

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§116.10, 116.111, 116.311, 116.615, 116.711, and 116.715. The commission also adopts new §§116.315, 116.778, 116.803, and 116.919. Sections 116.10, 116.111, 116.311, 116.315, 116.615, 116.711, 116.715, 116.778, 116.803, and 116.919 are adopted *with changes* to the proposed text as published in the May 24, 2002 issue of the *Texas Register* (27 TexReg 4526).

The new and amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In the May 24, 2002 issue of the *Texas Register* (27 TexReg 4526), the commission published a proposal which, in addition to containing the elements of this adoption, also proposed the optional incorporation of emissions resulting from routine maintenance, start-up, and shutdown (MSS) into new source review (NSR) permits. By making this proposal the commission sought to codify certain elements of a policy that has existed since February 2001 which allowed MSS incorporation.

Since the proposal, the commission has encountered, without clear resolution, certain issues concerning the incorporation of MSS and federal permitting requirements, including potential retroactive review for prevention of significant deterioration (PSD) or nonattainment (NA) determinations for those existing sources where the inclusion of MSS causes them to exceed the major source threshold of emissions. Additionally, EPA is preparing recommendations for changes to the federal NSR program regarding routine maintenance, repair, and replacement. Because federal developments relate directly to the

content and form of a state NSR program, the commission believes it is appropriate to pursue resolution of these issues before proceeding with rulemaking in this area. Therefore, the commission decided not to adopt the elements of the May 24, 2002 proposal relating to MSS emissions permitting. The commission proceeded with the adoption of requirements to include dockside vessel emissions as part of the standard emissions reviewed for applications for new permits, permit amendments, and permit renewals. Dockside vessel emissions are those emissions from the vessel that occur because of functions performed with onshore equipment.

The commission also adopted the rule amendments to implement the requirements of House Bill (HB) 3040, 77th Legislature, 2001 which amended the Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.065 (Acts 2001, 77th Legislature, Chapter 1166, §1). This legislation limits the commission's authority to perform over water modeling and effects evaluation of non-criteria air pollutants from shipyards in coastal waters when issuing a permit. This adoption also includes changes to implement portions of HB 2912, 77th Legislature, 2001, regarding new compliance history evaluation requirements for permit renewals. Additionally, this adoption includes changes to clarify permit renewal application content requirements and moves renewal submittal deadlines to a new section adopted in this rulemaking.

In a separate rulemaking also published in this issue of the *Texas Register*, the commission adopted amendments to sections of 30 TAC Chapter 101, General Air Quality Rules, concerning upset events and maintenance activities which included changes in section numbering and designation. This adoption

contains several references to sections within Chapter 101 which have been revised since proposal to correspond with the adopted Chapter 101 revisions.

Amendments to §116.115, General and Special Conditions, were originally proposed as part of this rulemaking. However, §116.115 needed to be opened as part of a separate rulemaking responding to EPA's notice of deficiency regarding the state's federal operating permits program (Rule Log Number 2002-043-122-AI). Therefore, §116.115 was withdrawn in the July 26, 2002 issue of the *Texas Register* (27 TexReg 6673), and is not discussed in this adoption preamble.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

The adopted amendments to §116.10, General Definitions, add definitions for dockside vessel and dockside vessel emissions. A dockside vessel is defined as any water-based transportation that is moored to land. Dockside vessel emissions are those emissions from the vessel that occur because of functions performed with onshore equipment. Because the definition of grandfathered facility was open in a separate rulemaking, the definitions for dockside vessel and dockside vessel emissions could not be placed in alphabetical order at proposal because that would have required renumbering the definition that was already open. The rulemaking that included the definition of grandfathered facility was adopted on May 22, 2002, and became effective on June 12, 2002. For this reason, the adopted definitions in this rulemaking have now been moved into alphabetical order and subsequent definitions renumbered accordingly. Since the commission did not adopt the revisions related to MSS emissions

permitting, the commission did not adopt the proposed definitions for routine maintenance, routine shutdown, or routine start-up in §116.10.

Subchapter B, New Source Review Permits

The adopted amendment to §116.111, General Application, requires that all dockside marine vessel emissions associated with onshore facilities or using onshore equipment be included in all permits. The commission determined that dockside vessels are facilities as defined in TCAA, §382.003(6), and thus subject to the requirements of Chapter 116. These emissions will require best available control technology (BACT) review, maximum allowable emission limitations, monitoring, testing, recordkeeping, and ambient air impacts review. The emissions originating from a dockside vessel that are the result of functions performed by onshore facilities or using onshore equipment include: loading and unloading of liquid bulk materials, liquified gaseous materials, and solid bulk materials; cleaning and degassing liquid vessel compartments; and abrasive blasting and painting.

The adopted amendments to §116.111 also implement the requirements of HB 3040. These amendments state that the commission, when conducting a permit review for a shipbuilding or ship repair operation, may not require or consider dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission corrected the term “permit” to “permit application” in adopted subsection (a)(2)(J). The commission did not adopt the proposed revisions in §116.111 related to MSS emissions permitting.

Subchapter D, Permit Renewals

The adopted amendment to §116.311, Permit Renewal Application, requires that owners or operators submit information that demonstrates that dockside emissions comply with all commission rules and regulations and the intent of the TCAA, including protection of the health and property of the public and the minimization of emissions to the extent practicable, consistent with good air pollution control practices. Existing dockside emissions will be reviewed for off-property effects considering magnitude, frequency, and duration. The commission did not adopt proposed new subsection (b) related to MSS emissions permitting; therefore, the renumbering of subsequent subsections (b) and (c) was unnecessary.

Adopted §116.311(c) implements portions of HB 2912 regarding new compliance history evaluation requirements for permit renewals. Previous language in §116.311(c) reflected parts of TCAA, §382.055(d)(1) and §382.056(o), which were amended by HB 2912. Although these sections, as they existed before amendment by HB 2912, will apply for purposes of consideration of compliance history for renewal applications which were submitted before September 1, 2002, HB 2912 provides that the amended sections apply to renewal applications submitted on or after September 1, 2002. Specifically, HB 2912 changes affect the language regarding substantial compliance with the provisions of the TCAA and the existing permit, as well as consequences when applicants are found to have a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including failure to make a timely and substantial attempt to correct any violations. The requirements of HB 2912 regarding compliance history evaluation and its consequences have been, and are continuing to be, administered by the commission through 30 TAC Chapter 60, Compliance History.

The adoption deletes existing §116.311(d) and (e) relating to permit renewal application submittal deadlines to clarify that §116.311 addresses only application content requirements. The renewal application submittal deadlines are moved to adopted new §116.315.

Adopted new §116.315, Permit Renewal Submittal, contains permit renewal dates which are transferred unchanged from existing §116.311(d) and (e). The renewal dates are being separated from permit content to conform with the format for pending rule proposals. The language has also been modified to indicate that permit renewal applications are due at least 90 days prior to permit expiration instead of within 90 days. This is to allow sufficient time for review and reflects current agency practice.

Subchapter F, Standard Permits

The adopted amendment to §116.615, General Conditions, requires that emissions from dockside vessel operations comply with the rules and regulations of the commission and comply with the intent of the TCAA, including protection of the health and property of the public. Any representation of emissions will become conditions under which the facility will be required to operate. The adopted amendment to §116.615(9) updates rule citations for consistency with a separate rulemaking published in this issue of the *Texas Register* which adopted revisions in Chapter 101. The commission did not adopt the proposed revisions in §116.615 related to MSS emissions permitting.

Subchapter G, Flexible Permits

The adopted amendment to §116.711, Flexible Permit Application, requires that emissions from dockside vessels be incorporated into new flexible permits. The adopted amendment to §116.711 also prohibits the commission from considering the effects of non-criteria air contaminants from shipyards over coastal waters consistent with the other amendments in this adoption that implement HB 3040. References to “undesignated heads” were also removed from the section as this term is obsolete. The commission corrected the term “permit” to “permit application” in adopted §116.711(10). The commission did not adopt proposed new subsection (b) related to MSS emissions permitting.

The adopted amendment to §116.715, General and Special Conditions, updates rule citations for consistency with a separate rulemaking published in this issue of the *Texas Register* which adopted revisions in Chapter 101. The commission did not adopt the proposed revisions in §116.715 related to MSS emissions permitting.

Subchapter H, Permits for Grandfathered Facilities

Division 2, Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits

Adopted new §116.778, Additional Requirements for Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits, requires that applicants for small business stationary source permits, pipeline facilities permits, or existing facility permits for grandfathered facilities represent, characterize, and quantify dockside vessel emissions. The phrase “consistent with good air pollution practices” was revised to “consistent with good air pollution control

practices” to be accurate. The commission did not adopt the proposed revisions in §116.778 related to MSS emissions permitting.

Division 3, Existing Facility Flexible Permits

Adopted new §116.803, Additional Requirements for Existing Facility Flexible Permit Applications, requires that applicants for existing facility flexible permits for grandfathered facilities quantify dockside vessel emissions. The phrase “consistent with good air pollution practices” was revised to “consistent with good air pollution control practices” to be accurate. The commission did not adopt the proposed revisions in §116.803 related to MSS emissions permitting.

Subchapter I, Electric Generating Facility Permits

Adopted new §116.919, Additional Requirements for Grandfathered Electric Generating Facility Permit Applications, requires that permits for electric generating facilities quantify dockside vessel emissions. The phrase “consistent with good air pollution practices” was revised to “consistent with good air pollution control practices” to be accurate. The commission did not adopt the proposed revisions in §116.919 related to MSS emissions permitting.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule, the specific intent of which, is to protect the

environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The principal intent of this adoption is to require the permitting of all air contaminant emissions associated with dockside vessel operations. Because these emissions are currently controlled, the commission does not expect this action to result in significant new expenses. This adoption also implements the requirements of HB 3040 relating to limitations to the consideration of air dispersion modeling for shipyard facilities and certain portions of HB 2912 concerning compliance history determinations.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a “major environmental rule” as defined in the Texas Government Code. Section 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. First, this rulemaking does not exceed a standard set by federal law, and the adopted technical requirements are consistent with federal applicability requirements for PSD or NA review. Second, this rulemaking does not exceed an express requirement of state law because it is authorized by the following state statutes:

TCAA, §382.016, which authorizes the commission to require the measuring and monitoring of air contaminant emissions from a source or activity and to require that associated records of the emissions be made and maintained; and §382.051, which authorizes the commission's permitting activities; as well as the other sections cited in the STATUTORY AUTHORITY section of this preamble. Third, this rulemaking does not 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. Fourth, this rulemaking was not developed solely under the general powers of the agency, but was specifically developed under the state laws and authorizations noted in the STATUTORY AUTHORITY section of this preamble. The commission invited public comment on the draft regulatory impact analysis determination. No comments on the determination were received.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, Chapter 2007. The principal intent of this rulemaking is to require the permitting of all air contaminant emissions associated with dockside vessel operations. This adoption also implements the requirements of HB 3040 relating to limitations to the consideration of air dispersion modeling for shipyard facilities and certain portions of HB 2912 related to compliance history.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. Therefore, the adopted rulemaking action does

not meet the definition of a taking under Texas Government Code, §2007.002(5) and these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and, therefore, required that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission's consistency determination for the adopted rules in accordance with 31 TAC §505.22 found that the rulemaking is consistent with the applicable CMP goal to protect and preserve the quality and values of coastal natural resource areas (31 TAC §501.12(1)) and the policy which requires that the commission protect air quality in coastal areas (31 TAC §501.14(q)). The adopted rulemaking requires the incorporation of dockside emissions into NSR permits, implements HB 3040 and portions of HB 2912, and accomplishes certain administrative changes. No new emissions are authorized by this adoption; therefore, the rulemaking is consistent with the applicable CMP goal and policy. The commission invited public comment regarding the consistency determination. No comments on the determination were received.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because Chapter 116 contains applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits), owners or operators subject to the Federal Operating Permit Program must, consistent with

the revision process in Chapter 122, revise their operating permits to include the revised Chapter 116 requirements for each emission unit affected by the revisions to Chapter 116 at their site.

PUBLIC COMMENTS

The commission held a public hearing on the proposal in Austin on June 10, 2002 at 2:00 p.m., Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 12100 Park 35 Circle. During the public comment period, which closed on June 17, 2002, the commission received comments from Birch and Becker, L.L.P. on behalf of the City of Garland, Greenville Electric Utility System, and San Miguel Electric Cooperative, Inc. (Birch); the EPA; Houston Sierra Club (HSC); and Dow Chemical Company (Dow) suggesting changes to the proposed rules. Comments were received from Texas Chemical Council (TCC); Association of Texas Intrastate Natural Gas Pipelines (ATINGP); Brown McCarroll, L.L.P. (BMC); Baker Botts, L.L.P on behalf of the Texas Industrial Project (TIP); and Association of Electric Companies of Texas, Inc. (AECT) in opposition to the adoption of the portion of the proposal related to MSS emissions permitting and suggesting changes. Comments were received from BMC on behalf of First Wave Marine (FWM) in support of the portion of the rulemaking implementing HB 3040 and suggesting changes.

RESPONSE TO COMMENTS

TCC, ATINGP, BMC, TIP, and AECT opposed adoption of the amendments related to MSS emissions permitting. TCC, ATINGP, BMC, and AECT generally based their opposition to the proposal on four issues: 1) the MSS portions of the proposed rules were not required or implied by state or federal statute; 2) the EPA is considering revisions to the federal NSR program and any state action now might

conflict; 3) the EPA final position on potential retroactive PSD or NA reviews had not been established; and 4) the rule was unnecessary as the current commission policy is to allow optional incorporation of MSS emissions into permits. ATINGP and AECT expressed concern that a program of optional MSS incorporation would evolve into a mandatory program. AECT also expressed concern regarding the definition of routine maintenance and the proposed §116.111(a)(2) and §116.311. BMC also stated that there is significant confusion and expense, and the rules are stricter than necessary. TCC and Birch also expressed concern regarding the proposed definitions of routine maintenance, routine shutdown, routine start-up, general and special conditions, and permit renewal applications. ATINGP also stated concerns with the sections regarding control technology and recordkeeping requirements. TIP stated that the rules are too prescriptive and that there are inconsistencies in the proposal.

Since making the proposal, the commission has encountered certain issues concerning the incorporation of MSS and federal permitting requirements without clear resolution, including potential retroactive review for PSD or NA determinations for those existing sources where the inclusion of MSS causes them to exceed the major source threshold of emissions. Additionally, EPA is preparing recommendations for changes to the federal NSR program. Because federal developments relate directly to the content and form of a state NSR program, the commission believes it is appropriate to pursue resolution of these issues before considering rulemaking in this area. Therefore, the commission decided not to adopt the elements of the May 24, 2002 proposal relating to MSS emissions permitting.

EPA commented that it does not endorse a blanket inclusion of routine MSS emissions at permit renewal. EPA stated that some facilities may have avoided an appropriate PSD or NA review through exclusion of these emissions. Similarly, the facility may have avoided major source classification and the application of BACT and lowest achievable emission rate. EPA requested that the commission clarify issues regarding the inclusion of MSS emissions including public notice, the effect on attainment demonstrations, and whether or not the inclusion of new or additional emissions will constitute a relaxation of the permit potential to emit.

The comments made by EPA are illustrative of the issues that must be resolved before the commission will proceed with rulemaking concerning MSS incorporation. EPA is also examining modifications to its NSR program which would likely affect how any state program on MSS incorporation would be structured. As previously stated, the commission has not adopted those elements of the proposal concerning MSS incorporation.

EPA recommended that the list in §116.10 for dockside vessel emissions be stated as illustrative rather than inclusive.

The commission modified the rule language to indicate that dockside vessel emissions may include activities other than those specifically listed in the definition of dockside vessel emissions in §116.10.

TIP commented that the inclusion of emissions from abrasive blasting and painting in the definition of dockside vessel emissions should be limited to shipyard operations and should not include emissions from incidental maintenance performed at marine loading facilities. TIP based this comment on commission guidance concerning dockside vessel emissions.

The commission did not change the definition of dockside vessel emissions in §116.10 in response to this comment. While abrasive blasting and painting are common operations at shipyards, those activities may not necessarily be limited to shipyards. The guidance cited by the commenter does mention shipyards as the most common location of abrasive blasting and painting but this does not limit the commission's jurisdiction over this activity at other locations such as marine terminals. Incidental maintenance on the vessel in the form of small scale painting or surface preparation would not be included in dockside vessel emissions provided that the activity is restricted to the vessel and does not use on-shore equipment or material. Also, any incidental maintenance performed on dockside vessels while they are docked may qualify for classification as *de minimis* under §116.119, De Minimis Facilities or Sources.

HSC commented that the definitions of routine maintenance and routine shutdown are different from the language of 30 TAC §106.263 and requests that the definitions be made identical to reduce confusion. Also, the commission should promulgate standard definitions and requirements for certain types of MSS so all companies will have these emissions included in their permits.

The commission did not adopt these definitions and will wait until the completion of federal actions on the definition of routine maintenance before addressing the issue further.

HSC commented that the proposed rules should contain quality assurance requirements and procedures for estimating of MSS emissions to prevent under-reporting.

The commission did not adopt the rule amendments concerning MSS emissions permitting, but retained the policy that allows the optional incorporation of MSS emissions into permits. Before any permit application is approved, it is reviewed by the permit engineer to assure that the representations and calculations relating to emissions from the facility are correct.

HSC commented that it seeks assurance from the commission that human error is not an acceptable justification for excess emissions, and that emissions that should be considered upsets are not characterized as routine MSS. HSC also suggested individual records for each occurrence of MSS emissions.

Human error alone is not an acceptable reason for excess emissions and would not be a sufficient reason for finding that excessive emissions are exempt from compliance with emissions limitations as provided for in §101.222, Demonstrations. Chapter 101 remains the principal method of excusing MSS emissions from enforcement and does require individual records for MSS events.

HSC stated that because the commission does not know the magnitude of existing MSS, these emissions should not be exempted from PSD or NA review. The commission needs to ensure that all existing MSS is declared.

The commission does not intend to exempt subject facilities from federal review in deciding not to adopt elements of the proposal related to MSS emissions. The commission recognizes that improvements in the accurate quantification of MSS emissions are probably necessary, and expects that the adopted changes to excessive emissions events and scheduled maintenance reporting rules, as well as changes to the reportable quantity of some highly reactive volatile organic compounds, which are part of a separate rulemaking also published in this issue of the *Texas Register*, and the ongoing evaluation of episodic emissions in the ozone NA areas of Houston/Galveston and Beaumont/Port Arthur will result in improvements to the inventory. To the extent that MSS emissions are properly reported in this inventory, they are already considered in SIP and PSD rule development. The improvements that remain to be made to the quantification of these emissions do not constitute a basis for determination of federal applicability review. It is the quantification itself that must serve as a basis for the determination.

HSC commented that the cost estimate of \$6,000 to \$10,000 per ton of pollutant removed is too pessimistic because the costs of pollution control will drop considerably as industry is required to reduce this form of emissions.

The commission based this estimate on retrofits of BACT and believes it represents a reasonable range of costs.

HSC requested a clarification of the term “coastal waters” as it appears in §116.111 and §116.711.

HSC does not want the term to be interpreted so broadly as to include freshwater areas.

The commission will interpret "coastal waters" consistent with the definition of that term in Natural Resource Code, §33.203(6), which states that coastal waters means waters under tidal influence and waters of the open Gulf of Mexico.

FWM requested that the commission modify the rules implementing HB 3040 to include all permitting actions of the commission under THSC, Chapter 382. FWM stated that the proposed rules appear to apply to permits issued under Chapter 116 only.

FWM is correct about the application of HB 3040 to all permitting actions under THSC, Chapter 382. Any changes to the permitting requirements of Chapter 116 will be incorporated into federal operating permits under Chapter 122. No modification to Chapter 122 is needed because permit conditions are not addressed in that chapter. There are currently no permits by rule in 30 TAC Chapter 106 that concern shipyard emissions and any authorization that is adopted under Chapter 106 will be evaluated for off-site effects according to TCAA, §382.05196. Therefore, the commission did not revise the rules in response to this comment.

SUBCHAPTER A: DEFINITIONS

§116.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under THSC, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §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 comprehensive plan for proper control of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; and §382.065, which prescribes duties of the commission regarding permitting of emissions from a shipyard.

§116.10. General Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to

Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Actual emissions** - The highest rate of emissions of an air contaminant actually achieved from a qualified facility within the 120-month period prior to the change. This rate cannot exceed any applicable federal or state emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title (relating to Changes to Facilities).

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

(A) **Permitted facility** - For a facility with a permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a maximum allowable emissions rate table and any emission limit contained in representations in the permit application which was relied upon in issuing the permit, plus any allowable emissions authorized under Chapter 106 of this title (relating to Permits by Rule).

(B) **Facility permitted by rule** - For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106,

Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule, or the federally enforceable emission rate established on a PI-8 form.

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

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

(E) **Special exemption facility** - For a facility operating under a special exemption, the allowable emissions shall be the emissions rate represented in the original special exemption request.

(F) The allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls.

(3) **Best available control technology (BACT)** - BACT with consideration given to the technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility.

(4) **Dockside vessel** - Any water-based transportation, platforms, or similar structures which are connected or moored to the land.

(5) **Dockside vessel emissions** - Those emissions originating from a dockside vessel that are the result of functions performed by onshore facilities or using onshore equipment. These emissions include, but are not limited to:

(A) loading and unloading of liquid bulk materials;

(B) loading and unloading of liquified gaseous materials;

(C) loading and unloading of solid bulk materials;

(D) cleaning and degassing of liquid vessel compartments; and

(E) abrasive blasting and painting.

(6) **Facility** - A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

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

(A) those requirements developed under Title 40 of the Code of Federal Regulations (CFR) Parts 60 and 61 (40 CFR 60 and 61);

(B) Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63));

(C) requirements within any applicable state implementation plan (SIP);

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

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

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

(8) **Grandfathered facility** - Any facility that is not a new facility and has not been modified since August 30, 1971.

(9) **Lead smelting plant** - Any facility which produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead-bearing ores or lead scrap, drosses, or other lead-bearing residues. Additional processing may include refining and alloying. A facility which only remelts lead bars or ingots for casting into lead products is not a lead smelting plant.

(10) **Maximum allowable emissions rate table (MAERT)** - A table included with a preconstruction permit issued under this chapter that contains the allowable emission rates established by the permit for a facility.

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

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, under the TCAA, §382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, an air pollution control method that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

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

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only under Chapter 106 of this title; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with TCAA, §382.060, as that section existed prior to September 1, 1991.

(12) **New facility** - A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

(13) **New source** - Any stationary source, the construction or modification of which is commenced after March 5, 1972.

(14) **Nonattainment area** - A defined region within the state which is designated by the EPA as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d).

(15) **Public notice** - The public notice of application for a permit as required in this chapter.

(16) **Qualified facility** - An existing facility that satisfies the criteria of either paragraph (9)(E)(i) or (ii) of this section.

(17) **Source** - A point of origin of air contaminants, whether privately or publicly owned or operated.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.111

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the THSC, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §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 comprehensive plan for proper control of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; and §382.051, which authorizes the commission's permitting activities; §382.0511, which allows the commission to consolidate various authorizations into a single permit and to process amendments to a consolidated permit; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA and adopt by rule permit conditions of general applicability; §382.0515, which requires that a person applying for an air permit must submit a permit application, demonstrations (plans and specifications) necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of the TCAA,

and any other necessary information; §382.0518, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and §382.065, which prescribes duties of the commission regarding permitting of emissions from a shipyard.

§116.111. General Application.

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission (TNRCC) Sampling Procedures Manual."

(C) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review. If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or

source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(L) Mass cap and trade allowances. If subject to Chapter 101, Subchapter H, Division 3, of this title (relating to Mass Emissions Cap and Trade Program), the proposed facility, group of facilities, or account must obtain allowances to operate.

(b) In order to be granted a permit, amendment, or special permit amendment, the owner or operator must comply with the following notice requirements.

(1) Applications declared administratively complete before September 1, 1999, are subject to the requirements of Chapter 116, Subchapter B, Division 3 (relating to Public Notification and Comment Procedures).

(2) Applications declared administratively complete on or after September 1, 1999, are subject to the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Request for Reconsideration and Contested Case Hearings; Public Comment). Upon request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

SUBCHAPTER D: PERMIT RENEWALS

§116.311, §116.315

STATUTORY AUTHORITY

The amendment and new section are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the THSC, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment and new section are also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §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 comprehensive plan for proper control of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA and adopt by rule permit conditions of general applicability; §382.055, which authorizes the commission to review and renew preconstruction permits and, under certain conditions, to impose appropriate air quality control requirements; and §382.065, which prescribes duties of the commission regarding permitting of emissions from a shipyard. The amendment and new section are also adopted under TWC, §5.753, which requires the commission, by rule, to develop a uniform standard for evaluating compliance history; and TWC, §5.754, relating to the classification and use of compliance history.

§116.311. Permit Renewal Application.

(a) In order to be granted a permit renewal, the permit holder shall submit information in support of the application which demonstrates that:

(1) dockside vessel emissions associated with the facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution practices.

(2) the facility is being operated in accordance with all requirements and conditions of the existing permit, including representations in the application for permit to construct and subsequent amendments, and any previously granted renewal, unless otherwise authorized for a qualified facility;

(3) the facility meets the requirements of any applicable New Source Performance Standards as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA under the authority of the FCAA, §111, as amended;

(4) the facility meets the requirements of any applicable emission standard for hazardous air pollutants as listed under Title 40 CFR Part 61, promulgated by EPA under the authority of the FCAA, §112, as amended; and

(5) the facility meets the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(6) the facility meets the requirements of Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(b) In addition to the requirements in subsection (a) of this section, if the commission determines it necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements, then:

(1) the applicant may be required to submit additional information regarding the emissions from the facility and their impacts on the surrounding area; and

(2) the commission shall impose as a condition for renewal only those requirements the executive director determines to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area.

(c) A compliance history review must be conducted in accordance with Chapter 60 of this title (relating to Compliance History).

§116.315. Permit Renewal Submittal.

(a) An application for renewal must be submitted at least 90 days prior to expiration of the permit or the permit will expire. The executive director may extend the time period for submitting an application.

(b) Any permit issued:

(1) before December 1, 1991, is subject for review 15 years after the date of issuance;

(2) on or after December 1, 1991, is subject for review every ten years after the date of issuance.

(3) at non-federal sources on or after December 1, 1991, may, for cause, contain a provision requiring renewal between five and ten years.

SUBCHAPTER F: STANDARD PERMITS

§116.615

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the THSC, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §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 comprehensive plan for proper control of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA and adopt by rule permit conditions of general applicability; §382.0515, which requires that a person applying for an air permit must submit a permit application, demonstrations (plans and specifications) necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of the TCAA, and any other necessary information; §382.05195, which authorizes the commission to issue standard permits for new or existing similar facilities; and §382.065, which prescribes duties of the commission regarding permitting of emissions from a shipyard.

§116.615. General Conditions.

The following general conditions are applicable to holders of standard permits, but will not necessarily be specifically stated within the standard permit document.

(1) Protection of public health and welfare. The emissions from the facility, including dockside vessel emissions, must comply with all applicable rules and regulations of the commission adopted under Texas Health and Safety Code, Chapter 382, and with intent of the TCAA, including protection of health and property of the public.

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). If the facility remains eligible for a standard permit, the owner or operator of the facility shall notify the executive director of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of changes in representations must be received by the executive director no later than 30 days after the change.

(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under §116.110 of this title (relating to Applicability) shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.

(4) Construction progress. Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office not later than 15 working days after occurrence of the event, except where a different time period is specified for a particular standard permit.

(5) Start-up notification.

(A) The appropriate air program regional office of the commission and any other air pollution control program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by a standard permit in such a manner that a representative of the executive director may be present.

(B) For phased construction, which may involve a series of units commencing operations at different times, the owner or operator of the facility shall provide separate notification for the commencement of operations for each unit.

(C) Prior to beginning operations of the facilities authorized by the permit, the permit holder shall identify to the Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(D) A particular standard permit may modify start-up notification requirements.

(6) Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the Office of Air Quality and any other air pollution control program having jurisdiction prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(7) Equivalency of methods. The standard permit holder shall demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the standard permit. Alternative methods must be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the standard permit.

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, the EPA, or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.

(9) Maintenance of emission control. The facilities covered by the standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping).

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions

precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

SUBCHAPTER G: FLEXIBLE PERMITS

§116.711, §116.715

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the THSC, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §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 comprehensive plan for proper control of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; and §382.051, which authorizes the commission's permitting activities; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA and adopt by rule permit conditions of general applicability; §382.0515, which requires that a person applying for an air permit must submit a permit application, demonstrations (plans and specifications) necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of the TCAA, and any other necessary information; §382.0518, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and

§382.065, which prescribes duties of the commission regarding permitting of emissions from a shipyard.

§116.711. Flexible Permit Application.

Any application for a new flexible permit or flexible permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be provided before the application is deemed complete. In order to be granted a flexible permit or flexible permit amendment, the owner or operator of the proposed facility shall submit information to the commission which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the proposed facility, group of facilities, or account as determined under §116.716 of this title (relating to Emission Caps and Individual Emission Limitations), will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people. In considering the issuance of a flexible permit for construction or modification of any facility, group of facilities, or account within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility, group of facilities, or account may have on the individuals attending these school facilities.

(2) Measurement of emissions. The proposed facility, group of facilities, or account will have provisions for measuring the emission of air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual."

(3) Best available control technology (BACT). The proposed facility, group of facilities, or account will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility on a proposed facility, group of facilities, or account basis. Control technology beyond BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities or account basis, provided however, that the existing level of control may not be lessened for any facility. For new facilities and proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), the use of BACT shall be demonstrated for the individual facility or affected source.

(4) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR), Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the EPA under authority granted under the FCAA, §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under the FCAA, §112, as amended.

(6) NESHAPS for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable MACT standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)).

(7) Performance demonstration. The proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit application. The applicant may be required to submit additional engineering data after a flexible permit has been issued in order to demonstrate further that the proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit. In addition, initial compliance testing with ongoing compliance determined through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing may be required.

(8) Nonattainment review. If the proposed facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements concerning nonattainment review in this chapter.

(9) Prevention of Significant Deterioration (PSD) review. If the proposed facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements in this chapter concerning PSD review.

(10) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's New Source Review Permits Division to determine the air quality impacts from the facility, group of facilities, or account. In conducting a review of a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(11) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the proposed source is an affected source (as defined in §116.15(1) of this title), it shall comply with all applicable requirements under Subchapter C of this chapter.

(12) Mass cap and trade allocations. If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

(13) Application content. In addition to any other requirements of this chapter, the applicant shall:

(A) identify each air contaminant for which an emission cap is desired;

(B) identify each facility to be included in the flexible permit;

(C) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;

(D) for each emission cap, identify all associated EPNs and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;

(E) for each individual emission limitation, identify the EPN and provide emission rate calculations based on the expected maximum capacity and the proposed control technology.

(14) Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each unit to meet the emission cap and demonstrate compliance with all emission caps at expected maximum production capacity.

§116.715. General and Special Conditions.

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

(b) A pollutant specific emission cap or multiple emission caps and/or individual emission limitations shall be established for each air contaminant for all facilities authorized by the flexible permit.

(c) The following general conditions shall be applicable to every flexible permit.

(1) Voiding of permit. A flexible permit or flexible permit amendment under this subchapter is automatically void if the holder fails to complete construction as specified in the flexible permit. Upon request, the executive director may grant a one time 12-month extension of the date to

complete construction. This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

(2) Construction progress. The start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(3) Start-up notification.

(A) The appropriate regional office of the commission and any local program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission may be present.

(B) Phased construction, which may involve a series of facilities commencing operations at different times, shall provide separate notification for the commencement of operations for each facility.

(C) Prior to beginning operations of the facilities authorized by the permit, the permit holder shall identify to the Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(4) Sampling requirements. If sampling of stacks or process vents is required, the flexible permit holder shall contact the commission's Engineering Services Section, Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission. The flexible permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(5) Equivalency of methods. It shall be the responsibility of the flexible permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the flexible permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(6) Recordkeeping. A copy of the flexible permit along with information and data sufficient to demonstrate continuous compliance with the emission caps and individual emission limitations contained in the flexible permit shall be maintained in a file at the plant site and made available at the request of personnel from the commission or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information may include, but is not limited to, emission cap and individual emission limitation

calculations based on a 12-month rolling basis and production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the flexible permit.

Information in the file shall be retained for at least two years following the date that the information or data is obtained.

(7) Maximum allowable emission rates. A flexible permit covers only those sources of emissions and those air contaminants listed in the table entitled "Emission Sources, Emissions Caps and Individual Emission Limitations" attached to the flexible permit. Flexible permitted sources are limited to the emission limits and other conditions specified in the table attached to the flexible permit.

(8) Emission cap readjustment. If a schedule to install additional controls is included in the flexible permit and a facility subject to such a schedule is taken out of service, the emission cap contained in the flexible permit will be readjusted for the period the unit is out of service to a level as if no schedule had been established. Unless a special provision specifies the method of readjustment of the emission cap, a permit alteration shall be obtained.

(9) Maintenance of emission control. The facilities covered by the flexible permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping).

(10) Compliance with rules. Acceptance of a flexible permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all Rules, Regulations, and Orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit. If more than one state or federal rule or regulation or flexible permit condition are applicable, then the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the flexible permit.

(d) There may be additional special conditions attached to a flexible permit upon issuance or amendment of the permit. Such conditions in a flexible permit may be more restrictive than the requirements of this title.

**SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES
DIVISION 2: SMALL BUSINESS STATIONARY SOURCE PERMITS, PIPELINE
FACILITIES PERMITS, AND EXISTING FACILITY PERMITS
§116.778**

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the THSC, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The sections are also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §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 comprehensive plan for proper control of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; and §382.051, which authorizes the commission's permitting activities; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA and adopt by rule permit conditions of general applicability; §382.0515, which requires that a person applying for an air permit must submit a permit application, demonstrations (plans and specifications) necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of the TCAA, and any other necessary information; §382.0518, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; §382.05181 which require grandfathered facilities to apply for a permit and comply with its conditions by

certain dates, and requires certain actions of the commission; §382.0519, which authorizes the commission to grant an air permit to the owner or operator of an existing, unpermitted facility not subject to the requirement to obtain a permit; and §382.065, which prescribes duties of the commission regarding permitting of emissions from a shipyard.

§116.778. Additional Requirements for Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.

In addition to complying with all applicable requirements of this subchapter, any application for a small business stationary source permit, a pipeline facilities permit, or an existing facility permit must include emissions from the facility resulting from any associated dockside vessel operations. These emissions must comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution control practices.

DIVISION 3: EXISTING FACILITY FLEXIBLE PERMITS
§116.803

§116.803. Additional Requirements for Existing Facility Flexible Permit Applications.

Any application for an existing facility flexible permit must include emissions from the facility resulting from any associated dockside vessel operations. These emissions must comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution control practices.

SUBCHAPTER I: ELECTRIC GENERATING FACILITY PERMITS

§116.919

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the THSC, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The section is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §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 comprehensive plan for proper control of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; and §382.051, which authorizes the commission's permitting activities; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA and adopt by rule permit conditions of general applicability; §382.0515, which requires that a person applying for an air permit must submit a permit application, demonstrations (plans and specifications) necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of the TCAA, and any other necessary information; §382.0518, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; §382.05181 which require grandfathered facilities to apply for a permit and comply with its conditions by

certain dates, and requires certain actions of the commission; and §382.065, which prescribes duties of the commission regarding permitting of emissions from a shipyard.

§116.919. Additional Requirements for Grandfathered Electric Generating Facility Permit

Applications.

In addition to complying with all applicable requirements of this subchapter, any application for a new grandfathered electric generating facility permit under Texas Health and Safety Code, TCAA, §382.05185(c) and (d) (relating to Electric Generating Facility Permits) for auxiliary combustors and coal-fired units only must include emissions from the facility resulting from any associated dockside vessel operations. These emissions must comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution control practices.

