard permit shall satisfy all of the requirements of §106.512 of this title (relating to Stationary Engines and Turbines (Previously SE 6)), except that registration using the Form PI-7 or PI-8 shall not be required. Emissions from engines or turbines shall be limited to the amounts found in §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule [Exemption from Permitting]).

(5) - (10) (No change.)

(11) No facility which is located less than 1/4 mile from the nearest off-plant receptor shall be allowed to emit hydrogen sulfide H₂S or SO₂ process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section. No facility which is located at least 1/4 mile from the nearest off-plant receptor shall be allowed to emit H₂S or SO₂ process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section or unless the H₂S or SO₂ emissions are monitored with ambient property line monitors according to subsection (e)(1) of this section. Components in sweet crude oil or gas service as defined by Chapter 101 of this title (relating to General Air Quality Rules) are exempt from these limitations.

(12) - (18) (No change.)

(b) Control requirements.

(1) Floating roofs or equivalent controls shall be required on all new or modified storage tanks, other than pressurized tanks which meet §106.476 of this title (relating to Pressurized Tanks or Tanks Vented to Control (Previously SE 83)), unless the tank is less than 25,000 gallons in nominal size or the vapor pressure of the compound to be stored in the tank is less than 0.5 pounds per square inch absolute (psia) at maximum short-term storage temperature.

(A) - (D) (No change.)

(E) Independent of the permits by rule [exemptions] listed in this paragraph, if the emissions from any fixed roof tank exceed ten tpy of VOC or ten tpy of sulfur compounds, the tank emissions shall be routed to a destruction device, vapor recovery unit, or equivalent method of control that meets the requirements listed in subparagraph (D) of this paragraph.

(2) (No change.)

(c) Inspection requirements.

(1) Owners or operators who are subject to subsection (a)(7) or (8) of this section shall comply with the following requirements.

(A) - (I) (No change.)

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration [Office of Air Quality, New Source Review Permits Division] that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements.

This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) - (ii) (No change.)

(2) Owners or operators who are subject to subsection (a)(9) or (10) of this section shall comply with the following requirements.

(A) - (I) (No change.)

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration [Office of Air Quality, New Source Review Permits Division] that the monitoring schedule be revised based on the percent of valves. Leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has [have] been developed to justify the following modifications in the monitoring schedule.

(i) - (ii) (No change.)

(K) (No change.)

(3) (No change)

(d) - (e) (No change.)

§116.621. Municipal Solid Waste Landfills.

A person may claim a standard permit for the construction or modification to a municipal solid waste landfill (MSWLF) or municipal solid waste facility (MSW facility) as defined in §101.1 of this title (relating to Definitions), including, but not limited to, Type I, Type 1-AE, Type II, Type III, Type IV, Type IV-AE, Type VI, and Type IX sites as defined in §330.41 of this title (relating to Types of Municipal Solid Waste Sites).

(1) - (7) (No change.)

(8) The owner or operator of each MSWLF unit shall maintain complete and up-to-date records sufficient to readily determine continuous compliance with the requirements of this section for the previous five years of operation. All the records shall be maintained in an operating record in accordance with §330.113(b)(11) of this title (relating to Recordkeeping Requirements). The records shall be available for review upon request by representatives of the commission or any local air

pollution agency having jurisdiction. The following recordkeeping requirements shall apply, in addition to those specified in 40 CFR 60, Subpart WWW.

(A) Permit holders who are subject to the permits by rule [exemptions] of Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]), as specified in paragraph (4) of this section shall maintain any records specified in the permit by rule [exemption from permitting].

(B) (No change.)

SUBCHAPTER G : FLEXIBLE PERMITS

§§116.710, 116.715, 116.721, 116.722, 116.750

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require pre-construction authorization; TCAA, and §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere §382.061, which authorizes the commission to delegate permitting

authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed amendments implement §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.710. Applicability.

(a) (No change.)

(b) Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(d) [§116.110(c)] of this title, provided however, that all facilities covered by a flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual emission limitation prior to the transfer of the permit by the commission. After the sale of a facility, or

facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the commission.

(c) - (d) (No change.)

§116.715. General and Special Conditions.

(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions. Upon a specific finding by the executive director that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under §116.150 and §116.151 and §§116.160-116.163 of this title (relating to Nonattainment Review or Prevention of Significant Deterioration Review) or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), the permit may include a special condition which requires the permittee to obtain written approval from the executive director before constructing a facility under a standard permit or a permit by rule [an exemption] under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]).

(b) - (d) (No change.)

§116.721. Amendments and Alterations.

(a) - (c) (No change.)

(d) Permit by rule [Exemption] under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]) in lieu of permit amendment or alteration.

(1) Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for a permit by rule [an exemption] under Chapter 106 of this title unless prohibited by permit provision as provided in §116.715 of this title (relating to General and Special Conditions). All such changes permitted by rule [exempted changes] to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(2) (No change.)

§116.722. Distance Limitations.

No flexible permit may be issued unless the distance and location restrictions found in §116.112 [§116.117] of this title (relating to Distance Limitations) are met.

§116.750. Flexible Permit Fee.

(a) - (c) (No change.)

(d) Return of fees. Fees must be paid at the time an application for a flexible permit or flexible permit amendment is submitted. If the applicant withdraws the application prior to issuance of the flexible permit or flexible permit amendment, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which a permit by rule [an exemption] under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]) is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a flexible permit or flexible permit amendment has been issued by the agency.

SUBCHAPTER J : MULTIPLE PLANT PERMITS

**§§116.1010, 116.1011, 116.1014, 116.1015, 116.1020, 116.1021, 116.1040,
116.1041, 116.1050, 116.1060, 116.1070**

STATUTORY AUTHORITY

The new sections are proposed under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require pre-construction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The new sections are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the

executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new sections implement §382.05101, concerning De Minimis Air Contaminants; §382.051, concerning Permitting Authority of Commission; Rules; §382.05194, concerning Multiple Plant Permit; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.0513, concerning Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0518, concerning Preconstruction Permit; §382.057, concerning Exemption; §382.05196, concerning Permits by Rule; §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to the Executive Director.

§116.1010. Applicability.

(a) A person may obtain a multiple plant permit for existing facilities subject to TCAA, §382.0518 or §382.0519 at multiple plant sites that are owned or operated by the same person or persons under common control if:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing grandfathered facilities or for facilities authorized under Subchapter H of this chapter (relating to Voluntary Emission Reduction Permits), the rates that would be authorized under Subchapter H of this chapter; and

(2) there is no indication that the emissions from the facilities will contravene the intent of the TCAA, including protection of the public's health and physical property.

(b) A permit issued under this subchapter may not authorize emissions from any facility that exceeds that facility's highest historic annual rate or the levels authorized in the facility's most recent permit. The highest historic annual rate would be determined by either of the following:

(1) using data that shows the maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971 for 12 consecutive months, including any increases authorized by a permit by rule; or

(2) using data related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc.) as appropriate, which are selected by the applicant and agreed upon by the executive director, to reasonably approximate the actual annual emission rate from any operational year.

(c) Emissions control equipment previously installed at a facility permitted under this chapter may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

§116.1011. Multiple Plant Permit Application.

(a) An application for a multiple plant permit must include a completed Form PI-1M Multiple Plant Permit Application. The Form PI-1M must be signed by an authorized representative of the applicant. The Form PI-1M specifies additional support information which must be provided before the application is deemed complete. In order to be granted a multiple plant permit, the owner or operator of the existing facilities shall submit the following information to the commission:

(1) information to demonstrate compliance with applicable conditions of §116.711 of this title (relating to Flexible Permit Application);

(2) for grandfathered facilities, as defined in §116.10(6) of this title (relating to General Definitions) for which a multiple plant permit application is filed prior to September 1, 2001, the information required by §116.811 of this title (relating to Voluntary Emission Reduction Permit Application);

(3) for permitted facilities, the relevant permit;

(4) relevant information, indicating that the emissions from the facilities will not contravene the intent of the TCAA, including protection of the public's health and physical property.

(b) Grandfathered facilities which do not apply prior to September 1, 2001 must first obtain a permit under Subchapter B of this chapter (relating to New Source Review Permits) before they are eligible to be included in a multiple plant permit.

§116.1014. Application Review Schedule.

The multiple plant permit application will be reviewed by the commission in accordance with §116.614 of this title (relating to Application Review Schedule).

§116.1015. General and Special Conditions.

(a) Multiple plant permits may contain general and special conditions, including special conditions which provide emission limitation for each facility and which specify the aggregate rate of emissions of air contaminants. The holders of a multiple plant permit shall comply with any and all such conditions.

(b) Holders of multiple plant permits shall comply with §116.115 of this title (relating to General and Special Conditions), as applicable.

§116.1020. Modifications.

The owner or operator planning the modification of a facility permitted under a multiple plant permit must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification.

§116.1021. Amendments and Alterations.

(a) Multiple plant permit amendments. All representations in an application for a multiple plant permit, as well as any general and special conditions contained in the permit, become conditions upon which the subsequent multiple plant permit is issued. It shall be unlawful for any person to vary from such representation or condition if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions, unless application is made to the executive director to amend the multiple permit in that regard and such amendment is approved by the executive director or commission. Applications to amend a multiple plant permit shall be submitted with a completed Form PI-1M and are subject to the requirements of §116.1011 of this title (relating to Multiple Plant Permit Application).

(b) Multiple plant permit alterations.

(1) A multiple plant permit alteration is for any variation from a representation in a multiple plant permit application or a general or special condition of a multiple plant permit that does not require a multiple plant permit amendment.

(2) All multiple plant permit alterations which may involve a change in a general or special condition contained in the permit, or affect control equipment performance must receive prior approval by the executive director. The executive director shall be notified in writing of all other multiple plant permit alterations within ten days of implementing the change, unless the permit provides for a different method of notification. Any multiple plant permit alteration request or notification shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.1011 of this title, including the protection of public health and welfare. The appropriate commission regional office and any local air pollution program having jurisdiction shall be provided copies of all multiple plant permit alteration documents.

(c) Permit by rule under Chapter 106 of this title (relating to Permits by Rule) in lieu of permit amendment or alteration.

(1) Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for a permit by rule under Chapter 106 of this title unless prohibited by permit provision as provided in §116.1015 of this title (relating to General and Special Conditions). All such changes to a permitted facility authorized by Chapter 106 of this title, shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(2) Emission increases authorized by Chapter 106 of this title, at an existing facility covered by a multiple plant permit shall not cause an exceedance of the aggregate emissions cap or individual emission limitation.

§116.1040. Multiple Plant Permit Public Notice.

The commission will publish notice of a proposed multiple plant permit in the *Texas Register* and in a newspaper of general circulation in the area to be affected. If the multiple plant permit will affect the entire state, the commission will publish notice in *Texas Register* and in the daily newspaper of largest circulation in Dallas and Houston and in other regional newspapers, as appropriate. The notice will include an invitation for written comments by the public to the commission regarding the proposed multiple plant permit and will be published not later than the 30th day before the date the commission issues the multiple plant permit.

§116.1041. Multiple Plant Permit Public Comment Procedures.

(a) The commission will hold a public meeting to provide an additional opportunity for public comment. The commission will give notice of a public meeting under this section as part of the notice described in §116.1040 of this title (relating to Multiple Plant Permit Public Notice) not later than the 30th day before the date of the meeting.

(b) If the commission receives public comment related to the issuance of a multiple plant permit for existing facilities, the commission will issue a written response to the comments at the same time the commission issues or denies the permit. The response will be made available to the public, and the commission will mail the response to each person who made a comment.

(c) Applications for multiple plant permit issuance, amendment, or revocation which are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001.

§116.1050. Multiple Plant Permit Application Fee.

Any person who applies for a multiple plant permit or for an amendment to a multiple plant permit shall remit, at the time of application for such permit, a fee of \$450. Fees will not be charged for multiple plant permit alterations, changes of ownership, or changes of location of permitted facilities.

§116.1060. Multiple Plant Permit Renewal.

Multiple plant permits shall be renewed in accordance with Subchapter D of this chapter
(relating to Permit Renewals).

§116.1070. Delegation.

The commission may delegate to the executive director any authority in this subchapter.