

The Texas Natural Resource Conservation Commission (agency or commission) proposes amendments to §116.12, Nonattainment Review Definitions; §116.160, Prevention of Significant Deterioration Requirements; and §116.162, Evaluation of Air Quality Impacts. Sections 116.12, 116.160, and 116.162 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Texas state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes this rulemaking to correct the definitions of “building, structure, facility, or installation” and “secondary emissions” as defined in §116.12 and §116.160. This proposal would eliminate the inconsistency in the commission’s rules and the rules promulgated by the EPA on August 7, 1980, concerning the inclusion of marine vessel emissions in applicability determinations for prevention of significant deterioration (PSD) and nonattainment (NA) permits. The rulemaking would also revise §116.160 and §116.162 to incorporate updated federal regulation citations.

On August 7, 1980, the EPA promulgated regulations in the *Federal Register* (45 FR 52696) that defined “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.” In the preamble (45 FR 52695) to address whether dockside activities are included in the stationary source, the EPA established “purpose and control” criteria. The EPA discussed how the final definition of “building, structure, facility, or installation” would “encompass the activities of a marine terminal and only those dockside activities that would serve the purposes of the terminal directly and would be under the control of its owner or operator.” The EPA noted that the term “dockside activities” meant “those activities in which the ships

would engage while docked at the terminal.” The EPA stated that “The activities of a terminal itself would be stationary, but all ship activities would not be. Only those that would directly serve the purposes of the terminal, such as loading and unloading, would be stationary since they alone would be in a sense fixed to the particular site. Hence, ‘stationary source’ encompasses the activities of a marine terminal and only those dockside activities that would directly serve its purposes” (45 FR 52696). The EPA concluded that the “stationary source” definition was limited to those activities that were on contiguous or adjacent properties, thus, “only dockside activities would be located on ‘property’ that is contiguous or adjacent to the terminal,” and that the activities must be under the control of one person or one group of persons under common control. Thus, “stationary source” only includes the “activities at a terminal and those over which the owner or operator of the terminal would have control.” Finally, the EPA noted that the terminal activities and the dockside activities would fall under the same two-digit standard industrial classification code.

The EPA included a detailed analysis of vessel loading and unloading and specifically determined that vessel loading and unloading should be included in permit applicability determinations. The EPA concluded that loading and unloading “would in every case directly serve the purposes of the terminal and would be under the control of its owner or operator to a substantial extent.” Further, the EPA expected that no loading activities would occur without consent from the terminal owner or operator and that the terminal would have significant involvement in the scheduling for loading and unloading. Other dockside activities were not individually addressed, but the EPA stated that the determination would be based on the same two criteria of “purpose and control.” The EPA also stated that emissions resulting from propulsion of marine vessels as they approach or leave marine terminals (commonly

referred to as “to and fro emissions”) would be considered secondary emissions. Therefore “to and fro” emissions would not be included in applicability, but would be considered in the permit review. The definitions of “stationary source,” “building, structure, facility, or installation,” and “secondary emissions” are identical for purposes of PSD/NA permitting.

On July 15, 1981, the EPA issued a stay of the August 7, 1980 regulations (46 FR 36695) that, in part, reversed EPA’s decision that vessel emissions should be included in applicability determinations for PSD/NA permitting. On December 17, 1981, the stay was extended and the EPA proposed a revised regulation to remove dockside vessel emissions from consideration in PSD/NA permit applicability and review, based on a new interpretation that marine vessels are mobile sources within the meaning of Federal Clean Air Act, §110(a)(5) as codified in 40 United States Code (USC), §7410(a)(5) and that terminals would be indirect sources of pollution. On June 25, 1982 (47 FR 27554), the EPA promulgated a rule that specifically excluded dockside vessel emissions and “to and fro” emissions from PSD/NA applicability determinations and permit review on the basis that marine vessels are mobile sources.

The Natural Resources Defense Council (NRDC) challenged the June 25, 1982 regulations with regard to the marine vessel emissions issue. In *Natural Resources Defense Council vs EPA*, 725 F.2d 761 (D.C. Cir. 1984), the court vacated the portion of the June 25, 1982 regulation which excepts the activities of any vessel from the emissions attributable to marine terminals. By vacating that portion of the June 25, 1982 regulations the court “implicitly reinstated” the August 7, 1980 regulation which requires that dockside vessel emissions be included in PSD/NA permit applicability and review. The

court affirmed that portion of the EPA's 1982 rule which excluded "to and fro" vessel emissions from the definition of secondary emissions; thus, these emissions are not included in any PSD/NA permit applicability or review considerations. The court remanded the regulation so that the EPA could do a more detailed and specific analysis of each dockside activity to determine if it meets the two criteria in the 1980 rule ("purpose and control") and thus, should be included in applicability determinations for PSD/NA permits.

The commission believes that, even though the EPA has not initiated the court ordered review, the effect of the order is that the 1980 rules are effective and dockside vessel emissions are included in applicability determinations for PSD/NA permitting. However, because the EPA has not done the required rulemaking, the marine vessel sections of the vacated June 25, 1982 rules are still in the Code of Federal Regulations (CFR) in the definition of "building, structure, facility, or installation" in §52.21(b)(6) and §52.24(f)(2). In 1993, Chapter 116 was revised to incorporate the PSD/NA permitting requirements and definitions from the vacated 1982 regulations were included in §116.12(4) for NA and incorporated into §116.160(a) for PSD. This rulemaking will incorporate the correct federal regulation citations and definitions into Chapter 116.

In addition, several amendments to the federal PSD rules have been made since 1993 when the Chapter 116 PSD rules were last updated. This rulemaking will also update the federal PSD rules incorporated by reference into §116.160. These revisions will not have an impact on permit holders or applicants because the commission already conducts PSD reviews consistent with the most current PSD rules.

SECTION BY SECTION DISCUSSION

Subchapter A - 116.12, Definitions

As previously discussed, the commission proposes to amend §116.12(4), the definition of “building, structure, facility, or installation,” to delete the language... “except the activities of any vessel.” The amendment will make the definition in Chapter 116 consistent with the August 7, 1980 rule.

Subchapter B - Division 6, Prevention of Significant Deterioration Review

The commission proposes changes to §116.160(a) to incorporate the most recent version of PSD air quality regulations promulgated by the EPA in 40 CFR §52.21 as amended March 12, 1996, and the most recent version of 40 CFR §51.301, Definitions for Protection of Visibility, as amended on July 1, 1999.

The commission proposes to add a new §116.160(c) to specifically exclude the federal definition of “building, structure, facility, or installation” and “secondary emissions” contained in the CFR because it still contains the definitions from the June 25, 1982 rule which were vacated by the 1984 NRDC case. The commission also proposes to add definitions for these terms to §116.610(c) that reflect the requirements of the August 7, 1980 federal rule and the 1984 NRDC court decision.

Finally, the commission proposes to modify two references in §116.162 and to correct a typographical error. The commission proposes to revise §116.162(2) in order to clarify the reference to 40 CFR Part 60 related to reconstruction by identifying the specific section, 40 CFR §60.15, which relates to

reconstruction. In addition, the commission proposes to modify §116.162(3) by deleting the reference to 40 CFR §51.118(c) which does not exist in the current federal rule. The references to federal regulations in §116.162(2) - (4) are proposed for clarification through specifying the promulgation date of the federal regulation being referenced.

There have been many amendments to portions of 40 CFR §§51.100, 51.118, 51.164, 51.301, and 52.21 since the promulgation and amendment dates specified in §116.160(a) and §116.162. However all these 40 CFR amendments, except one, affected portions of the CFR which were excluded from the adoptions by reference in Chapter 116. Therefore, Chapter 116 only needs to be updated to reflect only one of the CFR amendments. The 1996 amendment to 40 CFR §52.21(b)(23)(i) (61 FR 9918) amended the definition of “significant.” The commission proposes to revise §116.160(a) to reflect the amendment date of 1996.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal implications for units of state or local government as a result of administration or enforcement of the proposed amendments.

The proposal is intended to make administrative changes, update definitions and references, and incorporate updated PSD air quality regulations promulgated by the EPA. The primary intent of this rulemaking is to eliminate inconsistency between the commission rules and the rules adopted by the

EPA concerning the inclusion of marine vessel emissions in applicability determinations for PSD and NA permits. The EPA requires that vessel emissions at marine docks be considered in PSD and NA permit applicability determinations. This proposal will make changes to the commission rules to more clearly reflect these federal requirements.

Examples of sources subject to these requirements are those sites which have marine vessel docks that ships and barges use to perform activities which produce air emissions. These could range from chemical plants and refineries to small vessel cleaning or loading operations. The specific number and location of affected facilities is unknown. The proposed amendments do not change or add additional federal regulatory requirements that are not already required; therefore, the commission does not anticipate any fiscal implications for units of state and local government due to implementation of the proposed amendments.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result on implementing the amendments will be protection of the environment through the continued enforcement of federal regulations requiring certain marine emissions be included in PSD and NA permit applicability determinations.

The proposal is intended to make administrative changes, update definitions and references, and incorporate updated PSD air quality regulations promulgated by the EPA in order to make the commission rules compatible with the EPA requirements to include vessel emissions at marine docks in

PSD and NA permits applicability determinations.

Examples of sources subject to these requirements are those sites which have marine vessel docks that ships and barges use to perform activities which produce air emissions. These could range from chemical plants and refineries to small vessel cleaning or loading operations. The specific number and location of affected facilities is unknown. The proposed amendments do not change or add additional federal regulatory requirements that are not already required; therefore, the commission does not anticipate any fiscal implications for individuals and businesses due to implementation of the proposed amendments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of administration or enforcement of the proposed amendments, because the proposed amendments do not add additional federal regulatory requirements that are not already required.

The proposal is intended to make administrative changes, update definitions and references, and incorporate updated PSD air quality regulations promulgated by the EPA in order to make the commission rules compatible with the EPA requirements to include vessel emissions at marine docks in PSD and NA permit applicability determinations.

The commission estimates that there are small or micro-businesses, such as small vessel cleaning or loading businesses, affected by these regulations; however, this proposal does not change or add

additional federal regulatory requirements that are not already required. Therefore, the commission does not anticipate any fiscal implications for small or micro-businesses due to implementation of the proposed amendments.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission does not believe that the proposed rules will have an adverse, material affect on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Changes to the commission's rules being proposed in this rulemaking correct the definitions of "building, structure, facility, or installation" and "secondary emissions," and incorporate by reference the most recent amendments to the PSD rules.

The proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only 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.

During the 75th Legislative Session, 1997, Senate Bill (SB) 633 amended the Texas Government Code to require agencies to perform a REGULATORY IMPACT ANALYSIS (RIA) of certain rules. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. If each rule proposed for implementation of federally required programs, such as PSD/NA permitting, was considered to be a major environmental rule that exceeds federal law, then every such rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Because the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission

believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature.

The agency has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245 (Tex. 1991); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App.--Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

These rules are proposed in order to meet the requirements of 40 CFR §52.21 and §52.24. Therefore, in addition to not exceeding an express standard set by federal law, these rules do not exceed state requirements, and are not adopted solely under the general powers of the agency because the provisions of the Texas Clean Air Act (TCAA) and Texas Water Code (TWC), provided in the STATUTORY AUTHORITY section of this preamble, provide the commission the authority necessary to implement the PSD/NA permit programs. The rules will achieve their stated purpose by correcting the definition of "building, structure, facility, or installation" and incorporating by reference of amendments to the

PSD rules. The remaining applicability criteria, pertaining to exceeding a delegation agreement or contract between the state and the federal government does not apply. Thus, the commission is not required to conduct a regulatory analysis as provided in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The following is a summary of that analysis. The purpose of this rulemaking is to address the inconsistencies which exist between Chapter 116 and the federal regulations for PSD/NA programs with regard to the definitions of “building, structure, facility, or installation” and “secondary emissions.” The rules will achieve their stated purpose by correcting the definitions of “building, structure, facility, or installation” and “secondary emissions” and incorporating by reference of the most recent amendments to 40 CFR §52.21 and §51.301. The proposed rules also delete an incorrect reference to a federal rule and more specifically identify certain federal regulations. Because the amendments are an action that is reasonably taken to fulfill an obligation mandated by federal law, the amendments meet the exception in Texas Government Code, §2007.003(b)(4). The commission has included elsewhere in this preamble the necessity for the proposed rules. For these reasons the rules do not constitute a takings under Chapter 2007 and do not require additional analysis.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the this rulemaking action 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 rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2) 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 reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that this rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rules is 31 TAC §501.12(1). This goal requires the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the proposed rules is 31 TAC §501.14(q), concerning policies for specific activities and coastal natural resource areas. Section 501.14(q) requires commission rules under the Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, to comply with the regulations in 40 CFR, adopted in accordance with 42 USC §§7401 *et seq.*, to protect and enhance air quality in the coastal areas so as to protect coastal natural resource areas and promote public health, safety, and welfare. The purpose of this rulemaking is to address the inconsistencies which exist between Chapter 116 and the federal regulations for PSD/NA programs with regard to the definitions of “building, structure, facility, or installation” and “secondary emissions.” The rules incorporate by reference the most recent amendments to 40 CFR §52.21 and §51.301. The proposed rules also delete an incorrect reference to a federal rule and more specifically identify certain federal regulations. These amendments are consistent with the previously stated goals and policies of the CMP.

Interested persons may submit comments during the public comment period on the consistency of the proposed rules with the CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE PSD AND NA PERMITS PROGRAM

This proposal deals exclusively with major sources subject to PSD/NA permits. The proposed rulemaking should not affect any new or existing sites because this rulemaking does not change the already existing requirements under the federal PSD/NA permitting programs. Therefore, this rulemaking does not subject sites to any new requirements, but merely clarifies the federal requirements. Owners or operators of major sources should be sure to consider dockside marine vessel emissions in applicability determinations for PSD and NA.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal on July 19, 2001, at 2:00 p.m., Building F, Room 2210, Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle, Austin, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-002-116-AI. Comments must be received by 5:00 p.m., July 23, 2001. For further information, please contact Karen Olson, Air Permits Division, at (512) 239-1294 or Joseph Thomas, Policy and Regulations Division, at (512) 239-4580.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; §5.105, which authorizes the commission to establish and approve commission policy; and under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the protection of the state's air; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits.

The proposed amendment implements TCAA, §§382.002, 382.017, 382.051, and TWC, §5.103, and §5.105.

**CHAPTER 116: CONTROL OF AIR POLLUTION BY PERMITS FOR NEW
CONSTRUCTION OR MODIFICATION
SUBCHAPTER A: DEFINITIONS**

§116.12

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the Texas Clean Air Act (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. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. 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 §116.150 and §116.151 of this title (relating to Nonattainment Review), shall have the following meanings, unless the context clearly indicates otherwise.

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

(4) Building, structure, facility, or installation - All of the pollutant-emitting activities which belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) [except the activities of any vessel]. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “major group” (i.e., which have the same two-digit code) as described in the

Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(5) - (18) (No change.)

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 6: PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§116.160 and §116.162

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; §5.105, which authorizes the commission to establish and approve commission policy; and under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the protection of the state's air; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits.

The proposed amendments implement TCAA, §§382.002, 382.017, 382.051, and TWC, §5.103, and §5.105.

§116.160. Prevention of Significant Deterioration Requirements.

- (a) Each proposed new major source or major modification in an attainment or unclassifiable

area shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the EPA in Title 40 Code of Federal Regulations (CFR) at 40 CFR §52.21 [52.21] as amended March 12, 1996 [June 3, 1993 (effective June 3, 1994)] and the Definitions for Protection of Visibility promulgated at 40 CFR §51.301 [51.301], as amended July 1, 1999, hereby incorporated by reference.

(b) (No change.)

(c) The definitions of building, structure, facility, or installation (40 CFR §52.21(b)(6)) and secondary emissions (40 CFR §52.21(b)(18)) are excluded and replaced with the following definitions:

(1) building, structure, facility, or installation - all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(2) secondary emissions - emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emission except as a result of the

construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(d) [(c)] The term "executive director" shall replace the word "administrator," except in 40 CFR §52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t) [52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t)]. "Administrator or executive director" shall replace "administrator" in 40 CFR §52.21(b)(3)(iii) [52.21(b)(3)(iii)], and "administrator and executive director" shall replace "administrator" in 40 CFR §52.21(p)(2) [52.21(p)(2)].

(e) [(d)] All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the PSD state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

§116.162. Evaluation of Air Quality Impacts.

In evaluating air quality impacts under §116.160 of this title (relating to Prevention of Significant Deterioration Requirements) or §116.161 of this title (relating to Sources Located in an

Attainment Area with a Greater Than De Minimis Impact), the owner or operator of a proposed new facility or modification of an existing facility shall not take credit for reductions in impact due to dispersion techniques as defined in Title 40 Code of Federal Regulations (CFR). The relevant federal regulations are incorporated herein by reference, as follows:

(1) (No change.)

(2) the definitions of “owner or operator,” “emission limitation and emission standards,” “stack,” “a stack in existence,” and “reconstruction,” as given under 40 CFR §51.100(f), (z), (ff), (gg), promulgated November 7, 1986, and 40 CFR §60.15 [60], promulgated December 16, 1975, respectively;

(3) 40 CFR §51.118(a) and (b) [51.118(a), (b), and (c)], promulgated November 7, 1986; and

(4) 40 CFR §51.164, promulgated November 7, 1986 [51.164].