

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §116.110 and §116.730; new §116.773 and §116.915; and the repeal of §§116.11, 116.120 - 116.123, 116.125, and 116.126. The commission proposes these revisions to Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to implement certain requirements of House Bill (HB) 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Legislature, 2001, regarding compliance history.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES AND REPEALS

HB 2912, §4.01, amended Texas Water Code (TWC), Chapter 5, Texas Natural Resource Conservation Commission, by adding Subchapter Q, Performance-Based Regulation. New Subchapter Q of TWC, §5.753, Standard For Evaluating Compliance History, requires the commission to “develop a uniform standard for evaluating compliance history.” Section 5.754, Classification and Use of Compliance History, goes on to require the commission to “establish a set of standards for the classification of a person’s compliance history.”

The commission currently has procedures for preparation of compliance summaries for new source review (NSR) permit applications for air emissions under the authority of the Texas Health and Safety Code (THSC), Texas Clean Air Act, Chapter 382, and these components are specified in existing §116.122. These requirements are also referred to in existing §116.730 and §116.311. The associated procedures specify that a compliance summary shall cover five years and shall include the following compliance events and associated information involving the Texas facility that is the subject of the

permit application: criminal convictions known to the commission and civil orders, judgments, and decrees; administrative enforcement orders; and compliance proceedings. For facilities with sites outside the State of Texas, the compliance summary shall include criminal convictions and civil judgments, administrative enforcement orders, and notices of violation issued by the United States Environmental Protection Agency (EPA). Furthermore, §116.122 specifies that violations of fugitive emission monitoring and recordkeeping requirements meeting certain criteria shall not be included in the compliance history.

30 TAC Chapter 60, Compliance History, §60.1, was adopted December 19, 2001 and published in the January 4, 2002 issue of the *Texas Register* (27 TexReg 191). Section 60.1 specifies the components to be considered in evaluating compliance history for permit decisions, as well as other specified types of authorizations, including licenses, certificates, registrations, approvals, permits by rule, standard permits, or other forms of authorization requiring agency approval, to implement the requirement of HB 2912, §4.01 to “develop a uniform standard for evaluating compliance history.” New sections to Chapter 60 are being proposed concurrently in this issue of the *Texas Register* as part of this rulemaking to implement further requirements of HB 2912, §4.01 to establish rules for the classification and use of compliance history. HB 2912 limits the use of compliance history to programs under the jurisdiction of the commission under TWC, Chapters 26 and 27, and THSC, Chapters 361, 382, and 401. The commission proposes that Chapter 60 would be the one location in commission rules for compliance history requirements pertaining to programs under the jurisdiction of these chapters, and further that compliance history specifics currently provided for elsewhere in commission rules be deleted. For this reason, amendments to §116.110 and §116.730, the addition of new §116.773 and

§116.915, and the repeal of §§116.11, 116.120 - 116.123, 116.125, and 116.126 are proposed. Other chapters of existing regulations (30 TAC Chapters 50, 55, 122, and 281) are being proposed concurrently in this issue of the *Texas Register* for modification as part of this rulemaking for similar reasoning.

The commission adopted a compliance period of five years in §60.1. The period of time will be based on the five-year period preceding the date the permit application is received by the executive director. According to HB 2912, §18.05, the agency must begin using the new components of compliance history for actions taken by the agency on or after February 1, 2002. Additionally, §18.05 specifies that classification and use rules, which are currently being proposed in Chapter 60, will apply in the consideration of compliance history for decisions by the agency relating to the issuance, amendment, modification, or renewal of permits under TWC, §§5.754, 26.028, 26.0281, 26.040, and 27.018, and THSC, §§361.084, 361.088, 361.089, 382.0518, 382.055, 382.056, 401.110, and 401.112, only to applications submitted on or after September 1, 2002; in the consideration of compliance history for actions taken by the agency relating to inspections and flexible permitting, effective September 1, 2002; and in the consideration of compliance history in decisions of the commission relating to the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission, only to a proceeding that is initiated or an action that is brought on or after September 1, 2002. Use of compliance history for innovative programs (except flexible permits) and other forms of authorization will begin September 1, 2002. These applicability dates are specified in §60.1.

SECTION BY SECTION DISCUSSION

The proposed changes to this chapter would remove all references to compliance summaries and the components of compliance history as currently specified in this chapter, and would, where applicable, provide references to Chapter 60. The commission proposes these modifications because, in implementing certain requirements of HB 2912, it has created a new chapter to contain the regulations pertaining to compliance history. In order to avoid redundancy or confusion, the commission proposes to remove the compliance history discussion from this chapter.

The commission proposes to repeal existing §116.11, Compliance History Definitions. The definitions in this section, which apply to NSR permit applications submitted under THSC, Chapter 382, have been superseded by the components specified in §60.1, as well as the proposed new sections to Chapter 60 regarding classification and use of compliance history included in concurrent rulemaking. Therefore, it is appropriate to repeal §116.11 because it will no longer be relevant or applicable with the (previous) adoption of §60.1, coupled with the proposal of new §60.2 and §60.3, as part of this rulemaking.

The commission proposes to amend §116.110, Applicability. The proposed modification would add new §116.110(c) to reflect that compliance history reviews are required under Chapter 60 for certain authorizations listed in §116.110(a) and (b), or in §116.116 (relating to Changes to Facilities). This is a new requirement that must be added in response to implementation of HB 2912, §4.01 and is consistent with §60.1(a). As a result of this addition, existing subsections (c) - (f) of this section are lettered as subsections (d) - (g). No changes to the text of these subsections are proposed except for a minor formatting change in relettered subsection (d).

The commission proposes to repeal all sections in Division 2, Compliance History which are: §116.120, Applicability; §116.121, Exemptions; §116.122, Contents of Compliance History; §116.123, Effective Dates; §116.125, Preservation of Existing Rights and Procedures; and §116.126, Voidance of Permit Applications. The components of compliance history as identified in these existing sections, and which apply to permit applications submitted under THSC, Chapter 382, have been superseded by the components specified in §60.1, coupled with the proposed new sections of Chapter 60 regarding classification and use of compliance history included in concurrent rulemaking.

The commission proposes to amend §116.730, Compliance History. The proposed modification would change the reference to compliance history requirements in “§§116.120 - 116.126” which are proposed to be repealed through this rulemaking, to “Chapter 60” in order to accurately reflect the location of applicable compliance history requirements for flexible permit applications.

The commission proposes new §116.773, Compliance History, to reflect that compliance history evaluations are required under Chapter 60 for all permit reviews conducted under Subchapter H of this chapter. This is a new requirement that must be added in response to implementation of HB 2912, §4.01.

The commission proposes new §116.915, Compliance History, to reflect that compliance history evaluations are required under Chapter 60 for all permit reviews conducted under Subchapter I of this chapter. This is a new requirement that must be added in response to implementation of HB 2912, §4.01.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed amendments are in effect, there may be significant fiscal implications to units of state and local government that renew or apply for NSR permits due to implementation of the proposed amendments. The proposed amendments require the commission to factor compliance history into decisions concerning NSR permits. Only those units of government that own or operate an affected site that receives a compliance history classification of poor, or sites that violate commission regulations on multiple occasions during the compliance history period, would potentially be fiscally impacted by the provisions in this rulemaking. Fiscal implications are not anticipated for all other units of state and local government due to implementation of the proposed amendments.

The proposed rulemaking is intended to make changes to the commission's NSR permit program rules in order to implement certain provisions of HB 2912. The bill requires the commission to develop a uniform standard for evaluating compliance history, to establish a set of standards for the classification of a person's compliance history, and to use compliance history classifications in certain commission decisions. In a concurrent rulemaking, the commission is proposing to establish the classification and use of the components of compliance history. The proposed amendments in this rulemaking are intended to replace existing compliance history provisions specified in the commission's NSR rules, and would, where applicable, provide references to compliance history requirements proposed in the concurrent Chapter 60 rulemaking.

A previous rulemaking established that the time period analyzed for compliance will be the five years prior to the date the permit application is received by the executive director; the five-year period preceding the date of initiating an enforcement action with an initial enforcement settlement offer or the filing date of an Executive Director's Preliminary Report, whichever occurs first; for purposes of determining whether an announced investigation is appropriate, the five-year period preceding an investigation; or the five years prior to the date the application for participation in an innovative program is received by the executive director. The compliance history period may be extended beyond the date the application for the permit or participation in an innovative program is received by the executive director, up through completion of review of the application.

The proposed amendments would require the commission to use the compliance history classification in commission decisions concerning new NSR permit applications, renewals, and amendments. Only those sites classified as poor would be potentially fiscally impacted by the proposed amendments. The overall effect on sites classified as poor performers is anticipated to vary widely, depending on the site and the overall compliance with commission regulations.

The commission anticipates that the number of units of state and local government that will be impacted economically due to implementation of the proposed amendments will be very small, if any. The commission already reviews compliance history for many 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. The commission estimates that only a very small

number of NSR permit applicants are anticipated to be classified as poor performers. Of these, very few, if any, will be units of state and local government. For those units of government with sites classified as poor, the overall costs resulting from implementation of the proposed amendments are expected to vary for each site, depending on additional permit provisions required by the commission.

The following costs are only provided as examples, because there are so many variables which could affect the costs, including: the type of site and the statutes and regulations it is regulated under; the size of the site; whether more stringent permit provisions are specified or the permit is denied, suspended, or revoked; and what costs may be reduced at the same time other costs are incurred as a result of modifications to, or denial, suspension, or revocation of permits. For units of government that are required to convene a permit hearing, the commission estimates the cost to affected units of government would be approximately \$30,000 per permit. If the commission requires a site to renew its permit every two years instead of every five years, the affected site would have to pay an extra \$10,000 in permit renewal fees. If the commission decides to revoke a permit, the revocation proceeding will cost the affected site approximately \$50,000 for each revoked permit. If the commission decides to require additional monitoring systems for a large combustion source for sulfur dioxide (SO₂), nitrogen oxides (NO_x), and oxygen (O₂), the cost is estimated to range between \$100,000 to \$150,000. If the commission denies approval of a permit application, the applicant may have to resubmit the permit with additional information. All of these examples are worst-case scenarios. The commission intends to work closely with each site rated as a poor performer to try to raise the classification of the site utilizing options intended to minimize compliance costs.

In addition to permit-related costs, the proposed amendments may result in increased costs from enforcement penalties for sites with multiple regulatory violations during the compliance period. The proposed amendments would double the administrative penalty enhancement based on compliance history for a repeat violator, although the statutory maximums, which range from \$2,500 to \$10,000 per day per violation, would not be exceeded.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of implementing the proposed amendments will be potentially increased environmental protection by linking a site's historical environmental performance with future authorizations provided by the commission.

The proposed rulemaking is intended to make changes to the commission's NSR permit program rules in order to implement certain provisions of HB 2912. The bill requires the commission to develop a uniform standard for evaluating compliance history, to establish a set of standards for the classification of a person's compliance history, and to use compliance history classifications in certain commission decisions. In a concurrent rulemaking, the commission is proposing to establish the classification and use of the components of compliance history. The proposed amendments in this rulemaking are intended to replace existing compliance history provisions specified in the commission's NSR rules, and would, where applicable, provide references to compliance history requirements proposed in the concurrent Chapter 60 rulemaking.

The proposed amendments would require the commission to use the compliance history classification in commission decisions concerning new NSR permit applications, renewals, and amendments. Only those sites classified as poor would be potentially fiscally impacted by the proposed amendments. The overall effect on sites classified as poor performers is anticipated to vary widely, depending on the site and the overall compliance with commission regulations.

The commission anticipates that the number of individuals and businesses that will be impacted economically due to implementation of the proposed amendments will be very small. The commission already reviews compliance history for many 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 individuals and businesses. The commission estimates that only a very small number of NSR permit applicants are anticipated to be classified as poor performers. For those sites classified as poor, the overall costs resulting from implementation of the proposed amendments are expected to vary for each site, depending on additional permit provisions required by the commission.

The following costs are only provided as examples, because there are so many variables which could affect the costs, including: the type of site and the statutes and regulations it is regulated under; the size of the site; whether more stringent permit provisions are specified or the permit is denied, suspended, or revoked; and what costs may be reduced at the same time other costs are incurred as a result of modifications to, or denial, suspension, or revocation of permits. For businesses that are required to convene a permit hearing, the commission estimates the cost to affected businesses would be

approximately \$30,000 per permit. If the commission requires a site to renew its permit every two years instead of every five years, the affected site would have to pay an extra \$10,000 in permit renewal fees. If the commission decides to revoke a permit, the revocation proceeding will cost the affected site approximately \$50,000 for each revoked permit. If the commission decides to require additional monitoring systems for a large combustion source for SO₂, NO_x, and O₂, the cost is estimated to range between \$100,000 to \$150,000. If the commission denies approval of a permit application, the applicant may have to resubmit the permit with additional information. All of these examples are worst-case scenarios. The commission intends to work closely with each site rated as a poor performer to try to raise the classification of the site utilizing options intended to minimize compliance costs.

In addition to permit-related costs, the proposed amendments may result in increased costs from enforcement penalties for sites with multiple regulatory violations during the compliance period. The proposed amendments would double the administrative penalty enhancement based on compliance history for a repeat violator, although the statutory maximums, which range from \$2,500 to \$10,000 per day per violation, would not be exceeded.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, for small or micro-businesses due to implementation of the proposed amendments, which are intended to make changes to the commission's NSR permit program rules in order to implement certain provisions of HB 2912. The bill requires the commission to develop a uniform standard for evaluating compliance history, to establish a set of standards for the classification of a person's compliance history, and to use compliance history

classifications in certain commission decisions. In a concurrent rulemaking, the commission is proposing to establish the classification and use of the components of compliance history. The proposed amendments in this rulemaking are intended to replace existing compliance history provisions specified in the commission's NSR rules, and would, where applicable, provide references to compliance history requirements proposed in the concurrent Chapter 60 rulemaking.

The proposed amendments would require the commission to use the compliance history classification in commission decisions concerning new NSR permit applications, renewals, and amendments. Only those sites classified as poor would be potentially fiscally impacted by the proposed amendments. The overall effect on sites classified as poor performers is anticipated to vary widely, depending on the site and the overall compliance with commission regulations.

The commission anticipates that the number of small and micro-businesses that will be impacted economically due to implementation of the proposed amendments will be very small. The commission already reviews compliance history for many 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 small and micro-businesses. The commission estimates that only a very small number of NSR permit applicants are anticipated to be classified as poor performers. For those sites classified as poor, the overall costs resulting from implementation of the proposed amendments are expected to vary for each site, depending on additional permit provisions required by the commission.

The following costs are only provided as examples, because there are so many variables which could affect the costs, including: the type of site and the statutes and regulations it is regulated under; the size of the site; whether more stringent permit provisions are specified or the permit is denied, suspended, or revoked; and what costs may be reduced at the same time other costs are incurred as a result of modifications to, or denial, suspension, or revocation of permits. For businesses that are required to convene a permit hearing, the commission estimates the cost to affected units of government would be approximately \$30,000 per permit. If the commission requires a site to renew its permit every two years instead of every five years, the affected site would have to pay an extra \$10,000 in permit renewal fees. If the commission decides to revoke a permit, the revocation proceeding will cost the affected site approximately \$50,000 for each revoked permit. If the commission decides to require additional monitoring systems for a large combustion source for SO₂, NO_x, and O₂, the cost is estimated to range between \$100,000 to \$150,000. If the commission denies approval of a permit application, the applicant may have to resubmit the permit with additional information. All of these examples are worst-case scenarios. The commission intends to work closely with each site rated as a poor performer to try to raise the classification of the site utilizing options intended to minimize compliance costs.

In addition to permit-related costs, the proposed amendments may result in increased costs from enforcement penalties for sites with multiple regulatory violations during the compliance period. The proposed amendments would double the administrative penalty enhancement based on compliance history for a repeat violator, although the statutory maximums, which range from \$2,500 to \$10,000 per day per violation, would not be exceeded.

The following is an analysis of the costs per employee for small and micro-businesses that are required to install additional monitoring systems at a large combustion source to comply with the proposed amendments. 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 additional monitoring systems would have to pay up to an additional \$1,500 per employee to comply with the proposed amendments. A micro-business that is required by the commission to install additional monitoring systems would have to pay up to an additional \$7,500 per employee to comply with the proposed amendments. Since the proposed amendments could result in a number of different potential costs for affected small and micro-businesses, this example was chosen because it is one of the most costly.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because the proposed rules do not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of these rules is to protect the environment and reduce the risk to human health from environmental exposure, they are not "major environmental rules" because they do not 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 rules will not 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 because the proposed rules merely establish the standards for the classification and use of a person's compliance history. The requirements of establishing standards for the classification and use of a person's compliance history are contained in TWC, §5.754. The reason there is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state is because the proposed rules are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Furthermore, the proposed rules do not meet any of the four applicability requirements listed in §2001.0225(a). The proposed rules do not exceed a standard set by federal law, because there is no comparable federal law. The proposed rules do not exceed an express requirement of state law, because they are consistent with the requirements of TWC, §5.754. The proposed rules do not exceed the requirements of a delegation agreement because there is no applicable delegation agreement. The rules are not proposed to be adopted solely under the general powers of the agency, but will be adopted under the express requirements of TWC, §5.754.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed rules is to establish a set of standards for the classification and use of a person's compliance history, as required by TWC, §5.754.

Promulgation and enforcement of these proposed rules would not affect private real property which is the subject of the rules because the proposed rules set forth the standards for the classification and use of a person's compliance history, as required by TWC, §5.754. The subject proposed rules do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this proposed rulemaking is identified in, or will affect an action/authorization identified in, the 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 prepared a preliminary consistency determination for the proposed rulemaking under 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rulemaking is §501.12(1), the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is §501.14(q), the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas. This rulemaking action has been conducted consistent with THSC, Chapter 382.

The commission solicits comment on the consistency of the proposed rulemaking with applicable CMP goals and policies.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on May 1, 2002, at 2:00 p.m. at the commission's central office, Building E, Room 201S, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend a hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.

Comments must be received by 5:00 p.m., May 2, 2002, and should reference Rule Log Number 2001-071-060-AD. For further information, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

SUBCHAPTER A: DEFINITIONS

§116.11

STATUTORY AUTHORITY

The repeal is proposed under THSC, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also authorized under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed repeal implements TWC, §5.753, relating to the standard for evaluating compliance history; and TWC, §5.754, relating to the classification and use of compliance history.

§116.11. Compliance History Definitions.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.110

STATUTORY AUTHORITY

The amendment is proposed under THSC, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also authorized under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed amendment implements TWC, §5.753, relating to the standard for evaluating compliance history; and TWC, §5.754, relating to the classification and use of compliance history.

§116.110. Applicability.

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

(c) Compliance history. For all authorizations listed in subsections (a) and (b) of this section or §116.116 of this title (relating to Changes to Facilities), compliance history reviews may be required under Chapter 60 of this title (relating to Compliance History).

(d) [(c)] Exclusion. Owners or operators of 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 Code of Federal Regulations [CFR] Part 63)) are not authorized to use:

(1) a permit by rule under Chapter 106 of this title;

(2) standard permits under Subchapter F of this chapter that do not meet the requirements of Subchapter C of this chapter; or

(3) §116.116(e) of this title (relating to Changes to Facilities).

(e) [(d)] Change in ownership.

(1) Within 30 days after the change of ownership of a facility permitted under this chapter, the new owner shall notify the commission and certify the following:

(A) the date of the ownership change;

(B) the name, address, phone number, and contact person for the new owner;

(C) an agreement by the new owner to be bound by all permit conditions and all representations made in the permit application and any amendments and alterations;

(D) there will be no change in the type of pollutants emitted; and

(E) there will be no increase in the quantity of pollutants emitted.

(2) The new owner shall comply with all permit conditions and all representations made in the permit application and any amendments and alterations.

(f) [(e)] Submittal under seal of Texas licensed professional engineer. Applications for permit or permit amendment with an estimated capital cost of the project above \$2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a Texas licensed professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas Board of Professional Engineers. The estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

(g) [(f)] Responsibility for permit application. The owner of the facility or the operator of the facility authorized to act for the owner is responsible for complying with this section.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 2: COMPLIANCE HISTORY

§§116.120 - 116.123, 116.125, 116.126

STATUTORY AUTHORITY

The repeals are proposed under THSC, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also authorized under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed repeals implement TWC, §5.753, relating to the standard for evaluating compliance history; and TWC, §5.754, relating to the classification and use of compliance history.

§116.120. Applicability.

§116.121. Exemptions.

§116.122. Contents of Compliance History.

§116.123. Effective Dates.

§116.125. Preservation of Existing Rights and Procedures.

§116.126. Voidance of Permit Applications.

SUBCHAPTER G: FLEXIBLE PERMITS

§116.730

STATUTORY AUTHORITY

The amendment is proposed under THSC, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also authorized under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed amendment implements TWC, §5.753, relating to the standard for evaluating compliance history; and TWC, §5.754, relating to the classification and use of compliance history.

§116.730. Compliance History.

As part of a flexible permit review, or the review of an amendment of a flexible permit, or renewal of an existing flexible permit, the provisions found in Chapter 60 [§§116.120 - 116.126] of this title (relating to Compliance History) shall be applicable to the facility, group of facilities, or account being permitted, amended, or renewed.

SUBCHAPTER H: VOLUNTARY EMISSION REDUCTION PERMITS

§116.773

STATUTORY AUTHORITY

The new section is proposed under THSC, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new section is also authorized under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed new section implements TWC, §5.753, relating to the standard for evaluating compliance history; and TWC, §5.754, relating to the classification and use of compliance history.

§116.773. Compliance History.

For all permit reviews under this subchapter, compliance history reviews are required under Chapter 60 of this title (relating to Compliance History).

SUBCHAPTER I: ELECTRIC GENERATING FACILITIES

§116.915

STATUTORY AUTHORITY

The new section is proposed under THSC, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new section is also authorized under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed new section implements TWC, §5.753, relating to the standard for evaluating compliance history; and TWC, §5.754, relating to the classification and use of compliance history.

§116.915. Compliance History.

For all permit reviews under this subchapter, compliance history reviews are required under Chapter 60 of this title (relating to Compliance History).