

SUBCHAPTER B: PERMIT REQUIREMENTS
DIVISION 1: GENERAL REQUIREMENTS
§§122.110, 122.120, 122.121
Effective March 4, 2010

§122.110. Delegation of Authority to Executive Director.

The executive director may take action on any permit on behalf of the commission.

Adopted August 9, 2000

Effective September 4, 2000

§122.120. Applicability.

(a) Except as identified in subsection (b) of this section, owners and operators of one or more of the following are subject to the requirements of this chapter:

(1) any site that is a major source as defined in §122.10 of this title (relating to General Definitions);

(2) any site with an affected unit as defined in 40 Code of Federal Regulations Part 72 subject to the requirements of the Acid Rain Program;

(3) any solid waste incineration unit required to obtain a permit under Federal Clean Air Act (FCAA), §129(e) (relating to Solid Waste Combustion);

(4) any site that is a non-major source which the United States Environmental Protection Agency (EPA), through rulemaking, has designated as no longer exempt or no longer eligible for a deferral from the obligation to obtain a permit. For the purposes of this chapter, those sources may be any of the following:

(A) any non-major source so designated by the EPA, and subject to a standard, limitation, or other requirement under FCAA, §111 (relating to Standards of Performance for New Stationary Sources);

(B) any non-major source so designated by the EPA, and subject to a standard or other requirement under FCAA, §112 (relating to Hazardous Air Pollutants), except for FCAA, §112(r) (relating to Prevention of Accidental Releases); or

(C) any non-major source in a source category designated by the EPA;

(5) any Clean Air Interstate Rule (CAIR) nitrogen oxides unit, as defined in 40 CFR §96.102, Definitions, if the CAIR nitrogen oxides unit is otherwise required to have a federal operating permit; or

(6) any CAIR sulfur dioxide unit, as defined in 40 CFR §96.202, Definitions, if the CAIR sulfur dioxide unit is otherwise required to have a federal operating permit.

(b) The following are not subject to the requirements of this chapter:

(1) any site that is a non-major source which the EPA, through rulemaking, has designated as exempt from the obligation to obtain a permit; or

(2) any site that is a non-major source which the EPA has allowed permitting authorities to defer from the obligation to obtain a permit

Adopted February 10, 2010

Effective March 4, 2010

§122.121. Prohibition on Operation.

Except as provided in §122.138 of this title (relating to Application Shield), owners and operators of sites identified in §122.120 of this title (relating to Applicability) shall not operate emission units at those sites without a permit issued or granted under this chapter.

Adopted October 15, 1997

Effective November 10, 1997

DIVISION 2: APPLICABILITY
§122.122
Effective April 17, 2014

§122.122. Potential to Emit.

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally-enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally-enforceable. Emission rates in new source review permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and certified registrations provided for under Chapter 106 of this title (relating to Permits by Rule) or Chapter 116 of this title are also federally-enforceable emission rates.

(b) All representations in any registration of emissions under this section with regard to emissions, production or operational limits, monitoring, and reporting shall become conditions upon which the stationary source shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification, in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the stationary source.

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in §122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site.

(1) Certified registrations established prior to December 11, 2002, shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after December 11, 2002, shall be submitted no later than the date of operation.

(3) Certified registrations established for greenhouse gases (GHGs) (as defined in §101.1 of this title (relating to Definitions)) on or after the effective date of the

United States Environmental Protection Agency's final action approving amendments to this section into the State Implementation Plan (SIP) shall be submitted:

(A) for existing sites that emit or have the potential to emit GHGs, no later than 12 months after the effective date of EPA's final action approving amendments to this section as a revision to the Federal Operating Permits Program; or

(B) for new sites that emit or have the potential to emit GHGs, no later than the date of operation.

(f) All certified registrations and records demonstrating compliance with a certified registration shall be maintained on-site and shall be provided, upon request, during regular business hours to representatives of the appropriate commission regional office and any local air pollution control agency having jurisdiction over the site. If however, the site normally operates unattended, certified registrations and records demonstrating compliance with the certified registration must be maintained at an office within Texas having day-to-day operational control of the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner.

Adopted March 26, 2014

Effective April 17, 2014

DIVISION 3: PERMIT APPLICATION
§§122.130, 122.132 - 122.134, 122.136, 122.138 - 122.140
Effective April 17, 2014

§122.130. Initial Application Due Dates.

(a) Owners or operators of any site subject to the requirements of this chapter on February 1, 1998, shall submit abbreviated initial applications by February 1, 1998. The executive director shall inform the applicant in writing of the deadline for submitting the remaining application information.

(b) Owners and operators of sites identified in §122.120 of this title (relating to Applicability) that become subject to the requirements of this chapter after February 1, 1998 are subject to the following requirements.

(1) If the site is a new site or a site that will become subject to the program as the result of a change at the site, the owner or operator shall not operate the change, or the new emission units, before an abbreviated application is submitted under this chapter. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(2) If the site becomes subject to the program as the result of an action by the executive director or the United States Environmental Protection Agency (EPA), the owner or operator will submit an abbreviated application no later than 12 months after the action that subjects the site to the requirements of this chapter.

(3) If the site becomes subject to the program as a result of rulemaking revision that adds greenhouse gas sources to the Federal Operating Permits Program, the owner or operator will submit an abbreviated application no later than 12 months after EPA's final action approving the Federal Operating Permits Program revision.

(c) Applications submitted under 40 Code of Federal Regulations (CFR) Part 71 (Federal Operating Permit Programs).

(1) If 40 CFR Part 71 is implemented in Texas by the EPA, applications will only be required to be submitted to the EPA.

(2) If all or part of 40 CFR Part 71 is delegated to the commission, information required by this chapter and consistent with the delegation will be required to be submitted to the commission.

§122.132. Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits.

(a) A permit application shall provide any information, including confidential information as addressed in Chapter 1 of this title (relating to Purpose of Rules, General Provisions), required by the executive director to determine the applicability of, or to codify, any applicable requirement or state-only requirement.

(b) An application for a general operating permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general operating permit.

(c) An applicant may submit an abbreviated initial permit application, containing only the information in this section deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(d) An application for a site qualifying under §122.131 of this title (relating to Phased Permit Detail) may be submitted under the phased permit detail process.

(e) An application shall include, but is not limited to, the following information:

(1) a general application form and all information requested by that form;

(2) for each emission unit, information regarding the general applicability determinations, which includes the following:

(A) the general identification of each potentially applicable requirement and potentially applicable state-only requirement (e.g., NSPS Kb);

(B) the applicability determination for each requirement identified under subparagraph (A) of this paragraph; and

(C) the basis for each determination made under subparagraph (B) of this paragraph;

(3) for each emission unit, except as provided in §122.131 of this title, information regarding the detailed applicability determinations, which includes the following:

(A) the specific regulatory citations in each applicable requirement or state-only requirement identifying the following:

(i) the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph;

(B) the basis for each applicability determination identified under subparagraph (A) of this paragraph;

(4) a compliance plan including the following information:

(A) the following statement "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term.";

(B) for all emission units addressed in the application, an indication of the compliance status with respect to all applicable requirements, based on any compliance method specified in the applicable requirements and any other credible evidence or information;

(C) for any emission unit not in compliance with the applicable requirements identified in the application, the following information:

(i) the method used for assessing the compliance status of the emission unit;

(ii) a narrative description of how the emission unit will come into compliance with all applicable requirements;

(iii) a compliance schedule (resembling and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the site is subject), including remedial measures to bring the emission unit into compliance with the applicable requirements; which shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

(iv) a schedule for the submission, at least every six months after issuance of the permit, of certified progress reports;

(D) for any emission unit requiring installation, testing, or final verification of operational status of monitoring equipment to satisfy the requirements of compliance assurance monitoring or periodic monitoring, the following information:

(i) an implementation plan and schedule for installing, testing, and performing any other appropriate activities prior to use of the monitoring; and

(ii) milestones for completing such installation, testing, or final verification;

(5) if applicable, information requested by the nationally-standardized forms for the acid rain portions of permit applications, and compliance plans required by the acid rain program;

(6) if applicable, a statement certifying that a risk management plan, or a schedule to submit a risk management plan has been submitted to the appropriate agency in accordance with FCAA, §112(r)(7) (Prevention of Accidental Releases);

(7) for applicants electing the phased permit detail process under §122.131 of this title, a proposed schedule for the incorporation of the remaining detailed applicability determinations into the permit;

(8) for applicants requesting a permit shield, any information requested by the executive director in order to determine whether to grant the shield;

(9) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official);

(10) fugitive emissions from an emission unit shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source; and

(11) for any application for which the executive director has not authorized initiation of public notice by June 3, 2001, any preconstruction authorizations that are applicable to emission units at the site;

(12) for emission units subject to compliance assurance monitoring, as specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), information specified in 40 Code of Federal Regulations (CFR) §64.3

concerning Monitoring Design Criteria; and §64.4 concerning Submittal Requirements, according to the schedule specified in §64.5 concerning Deadlines for Submittals.

(13) for emission units subject to periodic monitoring, as specified in §122.602 of this title (relating to Periodic Monitoring Applicability), proposed periodic monitoring requirements sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement, shall be submitted for the following permitting actions:

(A) permits issued under §122.201 of this title (relating to Initial Permit Issuance);

(B) permit renewals issued under §122.243 of this title (relating to Permit Renewal Procedures);

(C) permit reopenings issued under §122.231(a) and (b) of this title (relating to Permit Reopenings);

(D) significant permit revisions issued under §122.221 of this title (relating to Procedures for Significant Permit Revisions); and

(E) minor permit revisions issued under §122.217 of this title (relating to Procedures for Minor Permit Revisions).

(f) The executive director shall make a copy of the permit application accessible to the EPA.

(g) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement; however, any facilities that meet the requirements of §116.119 of this title (relating to De Minimis Facilities or Sources) are not required to be included in applications unless the facilities or sources are subject to an applicable requirement.

Adopted November 20, 2002

Effective December 11, 2002

§122.133. Timely Application.

A timely application for a permit is one that is submitted as follows:

(1) for initial permit issuance, in accordance with §122.130 of this title (relating to Initial Application Due Dates);

(2) for a permit renewal, at least six months, but no earlier than 18 months, before the date of permit expiration;

(3) for the initial authorization to operate under the general operating permit, in accordance with §122.130 of this title;

(4) for a renewal of an authorization to operate under a general operating permit, at least six months, but no earlier than 18 months, before the date of expiration of the authorization; and

(5) for the authorization to operate under a revised general operating permit, by the effective date of the revised general operating permit.

Adopted October 15, 1997

Effective November 10, 1997

§122.134. Complete Application.

(a) An application is complete on the 61st day after receipt by the executive director, unless the executive director has requested additional information or otherwise notified the applicant of incompleteness.

(b) Except as provided in subsection (c) of this section, a complete application for a permit shall include the following:

(1) for initial permit issuance, all information required in §122.132 of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits);

(2) for permit renewal, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted;

(3) for the initial authorization to operate under a general operating permit, information necessary to determine qualification for, and to assure compliance with, the general operating permit;

(4) for the renewal of an authorization to operate under a general operating permit, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted; or

(5) for the authorization to operate under a revised general operating permit, the information required by §122.504 of this title (relating to Application

Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded).

(c) An applicant may submit an abbreviated initial permit application, containing only the information in §122.132 of this title deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

Adopted May 9, 2001

Effective June 3, 2001

§122.136. Application Deficiencies and Supplemental Information.

(a) All applications submitted under this chapter are subject to the requirements of this section.

(b) If an applicant omits any relevant facts or submits incorrect information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error.

(c) An applicant shall provide additional information as necessary to address any applicable requirements or state-only requirements that become applicable to the site after the date the applicant files a complete application but prior to release of the draft permit. Such information is not required to be submitted prior to the executive director's technical permit review period.

(d) If while processing an application, the executive director determines that additional information is necessary to evaluate or take final action on that application, the executive director may request the information and set a reasonable deadline for a response.

Adopted May 9, 2001

Effective June 3, 2001

§122.138. Application Shield.

(a) Before the executive director takes final action on an application for initial permit issuance, renewal, or a general operating permit, failure to have a permit is not a violation of this chapter provided a timely and complete application has been submitted to the executive director.

(b) The executive director may remove the application shield if the applicant fails to submit by the deadline any additional information necessary to process the application.

Adopted October 15, 1997

Effective November 10, 1997

§122.139. Application Review Schedule.

The executive director shall take final action to approve, void, or deny permit applications according to the following schedule.

(1) For those initial applications required to be submitted by February 1, 1998, the executive director shall take final action on at least one-third of those applications annually.

(2) For any permit application containing an early reduction demonstration under FCAA, §112(i)(5) (Early Reduction), the executive director shall take final action no later than nine months after receipt of the complete application.

(3) Except as noted in paragraphs (1) and (2) of this section, the executive director shall take final action on an application for an initial permit or permit renewal no later than 18 months after the date on which the executive director deems the application complete.

Adopted May 9, 2001

Effective June 3, 2001

§122.140. Representations in Application.

The only representations in a permit application that become conditions under which a permit holder shall operate are the following:

(1) representations in an acid rain permit application;

(2) upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application; and

(3) any representation in an application which is specified in the permit as being a condition under which the permit holder shall operate.

Adopted November 20, 2002

Effective December 11, 2002

DIVISION 4: PERMIT CONTENT
§§122.142 - 122.148
Effective December 11, 2002

§122.142. Permit Content Requirements.

(a) The conditions of the permit shall provide for compliance with the requirements of this chapter.

(b) Each permit issued under this chapter shall contain the information required by this subsection.

(1) Unless otherwise specified in the permit, each permit shall include the terms and conditions in §§122.143 - 122.146 of this title (relating to General Terms and Conditions; Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(2) Each permit shall also contain specific terms and conditions for each emission unit regarding the following:

(A) the generally identified applicable requirements and state-only requirements (e.g., NSPS Kb);

(B) except as provided by the phased permit detail process, the detailed applicability determinations, which include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph sufficient to ensure compliance with the permit.

(3) Each permit for which the executive director has not authorized initiation of public notice by June 3, 2001 shall contain any preconstruction authorization that is applicable to emission units at the site.

(c) Each permit shall contain periodic monitoring requirements that are sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring,

reporting, or recordkeeping sufficient to assure compliance with the applicable requirement.

(d) For permits undergoing the phased permit detail process, the permit shall contain a schedule for phasing in the detailed applicability determinations consistent with §122.131 of this title (relating to Phased Permit Detail).

(e) For emission units not in compliance with the applicable requirements at the time of initial permit issuance or renewal, the permit shall contain the following:

(1) a compliance schedule or a reference to a compliance schedule consistent with §122.132(e)(4)(C) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits); and

(2) a requirement to submit progress reports consistent with §122.132(e)(4)(C) of this title. The progress reports shall include the following information:

(A) the dates for achieving the activities, milestones, or compliance required in the compliance schedule;

(B) dates when the activities, milestones, or compliance required in the compliance schedule were achieved; and

(C) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(f) At the executive director's discretion, and upon request by the applicant, the permit may contain a permit shield for specific emission units.

(g) Where an applicable requirement is more stringent than a requirement under the acid rain program, both requirements shall be incorporated into the permit and shall be enforceable requirements of the permit.

(h) Permits shall contain compliance assurance monitoring in accordance with the schedule specified in 40 Code of Federal Regulations §64.5 concerning Deadlines for Submittals.

(i) Any compliance assurance monitoring requirements for an emission unit shall satisfy the requirements for periodic monitoring.

§122.143. General Terms and Conditions.

Unless otherwise specified in the permit, the following general terms and conditions shall become terms and conditions of each permit.

(1) Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or of the EPA, except for those requirements addressed by a permit shield.

(2) The term of the permit shall not exceed five years from the date of initial issuance or renewal of the permit. The authorization to operate under a general operating permit shall not exceed five years from the date the authorization was granted or renewed.

(3) Consistent with the authority in Texas Health and Safety Code, Chapter 382, Subchapter B (Powers and Duties of Commission), the permit holder shall allow representatives from the commission or the local air pollution control program having jurisdiction to do the following:

(A) enter upon the permit holder's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) access and copy any records that must be kept under the conditions of the permit;

(C) inspect any emission unit, equipment, practices, or operations regulated or required under the permit; and

(D) sample or monitor substances or parameters for the purpose of assuring compliance with the permit at any time.

(4) The permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit. Except as provided for in paragraph (5) of this section, any noncompliance with either the terms or conditions codified in the permit or the provisional terms and conditions, if any, constitutes a violation of the FCAA and the TCAA and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit.

(5) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal or before the granting of a new authorization to operate.

(6) In every case, the applicable requirements and state-only requirements are always enforceable.

(7) The permit may be reopened for cause and revised or terminated. Permit terms or conditions remain enforceable regardless of the following:

(A) the filing of a request by the permit holder for a permit revision, reopening, or termination;

(B) a notification of planned changes or anticipated noncompliance;
or

(C) a notice of intent by the executive director for a permit reopening or termination.

(8) The executive director may request any information necessary to determine compliance with the permit or whether cause exists for revising, reopening, or terminating the permit. The permit holder shall submit the information no later than 60 days after the request, unless the deadline is extended by the executive director. Upon request, the permit holder shall also furnish to the executive director copies of records required to be kept by the permit, including information claimed to be confidential.

(9) If a state-only requirement is determined by the commission to be an applicable requirement, the permit holder shall submit an application for a significant permit revision for the incorporation of the requirement into the permit as an applicable requirement. The application shall be submitted no later than 12 months after the determination by the commission that the requirement is an applicable requirement.

(10) The permit holder shall pay fees to the commission consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(11) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(12) The permit does not convey any property rights of any sort, or any exclusive privilege.

(13) A copy of the permit shall be maintained at the location specified in the permit.

(14) For general operating permits, a copy of the permit, the enforceable general operating permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(15) Any report or annual compliance certification required by a permit to be submitted to the executive director shall contain a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(16) Representations in acid rain applications and applicability determinations, and the bases for the determinations in general operating permit applications are conditions under which the permit holder shall operate.

(17) No emissions from emission units addressed in the permit shall exceed allowances lawfully held under the acid rain program.

(18) State-only requirements will not be subject to any of the following requirements of this chapter: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

Adopted November 20, 2002

Effective December 11, 2002

§122.144. Recordkeeping Terms and Conditions.

Unless otherwise specified in the permit, the following recordkeeping requirements shall become terms and conditions of the permit.

(1) The permit holder shall maintain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. If an applicable requirement or state-only requirement specifies a longer data retention period, the records shall be maintained for at least the period of time specified in the applicable requirement or state-only requirement. The monitoring records shall include, but are not limited to, the following:

(A) the date, place as defined in the permit, and time of sampling or measurements;

(B) the date(s) analyses were performed;

- (C) the company or entity that performed the analyses;
- (D) the analytical techniques or methods used;
- (E) the results of such analyses;
- (F) the relevant operating conditions which are deemed necessary to characterize emission rates at the time of sampling or measurement;
- (G) the data from all calibration and maintenance records;
- (H) all strip-chart recordings for continuous monitoring instrumentation; and
- (I) copies of all reports required by the permit.

(2) Records may be stored electronically.

(3) All records required to be maintained by this chapter shall be maintained at the location specified in the permit or in the authorization to operate under a general operating permit.

(4) Records required by the permit, including confidential information, shall be provided, upon request, in a legible form, to representatives from the commission or the local air pollution control program having jurisdiction within a reasonable period of time.

(5) The EPA may require that the records be sent directly to the EPA along with any claim of confidentiality. Any confidentiality claim should be made in accordance with federal law, including 40 CFR 2.

(6) Permit holders shall maintain records of the duration of the stay at a site of any temporary source.

Adopted October 15, 1997

Effective November 10, 1997

§122.145. Reporting Terms and Conditions.

Unless otherwise specified in the permit, the following reporting requirements shall become terms and conditions of the permit.

(1) Monitoring reports.

(A) Reports of monitoring data required to be submitted by an applicable requirement, or by the permit, shall be submitted to the executive director.

(B) Reports shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting.

(C) The monitoring reports shall be submitted no later than 30 days after the end of each reporting period.

(D) The reporting of monitoring data does not change the data collection requirements specified in an applicable requirement.

(2) Deviation reports.

(A) The permit holder shall report, in writing, to the executive director all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.

(B) A deviation report shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting. However, no report is required if no deviations occurred over the six-month reporting period.

(C) The deviation reports shall be submitted no later than 30 days after the end of each reporting period.

(D) Reporting in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements and Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements) does not substitute for reporting deviations under this paragraph.

Adopted May 9, 2001

Effective June 3, 2001

§122.146. Compliance Certification Terms and Conditions.

Unless otherwise specified in the permit, the following compliance certification requirements shall become terms and conditions of the permit.

(1) The permit holder shall certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance.

(2) The certification shall be submitted to the executive director and the EPA administrator no later than 30 days after the end of the certification period.

(3) The executive director shall make a copy of the compliance certification accessible to the EPA.

(4) The certification shall be based on at a minimum, but not limited to, the monitoring method (or recordkeeping method, if appropriate) required by the permit to be used to assess compliance. If necessary, the permit holder shall identify any other material information that must be included in the certification to comply with FCAA, §113(c)(2), which prohibits knowingly making a false certification or omitting material information.

(5) The annual compliance certification shall include or reference the following information:

(A) the identification of each term or condition of the permit for which the permit holder is certifying compliance, the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data;

(B) for emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period;

(C) for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, the following information indicating the potentially intermittent compliance status of the emission unit:

(i) the identification of the emission unit;

(ii) the applicable requirement for which a deviation occurred;

(iii) the monitoring method (or recordkeeping method, if appropriate) used to assess compliance;

(iv) the frequency with which sampling, monitoring, or recordkeeping was required to be conducted by the monitoring or recordkeeping requirement of the permit; and

(v) the total number of times that the assessment required by the monitoring or recordkeeping method specified in the permit indicated that a deviation had occurred;

(D) the identification of all other terms and conditions of the permit for which compliance was not achieved; and

(E) the annual compliance certification does not need to include any information regarding facilities identified as de minimis under §116.119 of this title (relating to De Minimis Facilities or Sources) unless the facilities or sources are subject to an applicable requirement.

(6) The executive director may request additional information if necessary to determine the compliance status of an emission unit.

Adopted May 9, 2001

Effective June 3, 2001

§122.147. General Terms and Conditions for Compliance Assurance Monitoring.

(a) For permits that contain emission units subject to compliance assurance monitoring (CAM), unless otherwise specified in the permit, the following CAM general terms and conditions shall become terms and conditions of the permit.

(1) The permit holder shall install, calibrate, maintain, and operate a monitoring system according to the manufacturer's specifications or other written procedures that provide adequate assurance that the system would reasonably be expected to monitor accurately.

(2) At all times, the permit holder shall properly maintain the monitoring system, including, but not limited to, maintaining parts if necessary, for routine repairs of the monitoring system.

(3) The permit holder shall collect data at all required intervals during emission unit operation, except for, as applicable, monitoring malfunctions, repairs associated with monitoring malfunctions, and required quality assurance or control activities.

(A) Data recorded during monitoring malfunctions, repairs associated with malfunctions, and required quality assurance or control activities shall not be used for purposes of CAM.

(B) The permit holder shall maintain records of the beginning date and time, ending date and time, and cause (including unknown cause, if applicable) for monitoring downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable).

(C) The permit holder shall use all the data collected during all periods other than those identified in subparagraph (A) of this paragraph in assessing the operation of the control device and associated control system.

(D) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions and shall be considered deviations.

(4) All incidents of monitoring downtime recorded under paragraph (3)(B) of this subsection shall be reported in accordance with §122.145 of this title (relating to Reporting Terms and Conditions).

(5) The permit holder shall respond to deviations in the following manner.

(A) The permit holder shall restore operation to its normal manner as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(B) The permit holder shall minimize the period of any startup, shutdown, or malfunction and take any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of a deviation (other than those caused by excused startup or shutdown conditions).

(6) The permit holder, if necessary, shall within 30 days of discovery, apply for a permit revision, or submit an application for a new authorization to operate, consistent with the procedures of Subchapter C or F of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals; and General Operating Permits) if:

(A) the permit holder identifies a failure to achieve compliance with an emission limitation or standard, for which the approved monitoring did not indicate a deviation while providing valid data; or

(B) the results of compliance or performance testing document a need to modify the existing CAM requirements.

(7) CAM requirements established under this section are subject to §§122.144 - 122.146 of this title (relating to Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(8) The permit holder shall comply with the requirements of a quality improvement plan according to §122.606 of this title (relating to Compliance Assurance Monitoring Quality Improvement Plans), if required by the executive director.

(b) The permit holder must be in compliance with 40 Code of Federal Regulations §64.7 (Operation of Approved Monitoring).

Adopted November 20, 2002

December 11, 2002

§122.148. Permit Shield.

(a) At the discretion of the executive director, and upon request by the applicant, the permit may contain a permit shield for specific emission units. The permit shield is a special condition stating that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(b) In order for the executive director to determine that an emission unit qualifies for a permit shield, all information required by §122.132(e)(2), (3) and (8) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits) must be submitted with the permit application.

(c) The permit shall contain the following information for the emission units addressed by the permit shield:

(1) determinations by the executive director establishing one of the following:

(A) potentially applicable requirements or potentially applicable state-only requirements specifically identified during the application review process are not applicable to the source; or

(B) duplicative, redundant, and/or contradicting applicable requirements or state-only applicable requirements specifically identified during the

application review process are superseded by a more stringent or equivalent requirement; and

(2) a statement that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(d) Any permit that does not expressly state that a permit shield exists shall not provide a permit shield.

(e) Permit shield provisions shall not be modified by the executive director until notification is provided to the permit holder. No later than 90 days after notification of a change in a determination made by the executive director, the permit holder shall apply for the appropriate permit revision to reflect the new determination.

(f) Provisional terms and conditions are not eligible for a permit shield. Any permit term or condition, under a permit shield, shall not be protected by the permit shield if it is replaced by a provisional term or condition or the basis of the term or condition changes.

(g) Nothing in this section shall alter or affect the following:

(1) the provisions of FCAA, §303 (relating to Emergency Orders);

(2) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(3) the applicable requirements of the acid rain program; or

(4) the ability of EPA to obtain information from a source under FCAA, §114 (relating to Inspections, Monitoring, and Entry).

Adopted October 15, 1997

Effective November 10, 1997

DIVISION 5: MISCELLANEOUS
§§122.161, 122.162, 122.165
Effective December 11, 2002

§122.161. Miscellaneous.

(a) The commission shall not grant a variance, under Texas Health and Safety Code, §382.028, from the requirements of this chapter.

(b) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the commission or the EPA.

(c) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities, provided that the owner or operator has obtained any necessary preconstruction authorization.

(d) The requirements of Subchapter G of this chapter (relating to Periodic Monitoring and Compliance Assurance Monitoring) shall not be used to justify the approval of monitoring less stringent than the monitoring which is required by the TCAA, FCAA, or by a local air pollution control agency having jurisdiction over the site and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under the TCAA, FCAA, or by a local air pollution control agency having jurisdiction over the site.

(e) If after permit issuance or the granting of an authorization to operate under a general operating permit, a site no longer meets the applicability criteria in §122.120 of this title (relating to Applicability), the executive director may administratively void the permit or the authorization to operate under a general operating permit.

(1) The permit holder shall demonstrate in writing that a site no longer meets the applicability criteria in §122.120 of this title and request that the permit or authorization to operate under a general operating permit be administratively voided by the executive director.

(2) If it is determined that the site meets the applicability criteria in §122.120 of this title after a permit or authorization to operate is administratively voided by the executive director, the owner or operator may be subject to enforcement action.

Adopted November 20, 2002

Effective December 11, 2002

§122.162. Compliance History Requirements.

The executive director shall conduct compliance history reviews under Chapter 60 of this title (relating to Compliance History) for the following actions:

(1) initial permit issuances under §122.201 of this title (relating to Initial Permit Issuance);

(2) significant permit revisions under §122.221 of this title (relating to Procedures for Significant Permit Revisions);

(3) permit reopenings under §122.231(a) or (b) of this title (relating to Permit Reopenings);

(4) permit renewals under Subchapter C, Division 4 of this chapter (relating to Permit Renewals);

(5) initial acid rain permit issuances under §122.410 of this title (relating to Operating Permit Interface);

(6) acid rain permit revisions for fast-track modifications under §122.414(a)(2) of this title (relating to Acid Rain Permit Revisions);

(7) acid rain permit modifications under §122.414(a)(3) of this title;

(8) acid rain permit reopenings under §122.231(a) or (b) of this title;

(9) authorizations to operate under a general operating permit under §122.502 of this title (relating to Authorization to Operate); and

(10) renewals of authorizations to operate under a general operating permit under §122.505 of this title (relating to Renewal of the Authorization to Operate Under a General Operating Permit).

Adopted August 7, 2002

Effective August 29, 2002

§122.165. Certification by a Responsible Official.

(a) The following documents shall include a signed certification of accuracy and completeness:

(1) applications for initial permit issuance;

(2) applications for revisions;

- (3) applications for reopenings;
- (4) applications for renewals;
- (5) applications for general operating permits;
- (6) general operating permit application revisions;
- (7) reports required by the permit; and
- (8) annual compliance certifications.

(b) The certification of accuracy and completeness shall include the following statement: AI certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the attached documents are true, accurate, and complete.

(c) The certification shall be signed by the responsible official, who shall be one of the following:

(1) for a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) the delegation of authority to such representatives is approved in advance by the permitting authority;

(2) for a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) for a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(4) for affected sources:

(A) the designated representative insofar as actions, standards, requirements, or prohibitions under FCAA, Title IV or the regulations promulgated thereunder are concerned; and

(B) the designated representative, the alternate designated representative, or a person meeting the provisions of paragraphs (1), (2), or (3) of this subsection for any other purposes under 40 CFR 70.

(d) The responsible official need not be the same person for each required submittal, and the selection of a responsible official does not preclude the naming of a separate technical contact.

(e) The duly authorized representative need not be the same person for each required submittal, and the selection of a duly authorized representative does not preclude the naming of a separate technical contact.

(f) If the responsible official for the permit changes, the permit holder must maintain documentation of the change with permit. The permit holder must notify the executive director of any change in the responsible official no later than at the next submittal requiring certification under this chapter.

Adopted October 10, 1997

Effective November 15, 1997