

SUBCHAPTER J: MULTIPLE PLANT PERMITS
§§116.1010, 116.1011, 116.1014, 116.1015, 116.1020, 116.1021, 116.1040 - 116.1042,
116.1050, 116.1060, 116.1070
Effective October 20, 2002

§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) the emissions from the facilities will not 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, if the facility is grandfathered, or the levels authorized in the facility's most recent permit, if the facility is permitted. 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 (MPP) must include a completed application form. The application form must be signed by an authorized representative of the applicant. The form specifies additional support information which must be provided before the application is deemed complete. In order to be granted an MPP, the owner or operator of the existing facilities shall submit the following information to the executive director:

(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 an MPP application is filed prior to September 1, 2001, the information required by §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application) solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the permit;

(3) for permitted facilities, the relevant permit; and

(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 for an MPP 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 an MPP.

Adopted July 24, 2002

Effective August 15, 2002

§116.1014. Application Review Schedule.

The multiple plant permit application will be reviewed by the commission in accordance with §116.114 of this title (relating to Application Review Schedule).

Adopted August 9, 2000

Effective September 4, 2000

§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.

Adopted August 9, 2000

Effective September 4, 2000

§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.

Adopted August 9, 2000

Effective September 4, 2000

§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 is a modification, a change in the method of control of emissions, or will result in an increase in emissions, unless application is made to the commission to amend the multiple plant permit in that regard and such amendment is approved by the commission. Applications to amend a multiple plant permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.116(b) of this title (relating to Changes to Facilities).

(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.

Adopted August 9, 2000

Effective September 4, 2000

§116.1040. Multiple Plant Permit Public Notice and Public Participation.

(a) An application for a multiple plant permit (MPP) that is filed on or after September 1, 2001, is subject to the same procedural requirements of Chapters 39, 50, 55, and 80 of this title (relating to Public Notice; Action on Applications and Other Authorizations; Requests for Reconsideration and Contested Case Hearings, Public Comment; and Contested Case Hearings) that apply to applications processed under Subchapter B of this chapter (relating to New Source Review Permits), except that any required newspaper notice shall be published in accordance with subsection (b)(1)(A) of this section.

(b) Applications for MPP initial issuance, amendment, or revocation that are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001, and are subject to the notice and hearing process of TCAA, §382.05197, as provided in this subsection.

(1) An applicant for an MPP shall comply with the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits as specified in §39.403(d) of this title (relating to Applicability), except as provided by this section.

(A) An applicant for an MPP shall publish notice of intent to obtain the permit as required under §39.603 of this title (relating to Newspaper Notice), except that:

(i) the notice of a proposed MPP for existing facilities shall be published in one or more state-wide or regional newspapers that provide reasonable notice throughout the state; or

(ii) if the MPP for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected.

(B) The notice shall include a statement that the persons identified in paragraph (2) of this subsection are entitled to request a notice and comment hearing from the commission.

(C) The executive director may authorize an applicant for an MPP for an existing facility that constitutes or is part of a small business stationary source as defined in TCAA, §382.0365(h)(2) to provide notice using an alternative means if the executive director finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements.

(2) Any person who may be affected by emissions from a facility that is included in an MPP application under this subsection, or a member of the legislature from the general area in which the facility is located, may request the executive director to hold a notice and comment hearing on the MPP application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any notice and comment hearing request must be made in writing during the 30-day public comment period.

(3) Any hearing for an MPP application under this subsection shall be conducted under the procedures in §116.1041 of this title (relating to Multiple Plant Permit Notice and Comment Hearings).

(4) The executive director's response to public comments and the notice of decision on whether to issue or deny an MPP application under this subsection will be conducted under the procedures in §116.1042 of this title (relating to Notice of Final Action).

(5) A person affected by a decision to issue or deny an MPP application under this subsection may seek review under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

(c) For applications for renewal of an MPP, any required newspaper notice shall be published in accordance with subsection (b)(1)(A) of this section.

Adopted July 24, 2002

Effective August 15, 2002

§116.1041. Multiple Plant Permit Notice and Comment Hearings.

(a) The notice and comment hearing requirements apply only to an application filed before September 1, 2001, for a multiple plant permit (MPP) initial issuance, amendment, or revocation.

(b) The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if it determines that the basis of the request by a person who may be

affected by emissions from a facility that is included in an MPP application is unreasonable. If a hearing is requested by a person who may be affected by emissions from a facility that is included in an MPP application, and that request is reasonable, the executive director will hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the facility that is included in an MPP application is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

- (1) the time, place, and nature of the hearing;
- (2) a brief description of the purpose of the hearing; and
- (3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The executive director may set reasonable time limits for oral statements, and may require the submission of statements in writing.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the executive director may extend the period for submitting written comments beyond the close of the hearing.

(e) The agency will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

(g) Any supporting materials for comments submitted under subsection (f) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

- (1) already part of the administrative record in the same proceedings;
- (2) federal or state statutes, regulations, and rules;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(h) The executive director will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments relating to whether the draft permit complies with the requirements of this subchapter.

(j) The executive director will respond to comments consistent with §116.1042 of this title (relating to Notice of Final Action).

Adopted July 24, 2002

Effective August 15, 2002

§116.1042. Notice of Final Action.

(a) After the public comment period or the conclusion of any notice and comment hearing, notice will be sent by first class mail of the final action on the application for initial issuance, amendment, or revocation of a multiple plant permit that was filed before September 1, 2001. The notice will include the information required by §39.420(a)(1) - (2) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision) and will be sent to any person who commented during the public comment period or at the hearing, and to the recipients specified in §39.420(b)(1) - (3) and (5) - (6) of this title.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change; and

(3) a statement that any person affected by the decision of the executive director may seek review under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision), and may seek judicial review under TCAA, §382.032, Appeal of Commission Action.

Adopted July 24, 2002

Effective August 15, 2002

§116.1050. Multiple Plant Permit Application Fee.

Any person who applies for a multiple plant permit (MPP) shall remit, at the time of application for such permit, a fee of \$900.

(1) Fees will not be charged for MPP alterations, changes of ownership, or changes of location of permitted facilities.

(2) Fees must be paid at the time an application for a permit is submitted. No fees will be refunded after a deficient application has been voided.

Adopted September 25, 2002

Effective October 20, 2002

§116.1060. Multiple Plant Permit Renewal.

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

Adopted August 9, 2000

Effective September 4, 2000

§116.1070. Delegation.

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

Adopted August 9, 2000

Effective September 4, 2000