

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§116.10, 116.111, 116.115, 116.311, 116.615, 116.711, and 116.715. The commission also proposes new §§116.315, 116.778, 116.803, and 116.919.

The new and amended sections are proposed to 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 PROPOSED RULES**

In June 2000, the commission adopted revisions to 30 TAC Chapter 101, General Air Quality Rules, which codified conditions for the exemption of upset, maintenance, start-up, and shutdown emissions from enforcement. Shortly after, the commission began to receive several inquiries as to how routine maintenance, start-up, and shutdown (MSS) emissions may be authorized in a new source review (NSR) permit under Chapter 116. The internal guidance developed for the commission's air permitting staff used predictability, repeatability, and frequency as principal factors in determining which types of emissions would be eligible for inclusion as allowable emissions in a permit. Events not meeting these conditions could not be included. These same guidelines are basic to this proposal.

It is not sufficient that an event is predictable, as predictability of these emissions is statistically based and relies on analysis of a large number of events. While statistical methods are generally accurate in predicting events over an extended period of time, this one factor by itself cannot reliably tie an event to a specific date or a narrowly designated time period. This makes it nearly impossible to reliably account for resulting emissions over a specified time, which is the basis of allowable emissions.

Routine events must not only be predictable, but must be tied to a specific, narrowly designated and repeated period of time. For example, routine maintenance is that which is designated to occur on a specific day or span of days on a recurring basis. Thus, the commission considers predictability and frequency to be key factors to determine the routine nature of events for permitting.

The commission is proposing these rules to help make a clear distinction between those emissions that are considered part of normal facility operation, such as routine MSS emissions, and those that are not, such as upsets. The commission believes these rules will result in a better understanding and accounting of routine and nonroutine emissions, provide an up-front engineering review ensuring proper control, and should result in decreased MSS emissions. This will aid the development of a more effective SIP and will help ensure that all emissions meet the intent of the Texas Clean Air Act (TCAA).

These proposed rules allow the authorization of emissions of air contaminants that result from routine MSS in newly issued, renewed, and amended NSR permits as allowable emissions. The commission recognizes that MSS emissions are part of the normal facility operation and that these emissions can be a significant portion of a facility's total emissions. The commission has not consistently authorized MSS emissions in NSR permits, but has traditionally relied upon the reporting, recordkeeping, and exemption requirements of Chapter 101 to account for MSS emissions. The commission encourages permit applicants and permit holders to authorize their routine MSS emissions. This authorization will make a clear distinction between routine and nonroutine emissions and should lead to a more efficient approach for the permit holder to operate facilities under normal conditions and account for emissions

because reports of routine MSS emissions would no longer be required under Chapter 101. Routine MSS emissions would be on a permit-by-permit basis. If a permit applicant or current permit holder chooses to authorize routine MSS emissions then all routine MSS at any facility authorized by the permit must be included. Chapter 101 has been, and will continue to be, the mechanism by which episodic, or upset, emissions, and unauthorized maintenance emissions are evaluated by the commission. Permit holders who elect not to authorize MSS emissions in permits will continue to report all MSS emissions, routine and nonroutine, under Chapter 101. Unless specifically stated to the contrary, this proposal and preamble discussion applies to routine MSS emissions and not all MSS emissions as a whole (i.e., related to nonroutine MSS or upsets).

Unless authorized in a permit, Chapter 101 will be the primary mechanisms for documenting compliance with the TCAA for facilities that have related routine MSS emissions that do not meet the limitations of §106.263, Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities. Section 101.11, Demonstrations, allows emissions from MSS activities to be “exempt” from enforcement action provided they meet the criteria used for granting these exemptions. Stakeholders have expressed concern that legitimate routine MSS events will not be exempted. The commission’s intent is that routine MSS activities meeting the exemption criteria of §101.11 will be exempted from any enforcement action. At a minimum, maintenance emissions permitted under Chapter 116 will have to be consistent with exemption criteria in §101.11.

This proposal includes dockside vessel emissions as part of the standard emissions reviewed 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. These proposed rules would also implement the requirements of House Bill (HB) 3040, 77th Legislature, 2001. 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.

This proposal also includes changes to implement portions of HB 2912, 77th Legislature, 2001, regarding new compliance history evaluation requirements for permit renewals. Additionally, this proposal includes changes to clarify permit renewal application content requirements and removes from the same section renewal submittal deadlines. Application submittal deadlines will be moved to a new section proposed in this rulemaking.

On April 10, 2002 the commission approved for publication a proposal that, if adopted, would amend those sections of Chapter 101 concerning upsets and maintenance including changes in section numbering and designation. This proposal contains several references to sections within Chapter 101; therefore, the commission will make any changes to section references necessary to correspond to the Chapter 101 revisions at adoption.

## SECTION BY SECTION DISCUSSION

### *Subchapter A, Definitions*

The proposed amendment to §116.10, *General Definitions*, adds definitions for routine maintenance, routine shutdown, routine start-up, dockside vessel, and dockside vessel emissions. Routine maintenance, routine shutdown, and routine start-up are all defined in terms of being planned and

repeatable activities associated with facilities that are considered part of normal facility operation.

Emissions from upsets will not be permitted under this proposal. The commission would also permit only routine MSS activities which occur at least once every 12 months. These are the events occurring most frequently and should result in the most accurate and reliable estimate of emissions for inclusion in the permit maximum allowable emission rates table (MAERT). Additionally, the 12-month frequency is consistent with the commission's current practice of basing annual allowable emissions on a 12-month period. Events that are scheduled less often than every 12 months would be considered nonroutine and should be reported under Chapter 101.

The commission recognizes that certain industries may have regular maintenance events that occur less than once every 12 months. The commission requests comments on an alternate frequency cycle for permitting maintenance events along with any justification including, but not limited to, the predictability and accurate quantification of emissions from these events.

Where applicable, emissions from normal facility operations would include dockside vessel emissions as well. A dockside vessel would be 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 is open in a separate rulemaking, the definitions for dockside vessel and dockside vessel emissions could not be placed in alphabetical order because that would have required renumbering the definition that is already open. For this reason, these two definitions were placed at the end of the section and will be moved

into alphabetical order and subsequent definitions renumbered at adoption, providing the opened rulemaking definition has been adopted and is effective at that time.

*Subchapter B, New Source Review Permits*

The proposed amendment to §116.111, *General Application*, requires that all new permits issued under Chapter 116 include dockside vessel emissions as part of normal operations and provides the option to include routine MSS emissions as allowable emissions. Amended permits may also include routine MSS emissions. If MSS emissions are included in either a new or amended permit then all MSS emission from facilities authorized by the permit must be included. Permitted facilities that do not have their routine MSS emissions authorized in the permit will continue to report all MSS emissions, routine and nonroutine, under Chapter 101. The routine MSS emissions in new and amended permits would be reviewed according to the existing requirements in §116.111(a)(2), including off-site effects, best available control technology (BACT), and federal major source or modification permit applicability including prevention of significant deterioration (PSD), nonattainment (NA), or hazardous air pollutant review.

Federal applicability is based on the potential to emit of a source. The definition of potential to emit in 40 CFR §52.21(b)(4), Prevention of Significant Deterioration of Air Quality, is the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. In order for facilities to continue to operate at normal process production, periodic maintenance must occur and is part of the operational design of the facility. Similarly, because a facility cannot operate perpetually, start-up and shutdown must also be considered part of the operational design. Therefore, emissions

resulting from routine and scheduled MSS are part of a new or modified facility's potential to emit and would be counted when determining if the facility is major and if federal requirements apply to the facility. If specifically quantified and included as allowable emissions as contemplated in this proposal, these emissions may be listed separately on an MAERT.

The routine MSS BACT reviews will be in concert with, but may be distinct and different than, the evaluations for production operations and will consider frequency, duration, quality, and quantity of emissions. The commission will develop or revise guidance on the application of BACT in these circumstances. The commission intends that owners or operators of sources issued NSR permits under §116.111 that authorize their routine MSS emissions would no longer be able to authorize routine MSS emissions under §106.263. If requested by permit holders, routine MSS emissions associated with existing, authorized facilities may be incorporated into a permit or amendment evaluation following review requirements for permit renewals as listed in amended §116.311.

Owners or operators of sources with routine MSS emissions must currently make an estimate of emissions under the Chapter 101 requirements for short- and long-term periods. If these emissions are permitted, the reporting and recordkeeping requirements may result in a more streamlined activity for facilities that must currently comply with Chapter 101 requirements. It is impossible to describe a single methodology for the estimate of routine MSS emissions that will be applicable and accurate for all types of sources. The commission will rely on the experience of the source's owner or operator to make initial estimates of the required routine MSS allowable emissions that should be included in a permit. In all cases, the routine MSS emissions for which a calculation must be made are some of the

same type of emissions that are currently reported or estimated under Chapter 101 MSS and annual emissions inventory (EI) requirements. Therefore, the commission believes that owners or operators should have an accurate idea of the amount and character of routine MSS emissions associated with their facilities.

The amount of detail needed for MSS emission estimates will include at least identification of emission release points, general description of activity, frequency, type and quantity of emissions, applicable pollution prevention, abatement, or add-on control equipment, and review of off-property impacts in various operating scenarios equivalent to the level of detail required of operating emissions in current permits. Emissions from valves, flanges, compressors, pumps, and other standard piping components would be considered under the category of fugitive emission points as the commission assumes that some or all of these components leak throughout the useful life of the facility and repair requirements are accounted for in the permit allowable limits. The commission does not expect MSS information to include discrete dates or times for scheduled activities or specific detailed routine MSS procedures if not directly related to the quantity or type of emissions. These estimates will be reviewed by the permit engineer and adjusted, if needed, during the permit review in accordance with rule requirements.

The proposed amendment to §116.111 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 and thus subject to the requirements of Chapter 116. This issue was taken to the commissioners' work session on October 20, 2000, and the staff was directed to implement Chapter 116 requirements for dockside vessel emissions. These requirements

would include 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 proposed amendment to §116.111 also implements the requirements of HB 3040. This amendment states that the commission, when conducting a 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 proposed amendment to §116.115, *General and Special Conditions*, requires that NSR permits contain within the table entitled MAERT an amount for dockside vessel emissions (if applicable). Routine MSS emissions may be included in a separate category of allowable emissions and may have separate recordkeeping requirements as appropriate to demonstrate continuous compliance considering flexibility of representations. If authorized by a permit, routine MSS emissions would be considered part of normal facility operations, and the proposed amendment to §116.115 would require that the pollution control equipment be operated, as practicable, during routine start-up and shutdown.

The permit MAERT format will be modified for permits which include routine MSS emissions to clarify on a short-term and long-term basis how the different modes of operation are authorized. If appropriate, routine MSS emissions for similar facilities may be combined to provide operational and

recordkeeping flexibility. Recordkeeping requirements for routine MSS emissions will also be clarified in special conditions of the permit to ensure clear and reasonable compliance demonstrations, potentially streamlining recordkeeping activity as compared to requirements under Chapter 101. If permitted as authorized emissions on the MAERT, there will be no requirement to report these routine MSS emissions under Chapter 101, which should result in greater convenience for the owner or operator.

An increase in allowable emissions resulting from the inclusion of routine MSS does not affect the number of allowances issued under Chapter 101, Subchapter H, Division 3, *Mass Emissions Cap and Trade Program*. MSS emissions are currently included in the annual EI of facilities and in reports submitted for purposes of determining level of activity. This information is the base for the allocation of allowances under the mass cap and trade program.

Emission Reduction Credits (ERCs) and Discrete Emission Reduction Credits (DERCs) may be generated by a reduction in MSS emissions if the emissions in the consecutive two calendar years used as a baseline were reported to EI in those years. The baseline may not exceed the quantity of emissions reported in the most recent year of EI used for SIP determinations and the credit generated from reductions in MSS emissions must comply with and meet all requirements of Chapter 101, Subchapter H, Division 1 for ERCs and Division 4 for DERCs.

*Subchapter D, Permit Renewals*

The proposed 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. The commission is proposing a new subsection (b) which would allow permit holders to include routine MSS in the permit as allowable emissions. If the permittee elects to use this option then all routine MSS at the facilities authorized by the permit must be included. If not authorized in the permit then all MSS emissions, routine and nonroutine, must be reported under Chapter 101. The commission would require that existing routine MSS emissions be quantified and included in a separate category in the allowable table. Existing subsections are renumbered accordingly.

Existing facilities with associated routine MSS emissions have been required to report and minimize the emissions to the extent required under Chapter 101, which has been approved as a part of the SIP. These legally recognized and regulated emissions have also been reported under annual EIs and, therefore, have been accounted for in the commission's SIP and PSD regulation development.

When considering existing routine MSS emissions from existing, authorized facilities and the issue of federal permit requirements and applicability, the commission believes that these existing, routine MSS emissions do not warrant further review for their effect on NA or PSD status. Based on the federal definition of potential to emit, the commission believes these emissions are relevant to an evaluation of a portion of a source's potential to emit. This approach is consistent with an EPA memo from Steven Herman to EPA regional administrators, dated September 20, 1999, which states, "Start-up and

shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation or the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emissions limitations during such periods.” However, this same memo also states, “In general, because excess emissions that occur during these periods (start-up and shutdown) are reasonably foreseeable, they should not be excused (from enforcement). However, EPA recognizes that, for some source categories, even the best available emissions control systems might not be consistently effective during start-up and shutdown periods. In areas where respective contributions of individual sources to pollutant concentrations in ambient air are such that no single source or small group of sources has the potential to cause an exceedance of the national ambient air quality standards (NAAQS) or PSD increments, these technological limitations may be addressed in the underlying standards themselves through narrowly-tailored SIP revisions that take into account the potential impacts on ambient air quality caused by the inclusion of these allowances.” These narrowly-tailored SIP revisions are the reporting and demonstration requirements of Chapter 101. Incorporating existing MSS emissions into state NSR permits is not relaxing federally enforceable emissions limits; rather, rolling existing and regulated emissions into the permit is essentially moving them from one category to another and specifically quantifying the emissions already associated with facilities. If the addition of routine MSS emissions into a permit causes the allowable emissions to reach the threshold for a major source, then the holder of the permit will be required to apply for a federal operating permit (FOP).

TCAA, §382.055(e) states that the commission may not impose at permit renewal conditions that are more stringent than the existing permit unless it is to prevent a condition of air pollution or to ensure

compliance with applicable state or federal regulations. For review and renewal of preconstruction permits, the commission believes that this proposal is consistent with TCAA, §382.055. Although commission authority in reviews of NSR permits at renewal is limited, the statute expressly provides that under appropriate conditions, the commission maintains the authority to impose additional or different air control requirements at renewal. Any requirements the commission seeks to impose at renewal must be both economically reasonable and technically practicable considering the facility's age and the effect of its emissions on the surrounding area. In addition, requirements that are "more stringent" than those in the existing permit must be necessary to either avoid a condition of air pollution or ensure compliance with otherwise applicable federal or state air quality control requirements. In this proposal, the requirements to incorporate dockside vessel emissions in air permits at renewal will not necessarily be more stringent than what is required by the existing permit. However, if the commission determines that the effects review for the relevant emissions under consideration indicates a concern for public health and welfare and additional air pollution controls are required, it is consistent with the framework of §382.055 because it would be necessary to avoid a potential condition of air pollution. Also, the imposition of additional air pollution controls is consistent with §382.055 because the controls would be necessary to ensure compliance with applicable state air quality control requirements.

Existing dockside emissions would be reviewed for off-property effects considering magnitude, frequency, and duration. Control of routine MSS emissions will be reviewed against criteria similar to Chapter 101 for minimization of emissions consistent with best air pollution control practices, not BACT. However, if the existing MSS emissions effects review indicates a concern for public health and welfare, the commission will consider requiring additional air pollution controls. Generally, public

health and welfare issues are a consideration when routine MSS emissions are reported and evaluated under Chapter 101, however that evaluation is done on a case by case basis.

The proposal includes changes to existing §116.311(c), proposed to be renumbered as §116.311(d), to implement portions of HB 2912 regarding new compliance history evaluation requirements for permit renewals. Existing §116.311(c) reflects parts of TCAA, §382.055(d)(1) and §382.056(o), which were amended by HB 2912; therefore, these requirements are no longer applicable under the statute.

Specifically, these changes affect the current 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, adopted by the commission through Chapter 60, Compliance History. All renewal reviews must comply with the new multi-media requirements of that chapter as is proposed to be referenced in proposed §116.311(d).

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

Proposed 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.

*Subchapter F, Standard Permits*

The proposed 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. The proposal would provide the option to represent routine MSS emissions in the registration for the permit. Any representation of emission would become conditions under which the facility would be required to operate.

*Subchapter G, Flexible Permits*

The proposed amendment to §116.711, *Flexible Permit Application*, requires that emissions from dockside vessels be incorporated into new flexible permits, and allows the incorporation of routine MSS emissions. If routine MSS emissions are authorized in the permit then all routine MSS emissions from facilities authorized under the permit must be included. New emissions would be subject to effects review, current BACT, and would be counted toward applicability of federal standards. In accordance with proposed §116.311, existing MSS emissions may be incorporated into a flexible permit at renewal. Routine MSS emissions and process emissions will be quantified in separate sections of the MAERT. The proposed 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 proposal that implement HB 3040. References to “undesignated heads” would also be removed from the section as this term is obsolete.

The proposed amendment to §116.715, *General and Special Conditions*, specifies the types of emissions that can be included in a flexible permit MAERT. These emissions include those from normal process operations, routine MSS, and dockside vessels. The proposed amendment requires that pollution control equipment be operated, as practicable, during routine start-up and shutdown and specifies that nonroutine or unauthorized MSS emissions must be reported in accordance with Chapter 101.

#### *Subchapter H, Permits for Grandfathered Facilities*

Subchapter H is currently titled *Voluntary Emission Reduction Permits*. The title was proposed to be revised to *Permits for Grandfathered Facilities* in a separate rulemaking on January 4, 2002 (27 TexReg 78). Also, three new divisions were proposed in the separate rulemaking. The proposed new division titles are listed in this preamble.

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

Proposed 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, and they may

include routine MSS emissions. If routine MSS emissions are authorized in the permit then all routine MSS emissions from facilities authorized under the permit must be included. Control of MSS emissions will be reviewed against criteria similar to Chapter 101 for minimization of emissions consistent with best air pollution control practices, not BACT. However, if the existing MSS emissions effects review indicates a concern for public health and welfare, the commission will consider additional air pollution controls. In addition, existing MSS emissions associated with these facilities will not be subject to specified reduction requirements of TCAA, §§382.05183, relating to Existing Facility Permit; 382.05184, relating to Small Business Stationary Source Permit; or 382.05186, relating to Pipeline Facilities Permits.

*Division 3, Existing Facility Flexible Permits*

Proposed 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, and they may include routine MSS emissions. If routine MSS emissions are authorized in the permit then all routine MSS emissions from facilities authorized under the permit must be included. Control of MSS emissions will be reviewed against criteria similar to Chapter 101 for minimization of emissions consistent with best air pollution control practices, not BACT. However, if the existing MSS emissions effects review indicates a concern for public health and welfare, the commission will consider additional air pollution controls.

*Subchapter I, Electric Generating Facility Permits*

Proposed new §116.919, *Additional Requirements for Grandfathered Electric Generating Facility*

*Permit Applications*, requires that permits for electric generating facilities quantify dockside vessel emissions, and they may include routine MSS emissions. If routine MSS emissions are authorized in the permit then all routine MSS emissions from facilities authorized under the permit must be included. Control of MSS emissions will be reviewed against criteria similar to Chapter 101 for minimization of emissions consistent with best air pollution control practices, not BACT. However, if the existing MSS emissions effects review indicates a concern for public health and welfare, the commission will consider additional air pollution controls. The only applications expected as a result of the requirements of TCAA, §382.05185, Electric Generating Facility Permits, will be for auxiliary combustors and coal-fired units, and therefore the new section is limited to those facility types only. Existing MSS emissions associated with these facilities will not be subject to specific reduction or control requirements of TCAA, §382.05185. In addition, the allowances issued to the facilities under 30 TAC §101.333, Allocation of Allowances, must be sufficient to cover MSS activities.

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT**

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be fiscal implications, which may be significant, for units of state and local government due to administration and enforcement of the proposed rules. Units of government that apply for, renew, or amend NSR permits may have to install additional pollution control devices if the commission determines that emission levels from routine MSS emissions require the additional controls following a health effects review. Additionally, units of state

and local government that are classified as major sources during the NSR permit application review would be required to obtain an FOP. Units of state and local government that do not have existing NSR permits or that do not intend to apply for new NSR permits would not be affected by the proposed rules.

This rulemaking is intended to require the authorization of emissions of air contaminants that result from dockside emissions in new, amended, and renewed NSR permits. The proposal would provide the option to incorporate routine MSS emissions in permits. Additionally, this rulemaking is intended to implement provisions of HB 3040, which prohibits the commission from performing over water modeling and effects evaluation of non-criteria air pollutants from shipyards in coastal waters. This provision would not limit the commission from conducting analysis of over land emissions from these facilities. The commission does not anticipate that the provisions of HB 3040 to be implemented by this rulemaking would result in significant fiscal implications for units of state and local government.

The proposed rules update existing commission NSR permit regulations to require affected facilities to include dockside emissions in NSR permit applications. The applicant may elect to include routine MSS emissions in the permit application. Routine MSS and dockside emissions are currently tracked by the commission and are included in facility emission totals for the purposes of emission fees; however, these emissions have never been evaluated for the purposes of NSR permits. If the commission determines that emissions from routine MSS and dockside emissions proposed under an NSR permit would have an adverse effect on surrounding areas, then the installation and operation of

additional pollution control devices may be required in order to bring the facility into compliance with commission NSR permit regulations.

The inclusion of dockside emissions into the NSR permitting process will affect all renewed and future NSR permits. The total number of sites with existing NSR permits is unknown. The commission currently processes approximately 900 new NSR permits, 350 NSR permit amendments, and 150 NSR permit renewals annually, some of which are submitted by units of state and local government.

Applicants for any new, amended, or renewed NSR permit would have to include emissions from dockside emissions in their permit applications.

Although there is a potential for additional costs for affected units of state and local government due to incorporating routine MSS and dockside emissions into NSR permits, the commission does not anticipate this proposal will adversely affect a large number of sites owned and operated by units of state and local government. If the commission determines that an affected site's routine MSS and dockside emissions pose a risk to the environment surrounding the site, it is estimated that the cost to install and operate upgraded pollution control devices will range from \$6,000 to \$10,000 per ton of pollutants removed. There may be significant costs for those sources that, because of the addition of MSS emissions, become classified as major sources and are required to obtain an FOP. Although this requirement could affect units of state and local government, the commission anticipates the number would be very small, because the inclusion of MSS emissions into NSR permits is not anticipated to increase the reported emissions for a large number of sources to such an extent that they would be

considered major sources. Based on administrative and potential consultant fees, the commission estimates the cost to obtain a FOP could range up to \$50,000.

The proposed rulemaking, if adopted, could result in additional workload. The commission anticipates that this workload can be accomplished with existing staff initially but, in order to expedite processing, will examine the need for additional personnel if a sufficient number of permit applicants and permit holders incorporate routine MSS emissions into their permits.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be a better understanding and accounting of routine and nonroutine emissions. This will aid the development of a more effective SIP and will help ensure that all emissions meet the intent of the TCAA.

This rulemaking is intended to require the authorization of emissions of air contaminants that result from dockside emissions in new, amended, and renewed NSR permits, and allows the optional incorporation of routine MSS emissions. Additionally, this rulemaking is intended to implement provisions of HB 3040, which prohibits the commission from performing over water modeling and effects evaluation of non-criteria air pollutants from shipyards in coastal waters. This provision would not add additional regulatory requirements to affected facilities; therefore, the commission does not anticipate that the provisions of HB 3040 to be implemented by this rulemaking would result in significant fiscal implications for individuals and businesses.

The inclusion of routine MSS and dockside emissions into the NSR permitting process could affect all renewed and future NSR permits. The total number of sites with existing NSR permits is unknown.

The commission currently processes approximately 900 new NSR permits, 350 NSR permit amendments, and 150 NSR permit renewals annually, the majority of which are submitted by industry.

Applicants for any new, amended, or renewed NSR permit would have to include emissions from dockside emissions in their permit applications and may include routine MSS as well. Industries regulated by the commission must currently estimate, minimize, record, and report MSS emissions under the requirements of Chapter 101. This proposal, if adopted, would allow permitted industries to estimate and account for MSS emissions in their permits. The commission believes that this proposal would not add a significant regulatory burden or additional costs to affected industries solely as a result of the incorporation of MSS emissions into permits.

Although there is a potential for additional costs for affected individuals and businesses due to incorporating routine MSS and dockside emissions into NSR permits, the commission does not anticipate this proposal will adversely affect a large number of sites owned and operated by individuals and businesses. If the commission determines that an affected site's routine MSS and dockside emissions poses a risk to the environment surrounding the site, it is estimated that the cost to install and operate upgraded pollution control devices will range from \$6,000 to \$10,000 per ton of pollutants removed. There may be significant costs for those sources that, because of the addition of MSS emissions, become classified as major sources and are required to obtain an FOP. Although this requirement could affect individuals and businesses, the commission anticipates the number would be very small, because the inclusion of MSS emissions into NSR permits is not anticipated to increase the

reported emissions for a large number of sources to such an extent that they would be considered major sources. Based on administrative and potential consultant fees, the commission estimates the cost to obtain an FOP could range up to \$50,000.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, to small or micro-businesses as a result of implementing the proposed rules, which are intended to require the authorization of emissions of air contaminants that result from dockside emissions in new, amended, and renewed NSR permits.

The proposal would provide the option to include routine MSS emissions in permits as well.

Additionally, this rulemaking is intended to implement provisions of HB 3040, which prohibits the commission from performing over water modeling and effects evaluation of non-criteria air pollutants from shipyards in coastal waters. This provision would not add additional regulatory requirements to affected facilities; therefore, the commission does not anticipate that the provisions of HB 3040 to be implemented by this rulemaking would result in significant fiscal implications for small or micro-businesses.

The inclusion of dockside emissions into the NSR permitting process will affect all renewed and future NSR permits. The total number of sites with existing NSR permits is unknown. The commission currently processes approximately 900 new NSR permits, 350 NSR permit amendments, and 150 NSR permit renewals annually, some of which may be submitted by small or micro-businesses. Applicants for any new, amended, or renewed NSR permit would have to include emissions from dockside emissions in their permit applications. Applicants may include emissions from routine MSS as well.

Although there is a potential for additional costs for affected individuals and businesses due to incorporating routine MSS and dockside emissions into NSR permits, the commission does not anticipate this proposal will adversely affect a large number of sites owned and operated by small and micro-businesses. If the commission determines that an affected site's routine MSS and dockside emissions pose a risk to the environment surrounding the site, it is estimated that the cost to install and operate upgraded pollution control devices will range from \$6,000 to \$10,000 per ton of pollutants removed. There may be significant costs for those sources that, because of the addition of MSS emissions, become classified as major sources and are required to obtain an FOP. Although this requirement could affect small or micro-businesses, the commission anticipates the number would be very small, because the inclusion of MSS emissions into NSR permits is not anticipated to increase the reported emissions for a large number of small and micro-businesses to such an extent that they would be considered major sources. Based on administrative and potential consultant fees, the commission estimates the cost to obtain an FOP could range up to \$50,000.

The following is an analysis of the costs per employee for small and micro-businesses that choose the option of incorporating routine MSS emissions into permits. The commission does not know of any specific micro-businesses that would be affected by the proposed rules. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. A small business that is required by the commission to install pollution control devices to reduce five tons of emissions and to get an FOP would have to pay up to an additional \$1,000 per employee to comply with the proposed rules. A micro-business that is required by the commission to install pollution control devices to reduce five tons

of emissions and to get an FOP would have to pay up to an additional \$5,000 per employee to comply with the proposed rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal 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 proposal is to allow the authorization of all air contaminant emissions associated with normal facility operations. Currently, Texas statute and commission rules provide a variety of methods that an entity can use to authorize its facility emissions. This proposal provides a mechanism to streamline the authorization process for particular emissions associated with routine MSS emissions by incorporating the emissions into NSR permits issued by the commission. Generally, this

rulemaking proposal would not require emission controls in addition to those already being employed at existing facilities. For new and modified facilities, this proposal would require the control of routine MSS emissions to be evaluated against appropriate BACT criteria. Currently, routine MSS emissions are not routinely authorized in Chapter 116 permits, but they are subject to control and minimization requirements under Chapter 101. If incorporated into a permit, this proposal would require that routine MSS emissions associated with existing facilities be reviewed for off-property effects. If the commission determines that the effects review for the routine MSS emissions indicates a concern for public health and welfare, then additional air pollution controls may be required at the existing facility that is being reviewed. The commission does not expect this to be a widespread situation or to be concentrated in a particular sector of the economy. This proposal also implements the requirements of HB 3040 (relating to limitations to the consideration of air dispersion modeling for shipyard facilities) and clarifies and streamlines certain administrative provisions related to standard permit registrations. The commission believes that these additional proposed changes will result in reduced costs for regulated industries. Based on the proposal's principal intent to provide a mechanism to streamline the authorization process for routine MSS emissions and the anticipated impacts to regulated industries that will be subject to the proposed requirements, the commission concludes that this proposal does not meet the definition of "major environmental rule."

In addition, a draft 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 proposal does not exceed a standard set by federal law, and the proposed technical requirements are consistent with federal applicability requirements for PSD or NA review. Second, this proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; 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 proposal 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 proposal 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 invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, Chapter 2007. The principal intent of this proposal is to allow the

authorization of all air contaminant emissions associated with normal facility operations. This proposal provides a mechanism to streamline the authorization process for particular emissions associated with routine MSS emissions by incorporating the emissions into air permits issued by the commission. This proposal also implements the requirements of HB 3040 (relating to limitations to the consideration of air dispersion modeling for shipyard facilities) and clarifies and streamlines certain administrative provisions related to standard permit registrations. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this proposal 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 proposed rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5) and these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission's preliminary consistency determination for the proposed rules in accordance with 31 TAC §505.22 found that the proposed 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 proposed rulemaking requires the incorporation dockside emissions into NSR permits and allows the incorporation of MSS emissions, implements HB 3040 and portions of HB 2912, and accomplishes certain administrative changes. No new emissions are authorized by this proposal; therefore, the rulemaking is consistent with the applicable CMP goal and policy. The commission invites public comment regarding the consistency of the proposed rule with the CMP.

#### 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. If the addition of routine MSS emissions into a permit causes the allowable emissions to reach the threshold for a major source, then the holder of the permit will be required to apply for an FOP.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this 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. The hearing will be structured for the receipt of oral or written comments by interested

persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, 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

Written comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments should reference Rule Log Number 2001-043-116-AI. Comments must be received by 5:00 p.m. on June 10, 2002. For further information, please contact Beecher Cameron, Air Permits Division, at (512) 239-1495 or Jill Burditt, Policy and Regulations Division, at (512) 239-0560.

## **SUBCHAPTER A: DEFINITIONS**

### **§116.10**

#### **STATUTORY AUTHORITY**

The amendment is proposed 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 Texas Health and Safety Code (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 proposed 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.

The proposed amendment implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; and §382.051, relating to Permitting Authority of Commission; Rules. The proposed amendment also implements TWC, §5.103, relating to Rules.

**§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) - (14) (No change.)

(15) **Routine maintenance** - A planned, preventative, and recurring activity at or on a facility that occurs at least once every 12 months and that is necessary to ensure the continuing operation of a facility, group of facilities, or emission control device. This term does not include maintenance that is necessary because of an upset.

(16) **Routine shutdown** - A planned activity at or on a facility that occurs at least once every 12 months and that includes the period of time where the facility is brought from normal production to the cessation of production and includes emptying and degassing/depressurization of equipment. Shutdown ends at the point start-up or maintenance begins. This term does not include shutdowns that are necessary because of an upset.

(17) **Routine start-up** - A planned activity at or on a facility that occurs at least once every 12 months and that primes and prepares a facility to transition from zero to normal production.

This term does not include start-ups that are necessary following a shutdown due to an upset.

(18) [(15)] **Source** - A point of origin of air contaminants, whether privately or publicly owned or operated.

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

(20) **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:

(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.

**SUBCHAPTER B: NEW SOURCE REVIEW PERMITS**

**DIVISION 1: PERMIT APPLICATION**

**§116.111, §116.115**

**STATUTORY AUTHORITY**

The amendments are proposed 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 proposed 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; and §382.065, which prohibits the commission, during permit review, from considering the effects over coastal waters of non-criteria contaminants from shipyards.

The proposed amendments implement TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; and §382.051, relating to Permitting Authority of Commission; Rules; and §382.0515, relating to Application for Permit; and §382.065, relating to Shipyard Facilities. The proposed amendments also implement TWC, §5.103, relating to Rules.

**§116.111. General Application.**

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

(1) (No change.)

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following. The applicant may elect to include emissions from routine maintenance, routine start-up, and routine shutdown (MSS) in the application. If the applicant elects to include routine MSS emissions in the permit then all routine MSS emissions for the facilities authorized by that permit must be included. If included in the application, routine MSS

emissions would be considered in determining applicability of subparagraphs (H) - (J) of this paragraph.

[all of the following are met].

(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 [physical] property of the public [people].

(ii) (No change).

(B) - (I) (No change).

(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 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) (No change.)

(L) (No change.)

(b) (No change.)

**§116.115. General and Special Conditions.**

(a) (No change.)

(b) General conditions. Holders of permits, special permits, standard permits, and special exemptions shall comply with the following:

(1) (No change.)

(2) the following general conditions if the permit or amendment is issued or amended on or after August 16, 1994, regardless of whether they are specifically stated within the permit document.

(A) - (F) (No change.)

(G) Maximum allowable emission rates. The [total] emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates." The table

will not include emission from upsets. The table may include emissions from routine maintenance, start-up, and shutdown (MSS).

(H) Maintenance of emission control. The permitted facilities 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. The permit holder shall provide notification for upsets and maintenance in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements ; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements). If routine MSS emissions are included within the permit application and authorized in the subsequently issued permit, then the permit holder is not required to provide notification of the emissions under §101.7 of this title.

(I) (No change.)

(c) (No change.)

## **SUBCHAPTER D: PERMIT RENEWALS**

### **§116.311 and §116.315**

#### **STATUTORY AUTHORITY**

The amendment and new section are proposed 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 proposed 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 prohibits the commission, during permit review, from considering the effects over coastal waters of non-criteria contaminants from shipyards. The amendment and new section are also proposed under TWC, §5.753, which requires the commission, by rule, to develop a uniform standard for evaluating compliance history; TWC, §5.754, relating to the

classification and use of compliance history; TCAA §382.056(o), relating to holding a hearing on a permit renewal based on new compliance history requirements of TWC, §5.753 and §5.754.

The proposed amendment and new section implement TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; §382.051, relating to Permitting Authority of Commission; Rules; §382.055, relating to Review and Renewal of Preconstruction Permit; §382.056(o), relating to Notice of Intent to Obtain Permit or Permit Review; Hearing; and §382.065, relating to Shipyard Facilities. The proposed amendment and new section also implement TWC, §5.103, relating to Rules; §5.753, relating to Standard for Evaluating Compliance History; and §5.754, relating to 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) [(1)] 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) [(2)] 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) [(3)] 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) [(4)] 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) [(5)] 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) The permittee may elect to include emissions from routine maintenance, routine start-up, and routine shutdown (MSS) in the permit. If the permit holder elects to include routine MSS emissions in the permit, then all routine MSS emissions for the facilities authorized by that permit must be included. These emissions will comply with all applicable 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 and need not be reported under §101.7 of this title (relating to Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements). Evaluation of off-property impacts of routine maintenance, start-up, and shutdown emissions will include at least magnitude, frequency, and duration of emissions and/or modeled concentrations. If not authorized in the permit, all routine maintenance, routine start-up, and routine shutdown emissions will be reported under §101.7 of this title.

(c) [(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.

(d) [(c)] A compliance history review must be conducted in accordance with Chapter 60 [§§116.121-116.126] of this title (relating to Compliance History). [The renewal application must demonstrate that the facility is or has been in substantial compliance with the provisions of the TCAA and the terms of the existing permit. Failure to demonstrate substantial compliance shall result in the renewal not being granted. If it is found that violations in the compliance history constitute 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 the violations, the renewal shall be denied. If a contested case hearing has not been called, the executive director must notify the applicant of the intent to recommend denial and state the basis of the findings. The applicant will be given an opportunity to respond to the notice. If the findings reflect a pattern of disregard for applicable regulations which do not warrant denial, additional conditions may be placed in the permit.]

[(d) An application for renewal must be submitted within 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.]

[(e) 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.]

**§116.315. Permit Renewal Submittal.**

(a) An application for renewal must be submitted within 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 proposed 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 proposed 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; and §382.05195, which authorizes the commission to issue standard permits for new or existing similar facilities.

.

The proposed amendment implements TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; §382.051, relating to Permitting Authority of Commission; Rules; and §382.0515, relating to Application for Permit; §382.05195, relating to Standard Permit. The proposed amendment section also implements TWC, §5.103, relating to Rules.

**§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 [the] 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. Emissions from routine maintenance, routine start-up, and routine shutdown (MSS) may be included as representations. If the applicant elects to represent routine

MSS emissions then all routine MSS emissions for the facilities authorized by that permit must be included. 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) - (8) (No change.)

(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 upsets [and maintenance] shall be made in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements ; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements). If routine MSS emissions are included within the representations, then the permit holder need not provide notification of these emissions under §101.7 of this title.

(10) (No change.)

## **SUBCHAPTER G: FLEXIBLE PERMITS**

### **§116.711, 116.715**

#### **STATUTORY AUTHORITY**

The amendments are proposed 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 proposed 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; and §382.065, which prohibits the commission, during permit review, from considering the effects over coastal waters of non-criteria contaminants from shipyards.

The proposed amendments implement TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; and §382.051, relating to Permitting Authority of Commission; Rules; §382.0515, relating to Application for Permit; and §382.065, relating to Shipyard Facilities. The proposed amendments also implement TWC, §5.103, relating to Rules.

**§116.711. Flexible Permit Application.**

(a) 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 [under the undesignated head concerning nonattainment review in Subchapter B of this chapter (relating to New Source Review Permits)].

(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 [under the undesignated head concerning PSD in Subchapter B of this chapter].

(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 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 [(relating to Section 112(g) Definitions)]), it 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))].

(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.

(b) At the discretion of the applicant, information may be submitted which demonstrates that emissions from the proposed facility, group of facilities, or account as determined under §116.716 of this title, resulting from routine maintenance, routine start-up, and routine shutdown (MSS) comply with subsection (a)(1) - (3) and (7) - (11) of this section. If the applicant elects to authorize routine MSS emissions in the permit then all routine MSS emissions for the facilities authorized by that permit must be included. For existing facilities with associated routine maintenance, routine start-up, and routine shutdown emissions which were previously authorized under Chapter 106 of this title (relating to Permits by Rule) or met the requirements of §101.7 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements) and §101.11 of this title (relating to Demonstrations), the incorporation of these emissions in the permit will be in accordance with §116.311 of this title (relating to Permit Renewal Application).

**§116.715. General and Special Conditions.**

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

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

(1) - (6) (No change.)

(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. This table does not include emissions from upsets. This table may include emissions from routine maintenance, routine start-up, and routine shutdown (MSS).

(8) (No change.)

(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 upsets [and maintenance] shall be made in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements). If routine MSS is included within the application, then the permit holder is not required to provide notification of these emissions under §101.7 of this title.

(10) (No change.)

(d) (No change.)

## **SUBCHAPTER H: VOLUNTARY EMISSION REDUCTION PERMITS**

### **§116.778, §116.803**

#### **STATUTORY AUTHORITY**

The new sections are proposed 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 proposed 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; §382.0519, 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 prohibits the commission, during permit review, from considering the effects over coastal waters of non-criteria contaminants from shipyards.

The proposed new sections implement TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; and §382.051, relating to Permitting Authority of Commission; Rules; §382.0515, relating to Application for Permit; §382.0519, relating to Voluntary Emissions Reduction Permit; and §382.065, relating to Shipyard Facilities. The proposed new sections also implement TWC, §5.103, relating to Rules.

**§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 and may include emissions from routine maintenance, routine start-up, and routine shutdown (MSS). If the applicant elects to authorize routine MSS emissions in the permit, then all routine MSS emissions for the facilities authorized by that permit must be included. 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 practices.

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

Any application for a new existing facility flexible permit must include emissions from the facility resulting from any associated dockside vessel operations and may include emissions from routine maintenance, routine start-up, and routine shutdown (MSS). If the applicant elects to authorize routine MSS emissions in the permit, then all routine MSS emissions for the facilities authorized by that permit must be included. 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 practices.

## **SUBCHAPTER I: ELECTRIC GENERATING FACILITY PERMITS**

### **§116.919**

#### **STATUTORY AUTHORITY**

The new section is proposed 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 proposed 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; and §382.065, which prohibits the commission, during permit review, from considering the effects over coastal waters of non-criteria contaminants from shipyards.

The proposed new section implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; and §382.051, relating to Permitting Authority of Commission; Rules; §382.0515, relating to Application for Permit; and §382.065, relating to Shipyard Facilities. The proposed new section also implements TWC, §5.103, relating to Rules.

**§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, Texas Clean Air Act, §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 and may include emissions from routine maintenance, routine start-up, and routine shutdown (MSS). If the applicant elects to authorize routine MSS emissions in the permit, then all routine MSS emissions for the facilities authorized by that permit must be included. 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 practices.