

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Subchapter A, Definitions, §116.10 and §116.18; and Subchapter I, Electric Generating Facility Permits, §§116.910, 116.911, 116.913, 116.921, and 116.930. The commission proposes new §§116.770 - 116.772, 116.774 - 116.777, 116.779 - 116.781, 116.783, 116.785 - 116.788, 116.790, 116.793 - 116.802, and 116.804 - 116.807 in Subchapter H, Voluntary Emission Reduction Permits; and new §§116.917, 116.918, 116.926, and 116.928 in Subchapter I. All sections of Subchapter H and the new and amended sections of Subchapter A and I are proposed to be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 75th Legislature, 1997, House Bill (HB) 3019 directed the commission to develop a voluntary emissions reduction plan for the permitting of existing significant sources. These existing significant sources are commonly known as grandfathered facilities. A grandfathered facility is one that existed at the time the legislature created the Texas Clean Air Act (TCAA) in 1971. These facilities were not required to comply with (i.e., grandfathered from) the then new requirement to obtain permits for construction or modifications of facilities that emit air contaminants. If grandfathered facilities have not been modified since 1971, they continue to be authorized to operate without a permit. The intent of HB 3019 was to create a program that would encourage the remaining grandfathered facilities to voluntarily obtain permits that would reduce the emissions from those facilities. In response to HB 3019, the commission created the Clean Air Responsibility Enterprise (CARE) Committee to develop recommendations for the voluntary permitting of grandfathered facilities.

In 1999, the 76th Legislature used the CARE Committee's recommendation as the basis for Senate Bill (SB) 766 which directed the commission to develop rules containing incentives for the voluntary permitting of grandfathered facilities. This program is known as the Voluntary Emission Reduction Permit (VERP) program. The commission adopted rules to implement the VERP program on December 16, 1999. Since the VERP rules became effective, the owners and operators of a number of grandfathered facilities have taken advantage of the incentives offered by the VERP program and submitted VERP applications for their grandfathered facilities. Additionally, the owners and operators of other grandfathered facilities have submitted permit-by-rule registrations and other new source review permit applications to permit their grandfathered facilities. The deadline to apply for a VERP was August 31, 2001.

Additionally, the 76th Legislature, 1999, amended the Texas Utilities Code, Title 2, Public Utility Regulatory Act, Subtitle B, Electric Utilities, and created a new Chapter 39, Restructuring of Electric Utility Industry by adopting SB 7. Senate Bill 7 required the commission to implement the permitting and allowance requirements of new Texas Utilities Code, §39.264, concerning Emissions Reductions of "Grandfathered Facilities." Senate Bill 7 required the commission to develop a mass cap and trade system to distribute emission allowances for use by electric generating facilities (EGFs). Under SB 7, two categories of EGFs are eligible to use the proposed trading system. The first category consisted of EGFs in existence on January 1, 1999, which were not subject to the requirement to obtain a permit under TCAA, §382.0518(g). These facilities are commonly referred to as grandfathered facilities. Senate Bill 7 also mandated that grandfathered EGFs apply for a permit on or before September 1, 2000, and obtain a permit by, or cease operation after May 1, 2003. The second category of EGFs

consisted of permitted EGFs that were not subject to the permitting requirements of SB 7, yet elected to participate in the allowance trading system.

Most recently, the 77th Legislature, 2001, amended the Texas Health and Safety Code (THSC), TCAA to require that all grandfathered facilities obtain permits. The mandatory permitting requirements of HB 2912 are the culmination of legislative efforts, beginning in 1997, to permit or otherwise authorize all grandfathered facilities. House Bill 2912 created four new types of permits for grandfathered facilities: existing facility permits, small business stationary source permits, EGF permits, and pipeline facility permits. House Bill 2912 also mandated the dates by which grandfathered facilities must apply for a permit and have controls operational or submit a shutdown notice. Grandfathered facilities that are addressed by an application for a VERP are not required to comply with the provisions of HB 2912 for grandfathered facilities. However, grandfathered facilities that withdraw their VERP applications and elect to submit a permit application for an authorization under HB 2912 will forfeit those incentives, including eligibility for amnesty from enforcement.

House Bill 2912 specifies certain requirements based upon the geographic location of the grandfathered facility. Grandfathered facilities must submit permit applications or notices of shutdown by September 1, 2003 for facilities in East Texas; September 1, 2004 for facilities in West Texas; and for small business stationary source permits, by September 1, 2004, irrespective of the location of the facility.

The commission is required to act on applications by the first anniversary after receipt of an administratively complete application, but allows the commission to grant a facility's request for a one-year extension, for good cause.

Existing facility permits are available for all grandfathered facilities, and require consideration of ten year old best available control technology (BACT), considering the age and remaining useful life of the facility. Existing facility flexible permits are also available for grandfathered facilities and facilities permitted under a VERP, located at a single site. Small business stationary source permits are available for sources defined as a small business stationary source in TCAA, §382.0365(h) and which do not have to submit emissions inventory information under TCAA, §382.014. Facilities eligible for small business stationary source permits may not emit air contaminants after March 1, 2008 if they do not have a permit or a pending application. House Bill 2912 provides that gas-fired EGFs that were required to obtain a permit under SB 7, or were exempt from the requirement to obtain a SB 7 permit, are considered permitted for all air contaminants. House Bill 2912 also provided that coal-fired EGFs that were required to obtain a permit under SB 7 are considered permitted for nitrogen oxides (NO_x), sulfur dioxide (SO₂), and particulate matter (PM) as it relates to opacity. House Bill 2912 further provides that coal-fired EGFs are eligible for an EGF permit for the criteria pollutants not addressed by the SB 7 permit. Additionally, TCAA, §382.05185 provides for the permitting of: 1) generators that do not generate electric energy for compensation and are not used more than 10% of the annual operating schedule; and 2) auxiliary fossil-fuel-fired combustion facilities that do not generate electric energy and do not emit more than 100 tons per year (tpy) of any air contaminant.

Grandfathered reciprocating internal combustion engines that are part of the processing, treating, compression, or pumping facilities connected to, or part of, a gathering or transmission pipeline may apply for a pipeline facilities permit. An applicant may apply for a single permit for all engines connected to a pipeline or a separate permit for all discrete and separate engines. Additionally, the

commission must allow for mandatory emission reductions to be achieved at either a single engine or by averaging reductions among multiple engines connected to a pipeline. House Bill 2912 requires a 50% reduction in NO_x emissions at facilities located in East Texas, and allows the commission to require up to a 50% reduction in volatile organic compounds (VOC). For facilities located in West Texas, the commission may require up to a 20% reduction in NO_x and VOC. If sources elect to average emissions to achieve the mandatory reductions, they cannot include reductions made to comply with other state or federal requirements. However, if a source does not average emissions to achieve the mandatory reductions, they may include reductions made since January 1, 2001 to comply with other state or federal requirements.

Texas Clean Air Act, §382.05181(h) provides that applications for pipeline facility permits, existing facility permits, existing facility flexible permits, and EGF permits are subject to the public notice and hearing requirements of TCAA, §382.05191. Texas Clean Air Act, §382.05191 provides that public participation for initial issuance of a permit under TCAA, §§382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 will be done in the manner of TCAA, §382.0561, concerning Federal Operating Permit; Hearing, and TCAA, §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, and require the commission to send notice of final action to persons who comment during the comment period or during a hearing. This is the same process authorized for VERPs by SB 766.

Small business stationary source permits are not subject to these notice and comment hearing procedures. Review and renewals of existing facility permits, EGF permits, pipeline facility permits, and small business stationary source permits will be conducted under the same procedures for preconstruction permits, generally. Existing facility permits, EGF permits, pipeline facility permits, and small business stationary source permits are subject to judicial review, under TCAA, §382.032.

House Bill 2914, §78, 77th Legislature, 2001 created a new incentive program to assist in retrofitting reciprocating internal combustion engines associated with pipelines. The new TCAA, §382.051865, Reimbursement Program for Certain Emissions Reductions from Reciprocating Internal Combustion Engines Associated with Pipelines, provides that the commission may develop a program, in cooperation with local governments, other agencies, and EPA to provide incentives to owners or operators of reciprocating internal combustion engines that are required to make a 50% reduction in NO_x emissions under new TCAA, §382.05186, Pipeline Facilities Permits.

House Bill 2914, §78 also established an Emissions Reductions Incentives Account within the Clean Air Account No. 151. The section establishes guidelines for how any money deposited into this account is to be distributed to owners or operators making reductions in NO_x emissions from grandfathered reciprocating internal combustion engines associated with pipelines. House Bill 2914 provides for a partial reimbursement for the capital cost of installing technology to reduce emissions that meet certain criteria. To implement these revisions, the commission is proposing new §116.776, Distribution of Funds from the Emissions Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region, in Subchapter H. The

proposed section identifies the facilities which are eligible for a partial reimbursement for the cost of controls. The proposed rules also contain the criteria the commission will consider in determining who will receive money from the account and how much money a particular facility will receive. In order to be eligible for reimbursement under this program, the owner or operator of a grandfathered reciprocating internal combustion engine must make a 50% reduction in actual emissions of NO_x as compared to the emissions reported for the facility in the 1997 industrial point source emissions inventory. The commission believes that an actual reduction in emissions should be necessary to receive reimbursement in order to assure that air quality benefits will be achieved under this incentive program. Another criteria for reimbursement is the requirement to obtain a pipeline facilities permit or replace the grandfathered engine with an electric engine. This implements the HB 2914 requirement that limits reimbursement to facilities required to achieve a 50% reduction in NO_x emissions. Facilities that obtain pipeline facility permits are the only facilities required to achieve a 50% reduction in NO_x emissions and the replacement of grandfathered engines with electric engines will eliminate that source of NO_x emissions. A pipeline facility permit must be issued prior to a request for distribution under the program, and emission controls identified in the permit must be operating prior to a distribution from the account to enable the commission to process applications for reimbursement and provide for a control check prior to distribution of funds. The commission further identified the following criteria for distribution: location of the facility, percentage of reduction in the hourly emissions of NO_x, cost effectiveness of the controls, and when the reductions are actually achieved and the request for reimbursement is received. These criteria will provide incentives to ensure that reimbursements for emission reductions are prioritized for those reductions that occur in areas of the state where those reductions will be beneficial, for projects that achieve the highest percentage reductions first, are most

cost effective, and for projects that occur early. Weighting the criteria to provide for larger, cost effective, earlier reductions considering the area of the state where the reduction is proposed will maximize the air quality benefits for the state. The commission will issue guidance concerning the implementation of the reimbursement program.

Currently, the proposal contains language allowing the commission to delegate to the executive director the authority to take action on permit applications for grandfathered facilities. The commission solicits comment on the proposal to delegate to the executive director the authority to take any action on these grandfathered facility permits, and also to make decisions regarding the implementation and administration of the permitting program, generally.

To implement these revisions to the TCAA, the commission is proposing new and amended rules in Chapter 116, Subchapter A, Definitions; Subchapter H, Voluntary Emission Reduction Permits; and Subchapter I, Electric Generating Facilities. Additionally, revisions to 30 TAC Chapter 39, Public Notice, are necessary to implement the provisions of HB 2912. The proposed amendments to Chapter 39 will be published in a later issue of the *Texas Register*. The commission was unable to open the necessary sections of Chapter 39 until those sections were officially closed in another rulemaking action.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

The proposed amendment to §116.10, General Definitions, revises the definition of “grandfathered facility” to be consistent with TCAA, §382.0518(g). The revised definition clarifies that a grandfathered facility is one that is not a new facility, was constructed prior to August 30, 1971 (or no construction contract was executed on or before August 30, 1971 that specified a beginning construction date on or before February 29, 1972) and has not been modified since August 30, 1971.

The proposed amendments to §116.18, Electric Generating Facility Permits Definitions, adds a definition for “natural gas-fired electric generating facility” for consistency with the EGF permit requirements of HB 2912. House Bill 2912, in §382.05185(i), provides that a natural gas-fired EGF includes a facility that was designed to burn either natural gas or fuel oil of a grade approved by commission rule. It is the commission’s position that “designed to burn” in this case means that all of the necessary equipment (including fuel oil tanks, fuel lines, atomizers, and pre-heaters if necessary) were constructed and maintained as part of the grandfathered EGF. Any construction or modification necessary to allow an EGF to burn fuel oil will be required to comply with the requirements of Subchapter B, New Source Review Permits, before beginning the construction.

The commission is conducting a modeling analysis of grandfathered EGFs with the potential to burn fuel oil. The commission modeled all grandfathered gas-fired EGFs in all areas of the state. The commission looked at the maximum short-term emission rate for each compound associated with burning fuel oil. This approach is conservative because not all grandfathered gas-fired EGFs are designed to burn fuel oil, and they will not all be firing at the maximum firing rate at the same time. The commission first looked at firing fuel oil of American Society for Testing and Materials (ASTM)

grade number 2 with a sulfur content of 0.3% by weight or less. Using the conservative approach outlined above with ASTM grade number 2 fuel oil and a sulfur content of no more than 0.3% by weight, compound-specific maximum predicted ground level concentrations were compared to the respective Effects Screening Levels (ESLs), or relevant air standards. All concentrations were below ESLs or standards, with the exception of the state SO₂ 30-minute standard. One site was identified as potentially exceeding the state SO₂ standard. This site was then modeled again with all sources acting together rather than separately. The number of hours the site was predicted to exceed the SO₂ standard were counted at each point and found to be less than 0.1% of all hours modeled. Due to the conservative nature of the modeling demonstration, which assumes all sources operating at full capacity simultaneously at all hours of the year, 100% compliance with the state SO₂ standard is expected. The commission's Toxicology and Risk Assessment Section has concluded that given the assumptions made in the review, burning ASTM grade number 2 fuel oil will not pose adverse health or welfare effects in the general public. Because ASTM grade number 1 fuel oil is cleaner burning than grade number 2, the analysis thus far has concluded that burning fuel oil of ASTM grades 1 or 2 with a sulfur content of 0.3% by weight or less is protective of public health and physical property. The commission is continuing to analyze other fuel oil grades and refine the modeling analysis. The commission solicits comment on the possible inclusion of other acceptable fuel oil grades and the blending of different fuel oil grades in this rulemaking. The establishment of acceptable fuel oil grades does not relieve the owner or operator of a natural-gas-fired EGF from the responsibility to comply with any emissions limitations or conditions of any permit or state or federal regulation.

The proposed amendments also add a definition for “normal annual operating schedule.” This definition is needed to establish the normal annual operating schedule at an EGF site. The normal annual operating schedule is needed to determine if a generator that the owner or operator is seeking to permit under an EGF permit is used not more than 10% of the normal annual operating schedule as required by TCAA, §382.05185(d)(1).

Subchapter H, Voluntary Emission Reduction Permits

The proposed amendments to Subchapter H include changing the subchapter title from “Voluntary Emission Reduction Permits” to “Permits for Grandfathered Facilities” in order to correctly reflect the modified content of the subchapter. The subchapter is proposed to be divided into four divisions. The existing sections of the subchapter would be placed into Division 4, Voluntary Emission Reduction Permits. Division 1, General Applicability; Division 2, Small Business Stationary Source Permits, Pipeline Facility Permits, and Existing Facility Permits; and Division 3, Existing Facility Flexible Permits are new sections of Subchapter H proposed to implement and administer the requirements of HB 2912 and HB 2914.

Division 1, General Applicability

Proposed new §116.770, Requirements to Apply, contains the deadlines by which the owner or operator of a grandfathered facility must apply for a permit to operate that facility under Chapter 116, qualify for a permit by rule under 30 TAC Chapter 106, or submit a notice of shutdown. As required by HB 2912, a permit application or notice of shutdown must be submitted before September 1, 2003, for facilities located in the East Texas region and before September 1, 2004, for facilities located in the West Texas

region and El Paso County. House Bill 2912 defines the East Texas region as all counties traversed by or east of Interstate Highway 35 North of San Antonio or traversed by or east of Interstate Highway 37 South of San Antonio, including Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties. The West Texas region is then defined as all counties not contained in the East Texas region. This definition is slightly different from the definition created by SB 7 in that the SB 7 definition for West Texas region does not include El Paso County. Therefore, rather than create a new definition, the commission will use the language, "West Texas Region as defined in §101.330 of this title (relating to Definitions) and El Paso County" in place of the West Texas region as defined by HB 2912.

Proposed new §116.771, Implementation Schedule for Additional Controls, explains the implementation schedule to be contained in a permit if the installation of additional controls is required for a grandfathered facility to meet an emissions limit for a pollutant. As required by HB 2912, installation of required controls must be completed before March 1, 2007, for facilities located in the East Texas region and before March 1, 2008, for facilities located in the West Texas region and El Paso County.

Consistent with TCAA, §382.05182, Notice of Shutdown, proposed new §116.772, Notice of Shutdown, establishes the procedures for submitting a notice of shutdown in lieu of obtaining a permit for a grandfathered facility, and the deadlines by which a grandfathered facility shutting down must cease emitting air contaminants. Facilities for which the owner or operator submits a notice of shutdown by the application deadlines contained in §116.770 may continue to operate until March 1, 2007, if the facility is located in the East Texas region or March 1, 2008, if the facility is located in the West Texas region or El Paso County. Facilities that have been shut down and for which a notice of

shutdown has been submitted must obtain authorization under Chapter 116 or Chapter 106 prior to restarting operations. In order to enable the commission to keep better track of facilities which are shut down, the notice of shutdown will be required to include, at a minimum, an identification of the facility being shut down, the date the facility intends to cease operating, and an inventory of the type and amount of emissions that will be eliminated.

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

Proposed new §116.774, Eligibility for Small Business Stationary Source Permits, states the facilities which are eligible for a small business stationary source permit in accordance with TCAA, §382.05184. Only the owners or operators of facilities located at small business stationary sources as defined by TCAA, §382.0365(h), and which are not required by TCAA, §382.014 to submit emissions inventories to the commission may apply for a small business stationary source permit, and the application must be made before September 1, 2004. The proposed section specifies that any grandfathered facility, including any facility for which the owner or operator has submitted a notice of shutdown under proposed §116.772, located at a small business stationary source may not emit air contaminants on or after March 1, 2008, unless the facility is permitted or has a pending permit application under Chapter 116, or a pending registration for a permit by rule under Chapter 106. The proposed section also requires an application for a small business stationary source permit to be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e), and states that the facility's owner or operator is responsible for applying for the permit and complying with the subchapter.

Proposed new §116.775, Eligibility for Pipeline Facilities Permits, states the facilities which are eligible for a pipeline facilities permit in accordance with TCAA, §382.05186. The owner or operator of a grandfathered reciprocating internal combustion engine or group of engines that are part of processing, treating, compression, or pumping facilities connected to or part of a gathering or transmission pipeline may apply for a pipeline facilities permit. The proposed section also requires an application for a pipeline facilities permit to be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e), and states that the facility's owner or operator is responsible for applying for the permit and complying with the subchapter. The proposed section allows the owner or operator of more than one grandfathered reciprocating internal combustion engine to apply for a pipeline facilities permit for a single grandfathered engine or for all grandfathered engines connected to or part of a gathering or transmission pipeline.

Proposed new §116.776, Distribution of Funds from the Emissions Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Engines Located in the East Texas Region, implements the requirements of HB 2914, §78 to establish procedures and criteria for reimbursement to owners or operators for the partial cost of installing controls to reduce emissions from grandfathered reciprocating internal combustion engines at facilities associated with pipelines. The proposed section establishes which facilities will be eligible for reimbursement, the limitations on reimbursement, and the criteria for distribution. Although HB 2912 limits reimbursement to the owners or operators of those facilities required to reduce emissions of NO_x by 50% because they are seeking a pipeline facilities permit, the commission believes it is also appropriate to provide the opportunity for reimbursement to certain owners or operators who choose to replace their grandfathered internal

combustion engines with new electric engines. This section will allow the commission to process requests for reimbursement for the replacement of grandfathered reciprocating internal combustion engines through the registration of the replacement electric engines. Registration of the electric engines is necessary because there is no requirement to permit an electric engine since there are no emissions associated with electric engines. The owners or operators of grandfathered engines required to reduce emissions by some other state or federal law, including the requirement to reduce emissions of NO_x in the Houston/Galveston, Dallas/Fort Worth, or Beaumont/Port Arthur nonattainment areas, are not eligible for reimbursement.

Proposed new §116.777, Eligibility for Existing Facility Permits, states the facilities which are eligible for an existing facility permit in accordance with TCAA, §382.05183. The owner or operator of any grandfathered facility may apply for an existing facility permit. The proposed section also requires an application for an existing facility permit to be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e), and states that the facility's owner or operator is responsible for applying for the permit and complying with the subchapter.

Proposed new §116.779, Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits, specifies the application requirements and demonstrations which must be met in order for a facility to be granted a small business stationary source permit, pipeline facilities permit, or existing facility permit. These requirements are consistent with the requirements for other permits issued under Chapter 116.

The proposed new §116.779(a)(1) provides that the emissions from the facility must comply with the rules and regulations of the commission, including the protection of the health and physical property of the people. The commission may not issue a permit for a grandfathered facility if it finds that the emissions from the grandfathered facility will not be protective of public health and property. The requirement to protect physical health and property is also included in the proposed §116.794(1), concerning existing facility flexible permits and the proposed §116.917(a)(1), concerning permits for certain grandfathered coal-fired EGFs and certain grandfathered facilities located at EGF sites. In order to assure that permits are protective of public health and property, the commission will conduct an appropriate health effects review for each permit application for a grandfathered facility. Details of what the review will entail will be developed and provided in a guidance document. This guidance document will be published at a later date. The permit may also have provisions for the measurement of air contaminants, including installation of sampling ports and sampling platforms.

In order to be consistent with the current review process for permits and applicable federal requirements, §§116.779, 116.794, and 116.917 would require the owner or operator of a grandfathered facility applying for a small business stationary source permit, pipeline facilities permit, existing facility permit, existing facility flexible permit, or EGF permit to be able to demonstrate that they meet applicable federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). Facilities must be able to meet performance standards specified in the application and may be required to provide information that demonstrates ongoing compliance after the permit is issued. If applicable, facilities would be required to comply with Prevention of Significant Deterioration (PSD) and nonattainment review as specified in Chapter

116, Subchapter B. Since grandfathered facilities must comply with federal requirements, if applicable, it is appropriate to ensure that these facilities are in compliance with federal requirements in the process of reviewing applications. These sections also require the facility to submit air dispersion modeling if a more refined health effects review is required. Finally, these sections require the application to identify each grandfathered facility to be included in the permit, identify the air contaminants emitted, and provide emission rate calculations.

Proposed §116.779(b) specifies additional requirements with which applicants for a pipeline facilities permit would have to comply. In accordance with TCAA, §382.05186(e), facilities located in the East Texas region would be required to demonstrate that each engine will achieve at least a 50% reduction of the hourly emissions rate of NO_x, expressed in terms of grams per brake horsepower-hour (g/hp-hr), and may also be required to demonstrate a 50% reduction of the hourly emissions rate of VOC, expressed in terms of g/hp-hr. Consistent with TCAA, §382.05186(f), the proposed section also states that the commission shall require up to a 20% reduction in hourly emissions rate of NO_x and VOC, expressed in terms of g/hp-hr, for facilities located in the West Texas region or El Paso County. In accordance with TCAA, §382.05186(b), the proposed section allows the owner or operator of more than one grandfathered reciprocating internal combustion engine to average the reductions achieved among more than one engine connected to or part of a gathering or transmission pipeline in order to demonstrate the required reductions or to demonstrate that the required reductions will be achieved at each individual facility. Consistent with TCAA, §382.05186(c) and (d), the proposed section states that, if the owner or operator chooses to average among engines located in both the East and West Texas regions or El Paso County, the owner or operator must demonstrate that the sum of the

reductions achieved from all of the engines located in the East Texas region will achieve the 50% reduction required for facilities located in the East Texas region. If the emission reductions required by this proposed subsection will be achieved by averaging reductions, the proposal also states that the average may not include emission reductions achieved in order to comply with any other state or federal law. If the emission reductions required by this proposed subsection will be achieved at one account, the proposal allows the reduction to include emission reductions achieved since January 1, 2001 in order to comply with another state or federal law.

Proposed §116.779(c) specifies additional requirements with which applicants for a existing facility permit would have to comply. In accordance with TCAA, §382.05183(b), applicants for existing facility permits would have to propose an air pollution control method that is at least as beneficial as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the submittal of the existing facility permit application, considering the age and remaining useful life of the facility, and identify the date by which the control method would be implemented.

Proposed new §116.780, Public Participation for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits, requires that an applicant for a pipeline facilities permit or an existing facility permit publish notice of intent to obtain a permit in accordance with Chapter 39, Subchapters H and K. The proposed section establishes that any person who may be affected by emissions from the grandfathered facility seeking a permit may request that the commission hold a notice and comment hearing on the permit application. The proposed section states that any hearing request must be

submitted during the 30-day comment period, which ends 30 days after publication of the notice of intent. The proposed section specifies the procedures and requirements for the hearing and the rights of affected persons. In accordance with TCAA, §382.05181, small business stationary source permits are not subject to these notice and comment hearing procedures.

Proposed new §116.781, Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits, specifies the applicability of the hearing requirements in the section, the responsibilities of the commission in determining whether or not to hold a hearing, the applicant's responsibilities if a hearing is to be held, and the requirements regarding submission of oral or written statements and data concerning a draft permit. Texas Clean Air Act, §382.05181(h) provides that applications for pipeline facility permits, existing facility permits, existing facility flexible permits, and EGF permits are subject to the public notice and hearing requirements of TCAA, §382.05191. Texas Clean Air Act, §382.05191 provides that public participation for initial issuance of a permit under TCAA, §§382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 will be done in the manner of TCAA, §382.0561, concerning Federal Operating Permit; Hearing, and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, and require the commission to send notice of final action to persons who comment during the comment period or during a hearing.

Proposed new §116.783, Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications, specifies the commission's responsibilities for sending notice of the final action on an application for a pipeline facilities permit or an existing facility permit, and the information

that the commission must include in the notice. The proposed section will require the commission to individually notify persons who commented during the public comment period or at a permit hearing, of the final action of the commission. The notice must be sent by first-class mail to the commenters and to the applicant. The notice must include the response to comments, the identification of any changes in the permit, and a statement that any person affected by the decision of the commission may petition for rehearing and for judicial review.

Proposed new §116.785, Permit Fee, establishes a permit fee of \$450 for persons applying for a permit under Subchapter H, Division 1, unless the facility is a small business stationary source, as defined by TCAA, §382.0365(h), then the fee will be \$100. These fees will allow the commission to partially offset the cost of processing the applications. The proposed section also establishes requirements for payment and return of fees. Texas Clean Air Act, §382.062 authorizes the commission to establish fees for permits.

Proposed new §116.786, General and Special Conditions, will allow the commission to include general and special conditions in the permits issued under Subchapter H, Division 2, and requires that permit holders comply with any and all general and special conditions that the permit may contain. The proposed section also lists the general conditions permit holders are subject to, regardless of whether they are specifically stated within the permit document. These requirements are consistent with the requirements for other permits issued under Chapter 116.

Proposed new §116.787, Amendments and Alterations of Permits Issued Under this Division, specifies that owners or operators planning the modifications of a facility permitted under Chapter 116, Subchapter H, Division 2, must comply with the requirements of Subchapter B, New Source Review Permits, before beginning the construction of the modification. The proposed section also states that amendments and alterations of permits issued under Subchapter H, Division 2, are subject to the requirements of Subchapter B.

Proposed new §116.788, Renewal of Permits Issued Under this Division, implements TCAA, §382.055 and the changes to §382.05192 to require that small business stationary source permits, pipeline facilities permits, and existing facility permits be renewed in accordance with Chapter 116, Subchapter D, Permit Renewals.

In accordance with the commission's authority under Texas Water Code (TWC), §5.122, proposed new §116.790, Delegation, allows the commission to delegate to the executive director the authority to take any action on a permit issued under Subchapter H, Division 2.

Division 3, Existing Facility Flexible Permits

Proposed new §116.793, Eligibility for Existing Facility Flexible Permits, identifies the conditions under which a grandfathered facility or group of grandfathered facilities is eligible for an existing facility flexible permit in accordance with TCAA, §382.05183(c). Consistent with §382.05183(c), the proposed section also allows facilities permitted under §382.0519 to be included in the existing facility flexible permit. The proposed section requires an application for an existing facility flexible permit to

be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e). The proposed section also requires specific actions by owners or operators of facilities covered by an existing facility flexible permit for changes of ownership. The proposed section specifies that the facility's owner or operator is responsible for applying for the permit and complying with the subchapter, except after a change of ownership as explained in the section.

Proposed new §116.794, Existing Facility Flexible Permit Application, specifies the application requirements and demonstrations which must be met in order for a facility to be granted an existing facility flexible permit. These requirements are consistent with current flexible permit requirements, except for the required level of control. The level of control required by the proposed section, consistent with the requirement of TCAA, §382.05183, is at least as beneficial as ten year old BACT, considering the age and remaining useful life of the facility.

Proposed new §116.795, Public Participation for Initial Issuance of Existing Facility Flexible Permits, requires that an applicant for an existing facility flexible permit publish notice of intent to obtain a permit in accordance with Chapter 39, Subchapters H and K. The proposed section establishes that any person who may be affected by emissions from the grandfathered facility seeking a permit may request that the commission hold a notice and comment hearing on the permit application. The proposed section states that any hearing request must be submitted during the 30-day comment period, which ends 30 days after publication of the notice of intent. The proposed section specifies the procedures and requirements for the hearing and the rights of affected persons.

Proposed new §116.796, Notice and Comment Hearings for Initial Issuance of Existing Facility Flexible Permits, specifies the applicability of the hearing requirements in the section, the responsibilities of the commission in determining whether or not to hold a hearing, the applicant's responsibilities if a hearing is to be held, and the requirements regarding submission of oral or written statements and data concerning a draft permit. Texas Clean Air Act, §382.05181(h) provides that applications for pipeline facility permits, existing facility permits, existing facility flexible permits, and EGF permits are subject to the public notice and hearing requirements of §382.05191. Texas Clean Air Act, §382.05191 provides that public participation for initial issuance of a permit under §§382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 will be done in the manner of TCAA, §382.0561, concerning Federal Operating Permit; Hearing, and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, and require the commission to send notice of final action to persons who comment during the comment period or during a hearing.

Proposed new §116.797, Notice of Final Action on Existing Facility Flexible Permit Applications, specifies the commission's responsibilities for sending notice of the final action on an application for an existing facility flexible permit, and the information that the commission must include in the notice. The proposed section will require the commission to individually notify persons who commented during the public comment period or at a permit hearing, of the final action of the commission. The notice must be sent by first-class mail to the commenters and to the applicant. The notice must include the response to comments, the identification of any changes in the permit, and a statement that any person affected by the decision of the commission may petition for rehearing and for judicial review.

Proposed new §116.798, Permit Fee, establishes a permit fee of \$450 for persons applying for a permit under Subchapter H, Division 3, unless the facility is a small business stationary source facility, as defined by TCAA, §382.0365(h), then the fee would be \$100. These fees will allow the commission to partially offset the cost of processing the applications. The proposed section also establishes requirements for payment and return of fees. Texas Clean Air Act, §382.062 authorizes the commission to establish fees for permits.

Proposed new §116.799, General and Special Conditions, requires that permit holders comply with any and all general and special conditions that the existing facility flexible permit may contain. The proposed section states that upon a specific finding by the executive director that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under §116.150 and §116.151 and §§116.160 - 116.163 (relating to Nonattainment Review or Prevention of Significant Deterioration Review), or Subchapter C of Chapter 116 (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63), the permit may include a special condition which requires the permittee to obtain written approval from the executive director before constructing a facility under a standard permit or a permit by rule under Chapter 106. Additionally, the proposed section specifies that a pollutant specific emission cap or multiple emission caps and/or individual emission limitations shall be established for each air contaminant for all facilities authorized by the permit. The proposed section also lists the general conditions applicable to every existing facility flexible permit and states that there may be additional special conditions attached to an existing facility flexible permit upon issuance or amendment of the

permit that may be more restrictive than the requirements of the section. These requirements are consistent with the requirements for flexible permits issued under Subchapter G of this chapter.

Proposed new §116.800, Emission Caps and Individual Emission Limitations, specifies the criteria for establishing the emission cap for a specific pollutant and the criteria for establishing an individual emission limitation for a pollutant. The proposed section also specifies the requirements for readjustment of the emission cap when a facility is shut down, a new facility is brought into the permit, or a facility becomes subject to any new state or federal regulation which would lower emissions or require an emissions reduction. These requirements are consistent with the requirements for flexible permits issued under Subchapter G of this chapter, except that there is not an insignificant emission factor specified for grandfathered facilities. The commission does not believe that an insignificant emission factor would be necessary or appropriate for grandfathered facilities, since use of the ten year old BACT control method will provide sufficient flexibility for these facilities.

Proposed new §116.801, Implementation Schedule for Additional Controls, explains the implementation schedule to be contained in a permit if the installation of additional controls is required for a grandfathered facility to meet an emission cap for an air contaminant. As required by TCAA, §382.05181, installation of required controls must be completed before March 1, 2007, for facilities located in the East Texas region, and before March 1, 2008, for facilities located in the West Texas region or El Paso County. The proposed section also specifies how the emission cap will be adjusted if such a facility is taken out of service or fails to install the additional control equipment as provided by the implementation schedule in the permit.

Proposed new §116.802, Significant Emission Increase, defines when an increase in emissions from operational or physical changes at an existing facility covered by an existing facility flexible permit will be considered insignificant for the purposes of state new source review under Subchapter H of this chapter, and will not require a permit amendment. The proposed section states that any increase in emissions from a new facility or emissions of an air contaminant not previously emitted by an existing facility will require a permit amendment.

Proposed new §116.804, Limitation on Physical and Operational Changes, states that neither operational nor physical changes at an account may result in an increase in actual emissions at facilities not covered by the existing facility flexible permit unless those affected facilities are authorized in accordance with §116.110, Applicability.

Proposed new §116.805, Amendments and Alterations for Existing Facility Flexible Permits, specifies that amendments and alterations for existing facility flexible permits are subject to the requirements of Subchapter B.

Proposed new §116.806, Existing Facility Flexible Permit Renewal, states that existing facility flexible permits will be renewed in accordance with the requirements of Subchapter D, Permit Renewals, consistent with the permit requirements of Chapter 116.

Proposed new §116.807, Delegation, is necessary to allow the commission to delegate to the executive director the authority to take any action on a permit issued under Subchapter H, Division 3 consistent

with the authority of the TWC, §5.122. This delegation will allow for efficient processing of permit applications.

With the addition of three new divisions to this subchapter, the existing requirements for VERPs have been placed under a new Division 4. There have been no changes to the requirements for VERPs.

Subchapter I, Electric Generating Facility Permits

The proposed amendments to Subchapter I would implement the portions of TCAA, §382.05185 which create a new EGF permit. The EGF permit will allow the owners or operators of EGFs who have already applied for a permit required by SB 7, 76th Legislature to apply for a permit for: 1) generators that do not generate electric energy for compensation and are not used more than 10% of the annual operating schedule; and 2) auxiliary fossil-fuel-fired combustion facilities that do not generate electric energy and do not emit more than 100 tpy of any air contaminant. The proposed changes will also allow coal-fired EGFs which were required to apply for a permit under SB 7, 76th Legislature to apply for an EGF permit for criteria pollutants other than NO_x, SO₂, and PM as it relates to opacity. In addition, the amendments to Subchapter I provide that gas-fired EGFs which were required to be permitted under SB 7, 76th Legislature or were exempt from the requirement to apply for such a permit are considered permitted for all air contaminants.

The proposed amendments to §116.910, Applicability, allow the owners or operators of EGFs who have already applied for a permit required by SB 7, 76th Legislature to apply for an EGF permit for certain auxiliary generators or other combustion equipment. The proposed amendments delete the old

subsection (e) as unnecessary since this section deals with applicability and the pollutants covered by the permit are identified in §116.119 and the permit document itself. The changes proposed in subsection (f) clarify that EGFs generating electric energy primarily for internal use are not required to obtain a permit under this subchapter. However, since these internal use generators are grandfathered, §382.05181, as codified in §116.770, requires that the owners or operators obtain authorization from the commission. The facility must obtain a permit under either Chapter 116, or qualify for a permit by rule under Chapter 106.

The proposed amendments to §116.911, Electric Generating Facility Permit Application, first clarify that gas-fired EGFs which were required to be permitted under SB 7, 76th Legislature or were exempt from the requirement to apply for such a permit are considered permitted under the TCAA for all air contaminants. The proposed additions to this section also allow the owners or operators of EGFs who have already applied for a permit required by SB 7, 76th Legislature to apply for a permit for generators that do not generate electricity for compensation and are not used more than 10% of the normal operating schedule, or for other combustion equipment that does not generate electric energy and does not emit more than 100 tpy of any air contaminant. The proposed amendments to this section allow coal-fired EGFs which were required to apply for a permit under SB 7, 76th Legislature to apply for an EGF permit for criteria pollutants other than NO_x, SO₂, and PM as it relates to opacity. The proposed additions to this section identify the date by which applications must be filed and state that emissions of air contaminants from auxiliary generators or other combustion equipment that is permitted must be included in the allowance trading program created by SB 7, 76th Legislature.

The proposed amendments to §116.913, General and Special Conditions, update the conditions of any permit issued under this subchapter, including the pollutants or allowances that may be authorized for each permit and the requirements of the SB 7 allowance trading program for the additional equipment which may be permitted under this subchapter. Paragraph (2) under this section is being deleted as it is no longer necessary because HB 2912 either considers these additional air contaminants already permitted for gas-fired EGFs which have obtained or applied for a permit under SB 7, or provides for the permitting of the additional criteria pollutants for coal-fired EGFs which have obtained or applied for a SB 7 permit. Subsequent paragraphs have been renumbered. Permits for certain grandfathered coal-fired EGFs and certain grandfathered facilities located at EGF sites authorized under §116.917 will contain additional general and special conditions, as identified in §116.918.

The proposed new §116.917, Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites, outlines the application requirements for grandfathered coal-fired EGFs which choose to permit their additional criteria pollutants, and the auxiliary generators and the additional combustion equipment which can now be permitted under this subchapter. In order to be consistent with the current review process for permits and applicable federal requirements, §116.917 would require the owner or operator of a grandfathered facility applying for an EGF permit to be able to demonstrate that they meet applicable federal NSPS and NESHAP. Facilities must be able to meet performance standards specified in the application and may be required to provide information that demonstrates ongoing compliance after the permit is issued. If applicable, facilities would be required to comply with PSD and nonattainment review as specified in Chapter 116, Subchapter B. Since

grandfathered facilities must comply with federal requirements, if applicable, it is appropriate to ensure that these facilities are in compliance with federal requirements in the process of reviewing applications. These sections also require the facility to submit air dispersion modeling if a more refined health effects review is required. Finally, these sections require the application to identify each grandfathered facility to be included in the permit, identify the air contaminants emitted, and provide emission rate calculations.

The proposed new §116.918, Additional General and Special Conditions for Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites, identifies some of the general and special conditions which may be included in any permit issued under the proposed §116.917, and states that there may be additional special conditions attached to a permit upon issuance or amendment of the permit that may be more restrictive than the requirements of the section. Additional general and special conditions are required by §116.913. Permit holders are required to comply with any and all general and special conditions that the permit may contain. These requirements are consistent with the requirements for permits issued under Chapter 116.

The proposed amendments to §116.921, Notice and Comment Hearings for Initial Issuance, are necessary to include the auxiliary generators and additional combustion equipment described in proposed §116.911(f), which are proposed to be permitted under this subchapter, as facilities subject to the notice and hearing requirements of this section. These changes implement the requirement contained in TCAA, §382.05191.

The proposed new §116.926, Permit Fee, is necessary to allow the commission to collect application fees for any permits issued in accordance with §116.917. These fees will allow the commission to partially offset the cost of processing the applications. Texas Clean Air Act, §382.062 authorizes the commission to establish fees for permits.

The proposed new §116.928, Delegation, is necessary to allow the commission to delegate to the executive director the authority to take any action on a permit issued under this subchapter, consistent with the authority of the TWC, §5.122. This delegation will allow for efficient processing of permit applications.

The proposed amendments to §116.930, Modifications, include a revision of the section title to “Amendments and Alterations of Permits Issued Under this Subchapter.” The proposed amendments are intended to clarify that the owner or operator of a facility with a permit issued under this subchapter must comply with the requirements of Subchapter B prior to beginning the construction of the modification, and that any required alteration or amendment will follow the procedures contained in Subchapter B.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be fiscal implications, which may be significant, for certain units of state and local government including institutions of higher education that operate grandfathered equipment that will be required to obtain permits created by this

rulemaking. For those affected units of government that are required to obtain permits, there will be permit development, permit application, public notice, and pollution control device installation costs. The overall cost to these facilities will depend on the types of emissions, the specific processes involved, and the control methodologies employed for emission reductions.

The State of Texas began permitting new and modified sources of air pollutants in 1971. Sources built before the permitting rules became effective were not required to obtain permits for air emissions as long as they were not modified. These sources are known as grandfathered sources.

The proposed amendments implement certain provisions of HB 2912 and HB 2914, 77th Legislature, 2001. Provisions in HB 2912 require grandfathered air emission facilities to obtain a permit under this chapter or qualify for a permit by rule under Chapter 106.

House Bill 2912 creates four new types of permits for grandfathered facilities: existing facility permits, EGF permits, pipeline facility permits, and small business stationary source permits. Provisions in HB 2914 establish an account called the Emissions Reductions Incentives Account and allow the commission to use money in the account to provide partial reimbursement to certain pipeline operations to install pollution control equipment.

The proposed amendments require grandfathered air emission facilities owned or operated by units of government to obtain one of the four newly created permits. It is anticipated that these facilities will apply for either an existing facility permit or a pipeline facility permit as they would not be eligible for

a small business stationary source permit and gas-fired grandfathered EGFs that have applied for or are exempt from current permitting provisions are now considered permitted for all air contaminants, in accordance with SB 7, 76th Legislature, 1999. There may be auxiliary generators or other combustion equipment located at city-owned facilities that will have to obtain an EGF permit.

All grandfathered facilities owned or operated by units of state or local government would be eligible to apply for an existing facility permit. Examples of grandfathered facilities include oil/coal/wood/gas-fired boilers; process heaters; kilns; gas turbines; duct burners; flares; storage tanks; connections and valves used in piping located at oil and gas production, processing, and transmission; chemical processing; electricity generation; metal manufacturing; general manufacturing; and oil refining operations. The existing facility permit would require a facility to use an air pollution control method at least as beneficial as ten year old BACT. The commission does not require any particular pollution control method to comply with this rulemaking. Examples of control methods that could be used include low NO_x burners and flue gas recirculation for boilers and heaters, leak detection and repair programs for piping components, and combustion modifications for engines. House Bill 2912 mandated the dates by which all grandfathered facilities must apply for a permit and have controls operational, or shut down.

In addition to existing facility permits, some facilities would be eligible to obtain a pipeline facility permit. This permit would require reciprocating internal combustion engines used in pipeline operations to achieve a 50% reduction in NO_x and up to a 50% reduction in VOC for sites in East

Texas, and up to a 20% reduction in NO_x and VOC at sites in West Texas. Some units of state or local government own grandfathered reciprocating internal combustion engines.

Compliance deadlines for the new permits depend on whether the facility is located in East or West Texas. The East Texas region includes all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio, and also including Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties. All other counties in Texas are considered to be in the West Texas region. Affected facilities in East Texas must submit an application before September 1, 2003 and any controls required by the permit must be in operation by March 1, 2007. Affected facilities in West Texas must submit an application before September 1, 2004 and any control required by the permit must be in operation by March 1, 2008.

Based on analysis of the 1997 emissions inventory, there are a total of approximately 800 grandfathered facilities in Texas. Since 1997, it is estimated that 300 of these sites have been authorized to continue operations under a permit, permit by rule, or currently have a pending permit application. The commission anticipates there will be state and local government sites, including an unknown number of facilities owned and operated by river authorities, that would be affected by the proposed amendments.

The overall costs to affected units of state and local government will depend on which permit the site chooses to apply. There would be no significant fiscal implications for units of state and local government that own or operate gas-fired grandfathered EGFs that qualify for the EGF permit, because these facilities would already be considered permitted and not required to install pollution control

devices or pay permit development and application fees. There may be auxiliary generators or other combustion equipment located at city-owned facilities that will have to obtain an EGF permit. Units of state and local government that decide to obtain an EGF permit would have to pay costs associated with permit development, the permit application, and public notice. Units of state and local government that decide to obtain an existing or pipeline facility permit would have to pay costs associated with permit development, the permit application, public notice, and installation of any required pollution control devices.

The cost of preparing a permit application will depend on the complexity of the facility. The commission estimates that on average, it will cost a unit of state and local government approximately \$10,000 to prepare the permit application. The permit application fee will be \$450 per application.

The costs for public notice vary significantly depending on the location of the facility and its proximity to large metropolitan areas. Small town/city newspapers generally charge much less for publication of a public notice. The commission estimates a large city newspaper would charge approximately \$3,000 for the display notice and approximately \$450 for the legal notice. A smaller city newspaper would charge approximately \$210 for the display notice and \$20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be \$150. The cost for signs at affected facilities would cost approximately \$300. The total costs for public notice associated with permitting a grandfathered facility would range from \$680 to \$3,900, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be

required to publish a legal notice for the hearing, which would cost an additional \$450 for publication in a large city newspaper, and \$20 in a smaller city newspaper.

The costs to meet the emission reduction requirements of the existing facility permit will vary depending on the types of emissions, the specific processes involved, and the control methodologies employed for emission reductions. There are three grandfathered natural gas-fired boilers operated by Texas A&M University, and two grandfathered natural gas-fired boilers operated by the University of Texas at Austin that would be affected by the proposed rulemaking. The university boilers would be required to obtain an existing facility permit, since they would not qualify for an EGF or pipeline facility permit. The University of Texas and Texas A&M University boilers would be required to use an air pollution control method at least as beneficial as ten year old BACT. Based on data in the 1997 emissions inventory and the document *“Alternative Control Techniques Document -- NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,”* EPA, March, 1994 the commission estimates it will cost the University of Texas between \$105,000 to \$350,000 and Texas A&M University between \$95,000 to \$165,000 annually per boiler to install and operate pollution control devices that will reduce emissions to a level that meets the required BACT standard. The commission estimates that compliance costs would be similar or lower for other units of state and local government that operate grandfathered sites not listed on the 1997 emission inventory that decide to apply for an existing facility permit.

The costs to meet the emission reduction requirements of the pipeline facility permit will also vary depending on location of the facility, the types of emissions, the specific processes involved, the control methodologies employed for emission reductions, and the capacity of the affected reciprocating internal

combustion engine. Although HB 2912 requires up to a 20% reduction in NO_x for facilities located in West Texas, the commission anticipates that the controls required in West Texas will involve little or no capital costs. This rulemaking does not require any particular emission control technique. The proposed rules allow for emission averaging among engines on a pipeline. Because pipeline engines exist as part of a system of engines, owners may take advantage of this flexibility. The level of modifications can be tailored to achieve the most cost effective control strategy. The averaging strategy allows controls to range from complete low emission retrofits on engines with the lowest costs, limited retrofits on engines with average control costs, and no retrofits on engines with the highest control costs. The average required NO_x reduction is 50% in the East Texas area and up to 20% in the West Texas area. The commission estimates that in order to comply with the proposed amendments, owners and operators of lean-burn engines will utilize some form of flue gas cleanup using systems such as selective catalytic reduction (SCR), conversion to electric motors, and combustion modifications.

Combustion modifications to reduce NO_x emissions on lean-burn engines is the least costly and is sufficient to meet requirements. Combustion modifications include a range of techniques including low emission combustion, high pressure fuel injection, increased air/fuel ratio, high energy ignition systems, and ignition timing retard. For the purposes of this fiscal note, low emission combustion for lean-burn engines will be used. Although this is the most expensive of the combustion modification options listed, this technique results in greater emission reductions and would allow owners and operators to install pollution control devices on fewer engines and still meet the overall reduction requirements through emission averaging. The commission estimates the total capital costs to install low emission combustion on a 1,000 horsepower (hp) lean-burn engine would be \$292,800 and the total

annual cost would be \$72,400. These costs are based on equations, total capital ($\$226,000 + \$66.8 \times \text{BHP}$) and annualized costs ($\$57,800 + \$14.6 \times \text{BHP}$), found on pages 5-4 and 5-8 of the document, "*Stationary Reciprocating Internal Combustion Engines, Updated Information on NO_x emissions and Control Techniques*," EPA, September 1, 2000. Because the statutory reduction requirements are substantially less than the reductions achievable with low emission combustion, the average engine control cost will be substantially less than the costs obtained by application of this low emission combustion cost equation to each affected engine.

For rich-burn engines, the costs for pipeline engine NO_x reductions are based on use of non-selective catalytic reduction (NSCR). Non-selective catalytic reduction is a cost-effective control technique (99% reduction is feasible) in widespread use for rich-burn engines. This fiscal note estimates the NSCR total capital cost for a 1,000 hp rich-burn engine is \$42,200 and the total annual cost would \$90,300. These costs are based on equations, total capital ($\$12,100 + \$30.1 \times \text{hp}$) and annualized cost ($\$68,300 + \$22.0 \times \text{hp}$), found on pages 6-27 and 6-30 of the document, "*Alternative Control Techniques Document - NO_x Emissions from Stationary Reciprocating Internal Combustion Engines*," EPA. The average costs for pipeline engines complying with these permitting requirements will be approximately 50% of the per engine costs in East Texas, based on emission averaging.

Units of state and local government that seek to obtain pipeline facility permits may be eligible for partial reimbursement of the costs of pollution controls. House Bill 2914 directed the Comptroller's Office to establish an account within the General Revenue Account 151, Clean Air, called the Emissions Reductions Incentives Account. House Bill 2914 allows the commission to use money within

the Emissions Reductions Incentives Account to provide for partial reimbursement of the cost of controls for reciprocating internal combustion engines associated with pipeline operations. The commission was appropriated an additional \$16.2 million in Fiscal Year 2002 from the emissions reductions incentives account to provide incentives. Any unexpended funds remaining from the original appropriation could be used to provide similar incentives during Fiscal Year 2003.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased compliance with commission regulations and decreased air emissions due to pollution controls being required on emission sources that were previously exempt from utilizing pollution control devices.

The State of Texas began permitting new and modified sources of air pollutants in 1971. Sources built before the permitting rules became effective were not required to obtain permits for air emissions as long as they were not modified. These sources are known as grandfathered sources.

The proposed amendments implement certain provisions of HB 2912 and HB 2914, 77th Legislature, 2001. Provisions in HB 2912 require grandfathered air emission facilities to obtain a permit under this chapter or qualify for a permit by rule under Chapter 106.

House Bill 2912 creates four new types of permits for grandfathered facilities: existing facility permits, EGF permits, pipeline facility permits, and small business stationary source permits. Provisions in HB 2914 establish an account called the emissions reductions incentives account and allow the commission to use money in the account to provide partial reimbursement to certain pipeline operations to install pollution control equipment.

Grandfathered facilities owned and operated by large businesses would be eligible to apply for either the existing facility, EGF, or pipeline facility permits created by HB 2912. All grandfathered facilities located at large businesses would be eligible to apply for an existing facility permit. This permit would require a facility to use an air pollution control method at least as beneficial as ten year old BACT. The commission does not require any one particular pollution control method. Examples of control methods that could be used include low NO_x burners and flue gas recirculation for boilers and heaters, leak detection and repair programs for piping components, and combustion modifications for engines. The commission anticipates that adoption of this rulemaking will result in the shutdown of a small number of grandfathered equipment owned and operated by businesses due to costs associated with preparing a permit application, the publication of public notice, and the installation of pollution control equipment. Businesses that may choose to cease operations as a result of this rulemaking may include some pipeline facilities in East Texas with compressor stations that will be required to replace engines in order to get the 50% reduction in NO_x required to obtain a pipeline facilities permit, or some small or micro-businesses such as small cultured marble manufacturers who have to make equipment modifications.

In addition to existing facility permits, gas-fired grandfathered EGFs located at large businesses that have applied for or were exempt from the requirement to apply for a permit to comply with the provisions of SB 7, 76th Legislature, 1999, are now considered permitted for all air contaminants. The commission estimates there will be no significant fiscal implications for this provision because there would be no permit application or development fees, and installation of pollution control equipment would not be required for gas-fired grandfathered EGFs. There may be auxiliary generators or other combustion equipment located at city-owned facilities that will have to obtain an EGF permit. Units of state and local government that decide to obtain an EGF permit would have to pay costs associated with permit development, the permit application, and public notice.

In addition to existing facility permits, grandfathered reciprocating internal combustion engines owned and operated by large businesses that are part of processing, treating, compression, or pumping facilities connected to or part of a gathering or transmission pipeline would be eligible to obtain a pipeline facility permit. This permit would require grandfathered reciprocating internal combustion engines used in pipeline operations to achieve a 50% reduction in NO_x and up to a 50% reduction in VOC for sites in East Texas, and up to a 20% reduction in NO_x and VOC at sites in West Texas.

Compliance deadlines depend on whether the facility is located in East or West Texas. Affected facilities in East Texas must submit an application before September 1, 2003 and any controls required by the permit must be in operation by March 1, 2007. Affected facilities in West Texas must submit an application before September 1, 2004 and any control required by the permit must be in operation by March 1, 2008.

Based on analysis of the 1997 emissions inventory, there are a total of approximately 800 grandfathered facilities in Texas. Since 1997, it is estimated that 300 of these sites have been authorized to continue operations under a permit, permit by rule, or currently have a pending permit application. The remaining 500 facilities, the vast majority of which are owned and operated by large businesses, are oil/coal/wood/gas-fired boilers; process heaters; kilns; gas turbines; duct burners; and flares used in oil and gas production, processing, and transmission; chemical processing; electricity generation; metal manufacturing; general manufacturing; and oil refining operations. The commission estimates the actual number of affected large businesses will be higher since there are probably additional operational grandfathered facilities that were not included in the 1997 emissions inventory.

The overall costs to affected facilities will depend on which permit the site chooses to apply. There would be no significant fiscal implications for individuals or businesses that own or operate gas-fired grandfathered EGFs that qualify for the EGF permit, because these facilities would already be considered permitted and not required to install pollution control devices or pay permit development and application fees. There may be auxiliary generators or other combustion equipment located at sites that will have to obtain an EGF permit. Individuals or businesses that decide to obtain an EGF permit would have to pay costs associated with permit development, the permit application, and public notice. Individuals and businesses that decide to obtain an existing or pipeline facility permit would have to pay costs associated with permit development, the permit application, public notice, and installation of any required pollution control devices.

The cost of preparing a permit application will depend on the complexity of the facility. The commission estimates that on average, it will cost an individual or business approximately \$10,000 to prepare the permit application. The permit application fee will be \$450 per application.

The costs for public notice vary significantly depending on the location of the facility and its proximity to large metropolitan areas. Small town/city newspapers generally charge much less for publication of a public notice. The commission estimates a large city newspaper would charge approximately \$3,000 for the display notice and approximately \$450 for the legal notice. A smaller city newspaper would charge approximately \$210 for the display notice and \$20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be \$150. The cost for signs at affected facilities would cost approximately \$300. The total costs for public notice associated with permitting a grandfathered facility would range from \$680 to \$3,900, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be required to publish a legal notice for the hearing, which would cost an additional \$450 for publication in a large city newspaper, and \$20 in a smaller city newspaper.

The costs to meet the emission reduction requirements of the existing facility permit will vary depending on the types of emissions, the specific processes involved, the control methodologies employed for emission reductions to meet the ten year old BACT requirements, and the overall capacity of the facility. Based on data in the 1997 emissions inventory and the document "*Alternative Control Techniques Document -- NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,*" EPA, March, 1994, the commission estimates it will cost between \$40,000 to \$900,000 per piece of

equipment to install and operate pollution control devices necessary to meet the ten year old BACT standards. This cost estimate only addresses costs for boilers to reduce NO_x. There are other types of facilities and equipment affected that would have to install different emission control devices, and some may need to control SO₂ and other air contaminants. However, the commission expects that in most cases, the costs will be similar to those identified for boilers.

The costs to meet the emission reduction requirements of the pipeline facility permit will also vary depending on the types of emissions, the specific processes involved, the control methodologies employed for emission reductions, and the capacity of the affected reciprocating internal combustion engine. This rulemaking does not require any particular emission control technique. The proposed rules allow for emission averaging among engines on a pipeline. The average required NO_x reduction is 50% in the East Texas area and up to 20% in the West Texas area. The commission estimates that in order to comply with the proposed amendments, owners and operators of lean-burn engines will utilize some form of flue gas cleanup using systems such as SCR, conversion to electric motors, and combustion modifications.

Combustion modifications to reduce NO_x emissions on lean-burn engines is the least costly and is sufficient to meet requirements. Combustion modifications include a range of techniques including low emission combustion, high pressure fuel injection, increased air/fuel ratio, high energy ignition systems, and ignition timing retard. For this fiscal note, low emission combustion for lean-burn engines is used. Although this is the most expensive of the combustion modification options listed, this technique results in greater emissions reductions and would allow owners and operators to install

pollution control devices on fewer engines and still meet the overall reduction requirements through emission averaging. The commission estimates the total capital costs to install low emission combustion on a 1,000 hp lean-burn engine would be \$292,800 and the total annual cost would be \$72,400. These costs are based on equations, total capital ($\$226,000 + \$66.8 \times \text{BHP}$) and annualized costs ($\$57,800 + \$14.6 \times \text{BHP}$), found on pages 5-4 and 5-8 of the document, "*Stationary Reciprocating Internal Combustion Engines, Updated Information on NO_x emissions and Control Techniques*," EPA, September 1, 2000. Because the statutory reduction requirements are substantially less than the reductions achievable with low emission combustion, the average engine control cost will be substantially less than the costs obtained by application of this low emission combustion cost equation to each affected engine.

For rich-burn engines, the costs for pipeline engine NO_x reductions are based on use of NSCR. Non-selective catalytic reduction is a cost effective control technique (99% reduction is feasible) in widespread use for rich-burn engines. This fiscal note estimates the NSCR total capital cost for a 1,000 hp rich-burn engine is \$42,200 and the total annual cost would \$90,300. These costs are based on equations, total capital ($\$12,100 + \$30.1 \times \text{hp}$) and annualized cost ($\$68,300 + \$22.0 \times \text{hp}$), found on pages 6-27 and 6-30 of the document, "*Alternative Control Techniques Document – NO_x Emissions from Stationary Reciprocating Internal Combustion Engines*," EPA. The average costs for pipeline engines complying with these permitting requirements will be approximately 50% of the per engine costs in East Texas, based on emission averaging.

Businesses that seek to obtain pipeline facility permits may be eligible for partial reimbursement of the costs of pollution controls. The reimbursement would be paid from an account called the Emissions Reductions Incentives Account established by HB 2914 and appropriated to the commission for distribution. The commission was appropriated an additional \$16.2 million from the new fund. Reimbursement will be based on the amount of money available and prioritized based on a set of criteria established by the commission.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, for small and micro-businesses that have to install pollution control equipment as a result of implementation and enforcement of the proposed amendments, which are intended to implement the grandfathered permitting provisions of HB 2912 and HB 2914. House Bill 2912 requires all grandfathered air emission facilities to obtain a permit, and HB 2914 provided additional funding for the commission to provide incentives to defray the costs for pollution control equipment on reciprocating internal combustion engines. The commission anticipates that adoption of this rulemaking will result in the shutdown of a small number of grandfathered equipment owned and operated by small and micro-businesses due to costs associated with preparing a permit application, the publication of public notice, and the installation of pollution control equipment. The majority of grandfathered equipment located at small or micro-businesses would be eligible for a permit by rule or a small business stationary source permit. However, there may be businesses, such as small cultured marble manufacturers, that may have to change operating procedures or conduct equipment modifications to comply with this rulemaking. This would be

required if the executive director determined the location of the small business would pose an environmental problem to the surrounding area.

The commission anticipates that grandfathered facilities owned and operated by small and micro-businesses will likely apply for either existing facility or small business stationary source permits.

There are no known small or micro-businesses that would be eligible for the EGF permit and the commission anticipates there are very few small or micro-businesses with equipment that would qualify for the pipeline facility permit. The commission anticipates that the owners or operators of these facilities will obtain a small business stationary source permit rather than a pipeline facility permit.

There are no controls or emission reductions required for a small business stationary source permit, and there is no requirement for public notice.. In order to qualify for the small business stationary source permit, the site must emit less than 50 tpy of any regulated air pollutant and cannot emit more than 75 tpy of all regulated air pollutants. Small or micro-businesses with emission outputs above these thresholds would have to obtain an existing source permit. Grandfathered facilities owned and operated by small or micro-businesses that intend to obtain a small business stationary source permit must submit an application before September 1, 2004 and any controls required by the permit must be in operation by March 1, 2008. Small and micro-businesses that do not qualify for the small business stationary source permit must submit a permit application by March 1, 2008 or shut down.

Based on analysis of the 1997 emissions inventory, there are a total of approximately 800 grandfathered facilities in Texas. Since 1997, it is estimated that 300 of these sites have been authorized to continue operations under a permit, permit by rule, or currently have a pending permit application. Of the

remaining 500 facilities identified on the 1997 emissions inventory, the commission estimates that fewer than ten are small or micro-businesses. These facilities would have to apply for an existing facility permit or shut down since their emissions would exceed the maximum thresholds allowed for a site to qualify for a small business stationary source permit. The commission estimates there may be other grandfathered facilities owned and operated at small and micro-businesses that qualify for the small business stationary source permit, and therefore would not have shown up on the emissions inventory. Examples of grandfathered equipment owned and operated by small and micro-businesses include small ICI boilers, process heaters, and internal combustion engines.

Small and micro-businesses that qualify for the small business stationary source permit would only have to pay costs associated with developing the permit and the permit application fee. Facilities that decide to obtain an existing facility permit would also have to pay additional costs associated with installation and operation of pollution control devices and public notice. The cost of preparing a permit application will depend on the complexity of the facility and whether a detailed modeling analysis will be required to evaluate the impacts from the facility. The commission estimates that on average, it could cost a facility \$10,000 to prepare the permit application for a small business stationary source and existing facility permit if a third party consultant is used. However, the commission can provide limited technical assistance with the permitting process for owners and operators of small and micro-businesses. The permit application fee will be \$100 per facility instead of \$450 for larger businesses and units of government.

The costs for public notice will also be decreased for small and micro-businesses, because they would not be required to publish a display notice. The public notice costs will vary depending on the location of the facility and its proximity to large metropolitan areas. Small town/city newspapers generally charge much less for publication of a public notice. The commission estimates a large city newspaper would charge approximately \$450 for the legal notice. A smaller city newspaper would charge approximately \$20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be \$150. The cost for signs at affected facilities would cost approximately \$300. The total costs for public notice associated with permitting a grandfathered facility owned and operated by a small or micro-business would range from \$170 to \$600, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be required to publish a legal notice for the hearing, which would cost an additional \$450 for publication in a large city newspaper, and \$20 in a smaller city newspaper.

The costs to meet the emission reduction requirements of the existing facility permit will vary depending on the types of emissions, the specific processes involved, the control methodologies employed for emission reductions to meet the ten year old BACT requirements, and the overall capacity of the facility. Based on data in the 1997 emissions inventory and the document *“Alternative Control Techniques Document -- NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,”* EPA, March, 1994, the commission estimates it will cost between \$40,000 to \$165,000 per piece of equipment to install and operate pollution control devices necessary to meet the ten year old BACT standards. This cost estimate only addresses costs for boilers to reduce NO_x. There are other types of facilities and equipment affected that would have to install different emission control devices, and some

may need to control SO₂ and other air contaminants. However, the commission expects that in most cases, the costs will be similar to those identified for boilers.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed amendments. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business that opts to obtain an existing facility permit for one natural gas-fired boiler and installs the required pollution control devices would incur additional costs of approximately \$1,700 per employee. A micro-business that opts to obtain an existing facility permit for one natural gas-fired boiler and installs the required pollution control devices would incur additional costs of approximately \$8,300 per employee. The cost to install and operate pollution control devices for affected facilities is the same for small businesses as for larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required. Although the proposed amendments may result in the shutdown of grandfathered equipment, the commission estimates the number will be small and not concentrated in any one region of the state. Additionally, the number of potential employee layoffs is estimated to be small and not concentrated in any one region so as to not have an adverse material affect on local or regional economies of the state.

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 implementing HB 2912, §§5.02 - 5.04 meets the definition of a “major environmental rule” as defined in that statute. However, the proposed rulemaking implementing HB 2914, §78 does not meet the definition of a “major environmental rule.” The 77th Legislature amended the THSC to require that all grandfathered facilities obtain permits. These rules implement the comprehensive permitting system created by HB 2912, including four different types of permits which will cover all grandfathered facilities, and provide for potential emission reductions. The rules implementing HB 2914 specify the procedures and criteria governing reimbursement from the Emissions Reductions Incentives Account, established to assist owners or operators making reductions in grandfathered emissions from reciprocating internal combustion engines at facilities associated with pipelines.

A “major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Although the proposed rules to implement the HB 2912 sections are intended to protect the environment or reduce risks to human health from environmental exposure, they may have adverse effects on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since they require mandatory permitting or shut down of certain grandfathered facilities. However, the analysis required by Texas Government Code, §2001.0225(c) does not apply

because the proposed rules do not meet any of the four applicability requirements of a major environmental rule. The proposed rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rules are proposed specifically to comply with HB 2912 and related provisions of the TCAA, and do not exceed the requirements of either.

The proposed rules to implement the HB 2914 sections are intended to protect the environment or reduce risks to human health from environmental exposure. Because this is an incentive program designed to provide financial assistance to certain facilities, HB 2914 will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rules to implement the HB 2914 sections do not fit the definition of a major environmental rule, and the analysis required by § 2001.0225(c) does not apply.

TAKINGS IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the proposed rules. The following is a summary of that assessment. The purpose of the proposed rules is to fulfill the commission's obligation to implement HB 2912, §§5.02 - 5.04 and HB 2914, §78, concerning grandfathered facilities. The proposed rules will advance this purpose by creating a comprehensive permitting system including four different types of permits which will cover all grandfathered facilities, and provide for emission reductions of NO_x and VOC. The rules will also contain procedures and criteria governing partial reimbursement from the Emissions Reductions Incentives Account, established to assist owners or

operators making reductions in grandfathered emissions from reciprocating internal combustion engines at facilities associated with pipelines.

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). Section 2007.003(b)(13) states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. In addition, these rules fulfill an obligation mandated by federal law. The proposed rules will implement requirements of 42 United States Code (USC), §7410. The reductions in NO_x and VOC significantly advance a health and safety purpose by assisting the state's efforts to attain the ozone national ambient air quality standards set by the EPA under 42 USC, §7409, for nonattainment areas of the state and maintain the quality of the state's air in attainment areas. The action is mandated by federal law because the rules will be submitted for EPA approval as part of the SIP. Texas Government Code, Chapter 2007 also does not apply because this is an action that is taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the health and safety purpose, and that does not impose a greater burden than is necessary to achieve the

health and safety purpose. Reductions required by these rules will be no greater than those required by HB 2912. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

Promulgation and enforcement of these rules will not burden private real property. The proposed rules do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rules do not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the proposed rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to this rulemaking is the policy (31 TAC §501.14(q)) that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This

proposal will require the owners or operators of all previously grandfathered facilities to obtain a permit for those facilities in order to continue to operate. The permits issued for these facilities are expected to result in reduced emissions of air contaminants and improved compliance with state and federal air pollution control requirements. Therefore, this rulemaking is consistent with the applicable policy and goal.

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

ANNOUNCEMENT OF HEARING

Public hearings on the proposal will be held at the following times and locations: January 22, 2002, 7:00 p.m., Tyler Junior College Regional Training and Development Center, Room 104, 1530 South Southwest Loop 323, Tyler; January 23, 2002, 7:00 p.m., City of Houston City Council Chambers, 2nd Floor, 901 Bagby, Houston; January 24, 2002, 7:00 p.m., City of Odessa City Council Chambers; 5th Floor, 411 West 8th Street, Odessa; January 28, 2002, 6:30 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; and January 29, 2002, 2:00 p.m., Texas Natural Resource Conservation Commission, 12100 North I-35, Building F, Room 2210, Austin.

The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings, and answer questions before and after the hearings.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 must be received by 5:00 p.m. on January 29, 2002. All comments should reference Rule Log No. 2001-076-116-AI. For further information, please contact Steve Hagle, Air Permits Division, at (512) 239-1295; or Jill Burditt, Policy and Regulations Division, at (512) 239-0560.

STATUTORY AUTHORITY

The amendments are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181 which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; and TWC, §5.103, which authorizes the commission to adopt rules.

The proposed amendments implement THSC, TCAA, §382.002, concerning Policy and Purpose; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board; Rules; and §382.0518, concerning Preconstruction Permit; TWC, §5.103, concerning Rules.

SUBCHAPTER A: DEFINITIONS

§116.10, §116.18

§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) - (5) (No change.)

(6) **Grandfathered facility** - Any facility that is not a new facility and has not been modified since August 30, 1971 [it was constructed prior to the permit requirements of this chapter].

(7) - (15) (No change.)

§116.18. Electric Generating Facility Permits Definitions.

The following words and terms, when used in Subchapter I of this chapter (relating to Electric Generating Facility Permits) shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (10) (No change.)

(11) **Natural gas-fired EGF** - For purposes of Subchapter I of this chapter, an EGF that was designed to burn either natural gas or fuel oil of a grade determined by the commission to be acceptable. Burning of a fuel oil designated by this definition as acceptable does not relieve the owner or operator of the EGF from the responsibility to comply with the emission limitations, allowances, or conditions of any permit or state or federal regulation. Acceptable fuel oil grades are:

(A) American Society for Testing and Materials (ASTM) grade number 1 or 2 fuel oil containing not more than 0.3% sulfur by weight.

(B) Any other grade of fuel oil which the owner or operator of the EGF demonstrates to the executive director is protective of public health and physical property.

(12) **Normal Annual Operating Schedule** - For the purposes of §116.911(f)(1) of this title (relating to Electric Generating Facility Permit Application), the average annual operating hours for all electric generating facilities located at a single account for the calendar years 1997, 1998, and 1999.

(13) [(11)] **Peaking unit** - An EGF that has:

(A) an average capacity factor of no more than 10% during the past three
calendar years; and

(B) a capacity factor of no more than 20% in each of those calendar years.

(14) [(12)] **Person** - As defined in §101.330(17) of this title.

**SUBCHAPTER H : PERMITS FOR GRANDFATHERED FACILITIES [VOLUNTARY
EMISSION REDUCTION PERMITS]**

DIVISION 1: GENERAL APPLICABILITY

§§116.770 - 116.772

STATUTORY AUTHORITY

The new sections are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181 which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; and TWC, §5.103, which authorizes the commission to adopt rules.

The proposed new sections implement THSC, TCAA, §382.002, concerning Policy and Purpose; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board; Rules; and §382.0518, concerning Preconstruction Permit; TWC, §5.103, concerning Rules.

§116.770. Requirement to Apply.

The owner or operator of a grandfathered facility must apply for a permit to operate that facility under this chapter, qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule), or submit a notice of shutdown before September 1, 2003 for facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions), and before September 1, 2004 for facilities located in the West Texas region as defined in §101.330 of this title or El Paso County.

§116.771. Implementation Schedule for Additional Controls.

If the installation of additional controls is required for a grandfathered facility to meet an emission limit for a pollutant, the permit shall specify an implementation schedule for such additional controls. Any such schedule shall require installation and operation of controls before March 1, 2007 for facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions) or before March 1, 2008 for facilities located in the West Texas region as defined in §101.330 of this title or El Paso County.

§116.772. Notice of Shutdown.

(a) The owner or operator of a grandfathered facility who chooses to shut the facility down rather than obtain a permit under this chapter or qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule), shall notify the executive director in writing by completing Form PI-1GSD, Notice of Shutdown, prior to the deadlines specified in §116.770 or §116.774 of this title (relating to Requirement to Apply; and Eligibility for Small Business Stationary Source Permits). The

owner or operator of a grandfathered facility who submits a Form PI-1GSD, Notice of Shutdown, prior to the deadlines specified in §116.770 or §116.774 of this title shall cease emitting air contaminants by:

(1) March 1, 2007, if the facility is not eligible for a small business stationary source permit and is located in the East Texas region as defined in §101.330 of this title (relating to Definitions); or

(2) March 1, 2008, if the facility is eligible for a small business stationary source permit or is located in the West Texas region as defined in §101.330 of this title or El Paso County.

(b) The owner or operator of a grandfathered facility who applies for a permit prior to the deadlines specified in §116.770 or §116.774 of this title, but prior to permit issuance, decides to shut the facility down must submit a Form PI-1GSD, Notice of Shutdown, prior to withdrawal of the permit application and must cease emitting air contaminants by the date specified in subsection (a)(1) or (2) of this section.

(c) The owner or operator of a facility that has been shut down and for which a Notice of Shutdown has been submitted must obtain the proper authorization under this chapter or Chapter 106 of this title prior to operating the facility.

(d) The Notice of Shutdown shall include, as a minimum, an identification of the facility to be shut down, the date the owner or operator intends to cease operating the facility, and an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate.

**DIVISION 2: SMALL BUSINESS STATIONARY SOURCE PERMITS,
PIPELINE FACILITIES PERMITS, AND EXISTING FACILITY PERMITS**

§§116.774 - 116.777, 116.779 - 116.781, 116.783, 116.785 - 116.788, 116.790

STATUTORY AUTHORITY

The new sections are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181 which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; and TWC, §5.103, which authorizes the commission to adopt rules.

The proposed new sections implement THSC, TCAA, §382.002, concerning Policy and Purpose; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board; Rules; and §382.0518, concerning Preconstruction Permit; TWC, §5.103, concerning Rules.

§116.774. Eligibility for Small Business Stationary Source Permits.

(a) The owner or operator of a grandfathered facility located at a small business stationary source, as defined in TCAA, §382.0365(h), and which is not required to report to the commission under TCAA, §382.014 may apply for a small business stationary source permit before September 1, 2004.

(b) The deadlines contained in §116.770 of this title (relating to Requirement to Apply) and §116.771 of this title (relating to Implementation Schedule for Additional Controls) do not apply to facilities eligible to apply for a small business stationary source permit. Any grandfathered facility, including any facility for which the owner or operator has submitted a notice of shutdown under §116.772 of this title (relating to Notice of Shutdown), located at a small business stationary source may not emit air contaminants on or after March 1, 2008, unless the facility has a permit application pending under this chapter or a registration for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

(c) Applications for a small business stationary source permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(d) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the small business stationary permit and for complying with this subchapter.

§116.775. Eligibility for Pipeline Facilities Permits.

(a) The owner or operator of a grandfathered reciprocating internal combustion engine or group of engines that is a part of processing, treating, compression, or pumping facilities connected to or part of a gathering or transmission pipeline may apply for a pipeline facilities permit.

(b) Applications for a pipeline facilities permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(c) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the pipeline facilities permit and for complying with this subchapter.

(d) The owner or operator of more than one grandfathered reciprocating internal combustion engine may apply for a pipeline facilities permit for a single grandfathered reciprocating internal combustion engine or all of the grandfathered reciprocating internal combustion engines connected to or part of a gathering or transmission pipeline.

§116.776. Distribution of Funds from the Emissions Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region.

(a) Eligible facilities. Owners or operators of grandfathered reciprocating internal combustion engines are eligible for reimbursement of a portion of the cost of controls from the Emissions Reductions Incentives Account based on the following criteria.

(1) The owner or operator of the grandfathered reciprocating internal combustion engine or engines must make an actual 50% reduction in the annual emissions of nitrogen oxides (NO_x) as compared to the emissions reported from the grandfathered reciprocating internal combustion engine or engines in the 1997 Industrial Point Source Emissions Inventory.

(2) The grandfathered reciprocating internal combustion engine or engines must be located in the East Texas region as defined in §101.330 of this title (relating to Definitions).

(3) The owner or operator must apply for and receive a pipeline facilities permit or replace the grandfathered reciprocating internal combustion engine with an electric engine.

(4) The project to control emissions must be initiated on or before September 1, 2006.

(5) The project to control emissions must be completed before March 1, 2007.

(6) The pipeline facilities permit must be issued before the owner or operator of the grandfathered reciprocating internal combustion engine can request a distribution from the Emissions Reductions Incentives Account.

(7) The owner or operator who elects to replace a grandfathered reciprocating internal combustion engine with an electric engine must submit a Registration of Replacement of a Grandfathered Reciprocating Internal Combustion Engine with an Electric Engine before the owner or operator can request a distribution from the Emissions Reductions Incentives Account.

(8) The emissions controls identified in the permit must be operating before the executive director can authorize payment from the Emissions Reductions Incentives Account.

(9) For grandfathered reciprocating internal combustion engines replaced by electric engines, the electric engine must be installed and operating and the grandfathered reciprocating internal combustion engine must be permanently shut down before the executive director can authorize payment from the Emissions Reductions Incentives Account.

(10) Facilities required by any other state or federal law to make emissions reductions are not eligible for reimbursement.

(b) Limitations on reimbursement. The commission may reimburse the owner or operator of a grandfathered reciprocating internal combustion engine or engines for no more than the cost associated with achieving emissions reductions between 30% and 50% of the engine's hourly emissions of NO_x before the addition of controls. The commission may distribute less than the amount calculated in this manner based on the amount of money contributed to the fund and the criteria for distribution outlined in subsection (c) of this section.

(c) Criteria for distribution. The commission will distribute any money in the fund based on the following criteria:

(1) whether the facility is located in an attainment area for ozone, near a nonattainment area for ozone, or a nonattainment area for ozone;

(2) the percentage of reduction in the hourly emissions of NO_x on a grams per brake horsepower-hour basis achieved;

(3) the cost effectiveness of the controls achieved based on the tons of emissions actually reduced per dollar of the cost of the control method; and

(4) when the reductions are actually achieved and the request for reimbursement is received.

(d) Verification of emissions reductions. Prior to reimbursement from the Emissions Reductions Incentives Account, the owner or operator of each grandfathered reciprocating internal combustion engine must provide documentation verifying the amount of actual emission reductions achieved.

§116.777. Eligibility for Existing Facility Permits.

(a) The owner or operator of a grandfathered facility may apply for an existing facility permit.

(b) Applications for an existing facility permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(c) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the existing facility permit and for complying with this subchapter.

§116.779. Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.

(a) Any application for a small business stationary source permit, a pipeline facilities permit, or an existing facility permit must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit, the owner or operator of the grandfathered 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 grandfathered 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 people.

(2) Measurement of emissions. The permit may have provisions for measuring the emission of air contaminants as determined by the commission. These provisions 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," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) 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 40 CFR Part 60, promulgated by EPA under authority granted under FCAA, §111, as amended.

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

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

(6) Performance demonstration. The grandfathered facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after the permit has been issued in order to demonstrate further that the facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A grandfathered facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of Significant Deterioration (PSD) review. A grandfathered facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(9) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the grandfathered facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the grandfathered facility is an affected source as defined in §116.15(1) of this title (relating to Section 112(g) Definitions), the affected source 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, Section 112(g), 40 CFR Part 63)).

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

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

(B) identify the air contaminants emitted; and

(C) provide emission rate calculations.

(b) In addition to the requirements of subsection (a) of this section, an application for a pipeline facilities permit shall propose a control method and identify the date by which the control method will be implemented. The proposed control method shall demonstrate compliance with the following requirements.

(1) Facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions), shall demonstrate that each grandfathered reciprocating internal combustion engine will achieve at least a 50% reduction of the hourly emissions rate of nitrogen oxides (NO_x), expressed in terms of grams per brake horsepower-hour (g/hp-hr). The commission may also require a

50% reduction of the hourly emissions rate of volatile organic compounds (VOC), expressed in terms of g/hp-hr for each engine located in the East Texas region as defined in §101.330 of this title.

(2) The commission shall require up to a 20% reduction of the hourly emissions rate of NO_x and VOC, expressed in terms of g/hp-hr, from grandfathered reciprocating internal combustion engines located in the West Texas region as defined in §101.330 of this title or El Paso County.

(3) Notwithstanding the requirements of paragraphs (1) and (2) of this subsection, the owner or operator of more than one grandfathered reciprocating internal combustion engine may average the reductions achieved among more than one reciprocating internal combustion engine connected to or part of a gathering or transmission pipeline in order to demonstrate the reductions required in paragraphs (1) and (2) of this subsection. If the owner or operator chooses to average among engines located in both the East and West Texas regions as defined in §101.330 of this title it must be demonstrated that the sum of the reductions achieved from all of the engines located in the East Texas region as defined in §101.330 of this title will achieve the reductions required in paragraph (1) of this subsection. For purposes of this paragraph, El Paso County is included in the West Texas region as defined in §101.330 of this title.

(4) If the emissions reductions required by paragraphs (1) and (2) of this subsection will be achieved by averaging reductions as allowed by paragraph (3) of this subsection, the average may not include emission reductions achieved in order to comply with any other state or federal law. If the emission reductions required by paragraphs (1) and (2) of this subsection will be achieved at one

account, the reduction may include emission reductions achieved since January 1, 2001 in order to comply with another state or federal law.

(c) In addition to the requirements of subsection (a) of this section, an application for an existing facility permit shall propose an air pollution control method that is at least as beneficial as the best available control technology (BACT) that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the submittal of the existing facility permit application, considering the age and remaining useful life of the facility. The application shall identify the date by which the control method will be implemented.

§116.780. Public Participation for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits.

(a) An applicant for a pipeline facilities permit or an existing facility permit shall publish a notice of intent to obtain the permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(b) Any person who may be affected by emissions from a grandfathered facility may request the commission to hold a notice and comment hearing on the pipeline facilities permit application or the existing facility permit application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit in accordance with §39.418 of this title

(relating to Notice of Receipt of Application and Intent to Obtain Permit). Any request for a notice and comment hearing must be made in writing during the 30-day public comment period.

(c) Any notice and comment hearing regarding initial issuance of a pipeline facilities permit or an existing facility permit shall be conducted in accordance with the procedures in §116.781 of this title (relating to Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits) and not under the APA.

(d) The commission's response to public comments and the notice of its decision on whether to issue or deny a pipeline facilities permit or an existing facility permit will be conducted in accordance with the procedures in §116.842 of this title (relating to Notice of Final Action).

(e) A person affected by a decision to issue or deny a pipeline facilities permit or an existing facility permit may seek review, as appropriate, under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

§116.781. Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits.

(a) The notice and comment hearing requirements apply only to the initial issuance of a pipeline facilities permit or an existing facility permit.

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a grandfathered facility is unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered facility, and that request is reasonable, the commission will hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the grandfathered facility is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The commission may set reasonable time limits for oral statements, and may require the submission of statements in writing.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the commission may extend the period for submitting written comments beyond the close of the hearing.

(e) The commission will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

(g) Any supporting materials for comments submitted under subsection (f) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

(1) already part of the administrative record in the same proceedings;

(2) state or federal statutes and regulations;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(h) The commission will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this subchapter.

(j) The commission will respond to comments consistent with §116.783 of this title (relating to Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications).

§116.783. Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications.

(a) After the public comment period expires or the conclusion of any notice and comment hearing, the commission will send notice by first-class mail of the final action on the pipeline facilities

permit application or the existing facility permit application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change; and

(3) a statement that any person affected by the decision of the commission may petition for a rehearing under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

§116.785. Permit Fee.

(a) Fees required. Any person who applies for a permit under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits must remit a fee of \$450 at the time of application for such permit. If the facility is a small business stationary source facility as defined in TCAA, §382.0365(h), the fee shall be \$100.

(b) Payment of fees. All permit fees must be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission and delivered to the Texas Natural Resource Conservation Commission, P. O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the commission will begin examination of the application.

(c) Return of fees. Fees must be paid at the time an application for a permit is submitted in accordance with this division. If the applicant withdraws the application prior to issuance of the permit, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule) is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a permit has been issued by the commission.

§116.786. General and Special Conditions.

(a) Permits issued under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits may contain general and special conditions. The holders of a permit under this division shall comply with any and all such conditions.

(b) General conditions. Holders of permits issued under this division shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Sampling requirements.

(A) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(B) All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission.

(C) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations, or contracting with an independent sampling consultant.

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

(3) Recordkeeping. The permit holder shall:

(A) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(B) keep all required records in a file at the plant site. If, however, the facility normally operates unattended, records shall be maintained at the nearest staffed location within the State of Texas as specified in the application;

(C) make the records available at the request of personnel from the commission or any air pollution control program having jurisdiction;

(D) comply with any additional recordkeeping requirements specified in special conditions attached to the permit; and

(E) retain information in the file for at least two years following the date that the information or data is obtained.

(4) 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."

(5) 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 upset 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).

(6) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit.

(B) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(C) Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) Special conditions. The holders of permits issued under this division shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of this title.

(2) Special conditions for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit in accordance with Subchapter F of this chapter (relating to Standard Permits); or

(ii) a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule).

(B) Such written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review in accordance with:

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)); or

(II) the provisions in §116.150 and §116.151 of this title (relating to Nonattainment Review), and §§116.160 - 116.163 of this title (relating to Prevention of Significant Deterioration Review).

§116.787. Amendments and Alterations of Permits Issued Under this Division.

The owner or operator planning the modification of a facility permitted under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for permits issued under this division are subject to the requirements of Subchapter B of this chapter.

§116.788. Renewal of Permits Issued Under this Division.

Permits issued under this division (relating to Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits) shall be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

§116.790. Delegation.

The commission may delegate to the executive director the authority to take any action on a permit issued under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits.

DIVISION 3: EXISTING FACILITY FLEXIBLE PERMITS

§§116.793 - 116.802, 116.804 - 116.807

STATUTORY AUTHORITY

The new sections are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181 which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; and TWC, §5.103, which authorizes the commission to adopt rules.

The proposed new sections implement THSC, TCAA, §382.002, concerning Policy and Purpose; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board; Rules; and §382.0518, concerning Preconstruction Permit; TWC, §5.103, concerning Rules.

§116.793. Eligibility for Existing Facility Flexible Permits.

(a) Existing facility flexible permit. The owner or operator of a grandfathered facility or group of grandfathered facilities at a site may apply for an existing facility flexible permit. The existing facility flexible permit may also include facilities permitted under TCAA, §382.0519. A person may apply for an existing facility flexible permit in accordance with §116.794 of this title (relating to Existing Facility Flexible Permit Application) for a facility, group of facilities, or account, provided that:

(1) only one existing facility flexible permit may be issued at an account site;

(2) modifications to facilities covered by an existing facility flexible permit may be handled through the amendment of the existing facility flexible permit;

(3) permitting of a new facility may be handled through the amendment of an existing facility flexible permit; and

(4) an existing facility flexible permit may not cover sources at more than one account site.

(b) Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(d) of this title (relating to Applicability) provided however, that all facilities covered by an existing facility flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the

emission caps or individual emission limitation prior to the transfer of the permit by the commission.

After the sale of a facility or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing facility flexible permit and all rules and regulations of the commission.

(c) Applications for an existing facility flexible permit shall be submitted under the seal of a Texas licensed professional engineer if required by §116.110(e) of this title.

(d) Responsibility for existing facility flexible permit application. The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account who is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) of this section.

§116.794. Existing Facility Flexible Permit Application.

Any application for a new existing facility flexible permit must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted an existing facility flexible permit, the owner or operator of the grandfathered 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 facility, group of facilities, or account as determined under §116.800 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.

(2) Measurement of emissions. The 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) Control method. The grandfathered facility or group of grandfathered facilities shall use an air pollution control method that is at least as beneficial as the best available control technology (BACT) that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the submittal of the existing facility permit application, considering the age and remaining useful life of the facility. Facilities located in nonattainment or near nonattainment areas which obtained a voluntary emission reduction permit (VERP) under Division 4 of this subchapter (relating to Voluntary Emission Reduction Permits) shall use generally available control technology (GACT). Control technology beyond ten year old BACT, GACT, or a combination of ten year old BACT and GACT 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.

(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 40 CFR Part 60, promulgated by the EPA under authority granted under FCAA, §111, as amended.

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

(6) NESHAPs for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology (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 Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA Section 112, 40 CFR 63)).

(7) Performance demonstration. The facility, group of facilities, or account will achieve the performance specified in the existing facility flexible permit application. The applicant may be required to submit additional engineering data after an existing facility flexible permit has been issued in order to demonstrate further that the facility, group of facilities, or account will achieve the performance specified in the existing facility 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 facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements in accordance with Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(9) Prevention of Significant Deterioration (PSD) review. If the facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements in accordance with Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(10) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's Air Permits Division to determine the air quality impacts from the facility, group of facilities, or account.

(11) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the 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 in accordance with Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 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 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 existing facility flexible permit;

(C) identify each source of emissions to be included in the existing facility 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; and

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

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

§116.795. Public Participation for Initial Issuance of Existing Facility Flexible Permits.

(a) An applicant for a permit under this division relating to existing facility flexible permits shall publish notice of intent to obtain the permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(b) Any person who may be affected by emissions from a grandfathered facility may request the commission to hold a notice and comment hearing on the application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit in accordance with §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any hearing request must be made in writing during the 30-day public comment period.

(c) Any hearing regarding initial issuance of a permit under this division shall be conducted in accordance with the procedures in §116.796 of this title (relating to Notice and Comment Hearings for Initial Issuance of Existing Facility Flexible Permits) and not under the APA.

(d) The commission's response to public comments and the notice of its decision on whether to issue or deny a permit under this division will be conducted in accordance with the procedures in §116.797 of this title (relating to Notice of Final Action on Existing Facility Flexible Permit Applications).

(e) A person affected by a decision to issue or deny a permit under this division may seek review, as appropriate, in accordance with the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

(f) Any person who applies for an amendment to an existing facility flexible permit regarding an affected source (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, Section 112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 of this title (relating to Public Notice).

§116.796. Notice and Comment Hearings for Initial Issuance of Existing Facility Flexible Permits.

(a) The notice and comment hearing requirements apply only to the initial issuance of an existing facility flexible permit.

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a grandfathered facility is unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered facility, and that request is reasonable, the commission will hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the grandfathered facility is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The commission may set reasonable time limits for oral statements, and may require the submission of statements in writing.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the commission may extend the period for submitting written comments beyond the close of the hearing.

(e) The commission will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

(g) Any supporting materials for comments submitted under subsection (f) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

(1) already part of the administrative record in the same proceedings;

(2) state or federal statutes and regulations;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(h) The commission will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this subchapter.

(j) The commission will respond to comments consistent with §116.797 of this title (relating to Notice of Final Action on Existing Facility Flexible Permit Applications).

§116.797. Notice of Final Action on Existing Facility Flexible Permit Applications.

(a) After the public comment period or the conclusion of any notice and comment hearing, the commission will send notice by first-class mail of the final action on the existing facility flexible permit application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change; and

(3) a statement that any person affected by the decision of the commission may petition for a rehearing under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

§116.798. Permit Fee.

(a) Fees required. Any person who applies for a permit under this division relating to existing facility flexible permits must remit a fee of \$450 at the time of application for such permit. If the facility is a small business stationary source facility as defined in TCAA, §382.0365(h), the fee shall be \$100.

(b) Payment of fees. All permit fees must be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission and delivered to the Texas

Natural Resource Conservation Commission, P. O. Box 13088, MC 214, Austin, Texas 78711-3088.

Required fees must be received before the commission will begin examination of the application.

(c) Return of fees. Fees must be paid at the time an application for a permit is submitted in accordance with this division. If the applicant withdraws the application prior to issuance of the permit, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule) is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a permit has been issued by the commission.

§116.799. General and Special Conditions.

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

before constructing a facility under a standard permit or a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

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

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

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

(2) Equivalency of methods. It shall be the responsibility of the existing facility flexible permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the existing facility flexible permit. Alternative methods shall be

applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(3) Recordkeeping. A copy of the existing facility flexible permit along with information and data sufficient to demonstrate continuous compliance with the emission caps and individual emission limitations contained in the existing facility flexible permit shall be maintained in a file at the plant site, and made available at the request of personnel from the commission or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within the State of Texas specified by the permit holder in the permit application. This information may include, but is not limited to, emission cap and individual emission limitation calculations based on a 12-month rolling basis and production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the existing facility flexible permit. Information in the file shall be retained for at least two years following the date that the information or data is obtained.

(4) Maximum allowable emission rates. An existing facility 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 existing facility flexible permit. Existing facility flexible permitted sources are limited to the emission limits and other conditions specified in the table attached to the existing facility flexible permit.

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

(6) Maintenance of emission control. The facilities covered by the existing facility 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 upset 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).

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

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

§116.800. Emission Caps and Individual Emission Limitations.

(a) Emission caps. Each emission cap for a specific pollutant will be established as follows.

(1) Emissions will be calculated for each facility based on application of best available control technology (BACT) that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the submittal of the existing facility permit application considering the age and remaining useful life of the facility, generally available control technology (GACT) for facilities with a voluntary emission reduction permit located in nonattainment areas or near nonattainment areas, or a combination of ten year old BACT and GACT at expected maximum capacity.

(2) The calculated emissions will be summed.

(b) Individual emission limitations. An individual emission limitation will be established in the same permit for each pollutant not covered by an emission cap for facilities covered by the existing facility flexible permit. In addition, an individual emission limitation may be established for a pollutant

covered by an emission cap when the expected capacity of a facility is less than the expected maximum capacity to prevent a facility from exceeding emission levels appropriate for the proposed controls.

(c) Readjustment of emission cap. If a facility subject to an emission cap is shut down for a period longer than 12 months, the emission cap shall be readjusted by lowering the emission cap by an amount that the shut down facility contributed to the original calculation of the emission cap. If a new facility is brought into the existing facility flexible permit, an emission cap shall be adjusted by modifying the emission cap accordingly.

(d) An emission cap will be readjusted downward for any facility covered by an existing facility flexible permit if that facility becomes subject to any new state or federal regulation which would lower emissions or require an emission reduction. The adjustment will be made at the time the existing facility flexible permit is amended or altered. If an amendment to an existing facility flexible permit is not required to meet the new regulation, the permittee must submit a request to alter the permit and include information describing how compliance with the new requirement will be demonstrated within 60 days of making the change.

§116.801. Implementation Schedule for Additional Controls.

If the installation of additional controls is required for a grandfathered facility to meet an emission cap for a pollutant, the existing facility flexible permit shall specify an implementation schedule for such additional controls. Any such schedule shall require installation of controls before

March 1, 2007 for facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions), or before March 1, 2008 for facilities located in the West Texas region as defined in §101.330 of this title or El Paso County. The permit may also specify how the emission cap will be adjusted if such a facility is taken out of service or fails to install the additional control equipment as provided by the implementation schedule.

§116.802. Significant Emission Increase.

An increase in emissions from operational or physical changes at an existing facility covered by an existing facility flexible permit is insignificant for the purposes of state new source review under this subchapter, if the increase does not exceed either the emission cap or individual emission limitation for the facility covered by the existing facility flexible permit. This section does not apply to an increase in emissions from a new facility nor to the emission of an air contaminant not previously emitted by an existing facility.

§116.804. Limitation on Physical and Operational Changes.

Neither operational nor physical changes at an account may result in an increase in actual emissions at facilities not covered by the existing facility flexible permit unless those affected facilities are authorized in accordance with §116.110 of this title (relating to Applicability).

§116.805. Amendments and Alterations for Existing Facility Flexible Permits.

The owner or operator planning a modification of a facility permitted under this division, relating to existing facility flexible permits, must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for existing facility flexible permits are subject to the requirements of Subchapter B of this chapter.

§116.806. Existing Facility Flexible Permit Renewal.

Permits issued under this division, relating to existing facility flexible permits, will be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

§116.807. Delegation.

The commission may delegate to the executive director the authority to take any action on a permit issued under this division, relating to existing facility flexible permits.

SUBCHAPTER I: ELECTRIC GENERATING FACILITY PERMITS

§§116.910, 116.911, 116.913, 116.917, 116.918, 116.921, 116.926, 116.928, 116.930

STATUTORY AUTHORITY

The amendments and new sections are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181 which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; and TWC, §5.103, which authorizes the commission to adopt rules.

The proposed amendments and new sections implement THSC, TCAA, §382.002, concerning Policy and Purpose; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board; Rules; and §382.0518, concerning Preconstruction Permit; TWC, §5.103, concerning Rules.

§116.910. Applicability.

(a) The owner or operator of a grandfathered electric generating facility (EGF) shall apply for a permit to operate that facility under this subchapter and may apply for permit authorization to operate certain facilities (identified in §116.911(f) of this title (relating to Electric Generating Facility Permit Application)) that are located at the same site as a grandfathered EGF.

(b) - (d) (No change.)

[(e) Emissions of nitrogen oxides shall be permitted under this subchapter for any grandfathered or electing EGF. Emissions of sulfur dioxide and particulate matter shall be permitted under this subchapter only for grandfathered or electing coal-fired EGFs. Emissions of other air contaminants from grandfathered EGFs may be permitted under this subchapter, provided the grandfathered EGFs meet the requirements of Chapter 116, Subchapter H of this title (relating to Voluntary Emission Reduction Permits).]

(e) [(f)] Owners or operators of grandfathered facilities as defined in §116.10 of this title (relating to General Definitions) at sites with grandfathered or electing EGFs subject to this subchapter may consolidate any permit issued under Chapter 116, Subchapter H of this title with a permit issued under this subchapter.

(f) [(g)] A grandfathered [An] EGF that generates electric energy primarily for internal use but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical

output capacity, or less than 219,000 megawatt-hours, is not required to obtain a permit under this subchapter [subject to the requirements of this chapter].

§116.911. Electric Generating Facility Permit Application.

(a) - (c) (No change.)

(d) Any grandfathered natural gas-fired EGF for which a permit application was filed under subsection (a) of this section, has obtained a permit in accordance with subsection (a) of this section, or is excluded in accordance with §116.910(d) of this title (relating to Applicability) from the requirement to submit an application under subsection (a) of this section is considered permitted for the emissions of all air contaminants from that EGF.

(e) An owner or operator of a grandfathered coal-fired EGF with a permit issued in accordance with to subsection (a) of this section or with an application pending under subsection (a) of this section may submit an application for an EGFP in accordance with to §116.917 of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites) to authorize the emissions of all criteria pollutants from the EGF other than NO_x, SO₂, and PM.

(f) An owner or operator of a grandfathered or electing EGF with a permit application pending under subsection (a) of this section or a permit issued in accordance with subsection (a) of this section

may submit an application for an EGFP in accordance with §116.917 of this title to also authorize each of the following types of facilities that are located at the same site as the EGF:

(1) a generator that does not generate electric energy for compensation and is used not more than 10% of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons per year of any air contaminant.

(g) Any application submitted in accordance with §116.917 of this title for facilities identified in subsection (e) of this section must be submitted by September 1, 2003. Any application submitted in accordance with §116.917 of this title for facilities identified in subsection (f)(1) or (2) of this section must be submitted by September 1, 2002. Any additional controls specified in an EGF permit issued in accordance with an application filed under §116.917 of this title are subject to the schedule outlined in §116.771 of this title (relating to Implementation Schedule for Additional Controls.)

(h) Emissions of air contaminants from facilities identified in subsection (f)(1) or (2) of this section must be included in each applicable emissions allowance trading program under Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading Allowances). The commission will not issue any new emissions allowance for the emissions of any air contaminant from such a facility.

(i) [(d)] All applications for an EGFP shall be submitted under the seal of a Texas licensed professional engineer if required by §116.110(e) of this title (relating to Applicability).

§116.913. General and Special Conditions.

(a) The following general conditions shall be applicable to every electric generating facility permit (EGFP) unless otherwise specified in the permit.

(1) A permit issued under this subchapter may authorize [authorizes] the following:

(A) for grandfathered natural gas-fired electric generating facilities (EGFs), emissions of all air contaminants; [nitrogen oxides (NO_x) emissions from all grandfathered and electing electric generating facilities (EGF);]

(B) for grandfathered coal-fired EGFs, nitrogen oxides (NO_x) emissions, sulfur dioxide [dioxides] (SO₂) emissions, and particulate matter (PM) through opacity limitations as specified in §111.111 of this title (relating to Requirements for Specified Sources); [from coal-fired grandfathered and electing EGFs.]

(C) for electing natural gas-fired EGFs, allowances for NO_x emissions; [particulate matter through opacity limitations as specified in §111.111 of this title (relating to Requirements for Specified Sources) for coal-fired grandfathered and electing EGFs.]

(D) for electing coal-fired EGFs, allowances for NO_x emissions, allowances for SO₂ emissions, and PM through opacity limitations as specified in §111.111 of this title; and

(E) for facilities identified in §116.917(a) of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites), all air contaminants.

[(2) An EGFP may permit emissions of all other air contaminants from grandfathered EGFs, provided the requirements of Chapter 116, Subchapter H of this title (relating to Voluntary Emissions Reduction Permits) are met.]

(2) [(3)] Grandfathered facilities as defined in §116.10 of this title (relating to General Definitions) at sites with grandfathered or electing EGFs and permitted under [Chapter 116,] Subchapter H of this chapter (relating to Permits for Grandfathered Facilities) [title] may be consolidated with a permit issued under this subchapter.

(3) [(4)] The owner or operator of a grandfathered EGF, an [or] electing EGF, and if applicable, any facility included in an EGFP under §116.917 of this title, must comply with Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading of Allowances) including the requirement to maintain allowances in a compliance account. Allowances may be transferred in accordance with §101.335 of this title (relating to Allowance Banking and Trading).

(4) [(5)] Mass emission monitoring and reporting shall be conducted in accordance with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(5) [(6)] On June 1 after every control period, the owner or operator [a grandfathered or electing EGF subject to this subchapter] shall hold a quantity of allowances for emissions of NO_x and, where applicable, SO₂, in its compliance account that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period for each EGF permitted in accordance with §116.911(a) and (b) of this title (relating to Electric Generating Facility Permit Application) and for each facility permitted in accordance with §116.917 of this title.

(6) [(7)] Owners or operators shall submit a report of the amount of emissions of each allocated air contaminant, from the prior control period to the Air Permits Division consistent with the requirements of §101.336(b) of this title (relating to Emission Monitoring, Compliance Demonstration, and Reporting).

(7) [(8)] Coal-fired grandfathered and electing EGFs must meet the opacity limitations of §111.111 of this title [(relating to Requirements for Specified Sources)].

(b) (No change.)

§116.917. Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites.

(a) Any application for an electric generating facility permit (EGFP) for additional criteria pollutants from grandfathered coal-fired electric generating facilities (EGFs) identified in §116.911(e) of this title (relating to Electric Generating Facility Permit Application) or for grandfathered facilities identified in §116.611(f)(1) or (2) of this title (relating to Registration To Use a Standard Permit) must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit for a grandfathered facility under this section, the owner or operator of the grandfathered 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 grandfathered 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 people.

(2) Measurement of emissions. The EGFP may have provisions for measuring the emission of air contaminants as determined by the commission. These 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,” portable analyzers, or emissions calculations if a known process variable is monitored.

(3) 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 40 CFR Part 60, promulgated by the EPA under authority granted in accordance with FCAA, §111, as amended.

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

(5) NESHAPs for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology (MACT) standard as listed under 40 CFR Part 63, promulgated by the EPA in accordance with FCAA, §112, or as listed under Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, Section 112, 40 CFR 63)).

(6) Performance demonstration. The grandfathered facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after an EGFP has been issued in order to demonstrate further that the

grandfathered facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A grandfathered facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of Significant Deterioration (PSD) review. A grandfathered facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(9) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the grandfathered facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the grandfathered facility is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), the affected source 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, Section 112(g), 40 CFR Part 63)).

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

(A) identify each facility to be included in the electric generating facility permit;

(B) identify the air contaminants emitted; and

(C) provide emission rate calculations.

(b) Upon request, the commission shall consolidate an application submitted in accordance with this section with an application pending in accordance with §116.911(a) of this title.

(c) Applications submitted in accordance with this section are subject to the requirements of §116.920 of this title (relating to Public Participation for Initial Issuance).

§116.918. Additional General and Special Conditions for Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites.

(a) Permits issued to facilities submitting applications under §116.917 of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric

Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites)
may contain general and special conditions. The holders of a permit under this subchapter shall comply with any and all such conditions.

(b) General conditions. Holders of permits issued to facilities submitting applications in accordance with §116.917 of this title shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Sampling requirements.

(A) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(B) All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission.

(C) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(2) Equivalency of methods. The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and

monitoring methods proposed as alternatives to methods indicated in the conditions of the permit.

Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(3) Recordkeeping. The permit holder shall:

(A) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(B) keep all required records in a file at the plant site. If, however, the facility normally operates unattended, records shall be maintained at the nearest staffed location within the State of Texas specified in the application;

(C) make the records available at the request of personnel from the commission or any air pollution control program having jurisdiction;

(D) comply with any additional recordkeeping requirements specified in special conditions attached to the permit; and

(E) retain information in the file for at least two years following the date that the information or data is obtained.

(4) 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."

(5) 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 upset 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).

(6) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit.

(B) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(C) Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) Special conditions. The holders of permits issued under this subchapter shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of this title.

(2) Special condition for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit in accordance with Subchapter F of this chapter (relating to Standard Permits); or

(ii) a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

(B) Such written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review under

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)); or

(II) the provisions in Subchapter B, Division 5 of this chapter (relating to Nonattainment Review) and Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

§116.921. Notice and Comment Hearings for Initial Issuance.

(a) The notice and comment hearing requirements apply only to the initial issuance of an [a] electric generating facility permit (EGFP).

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a

grandfathered or electing electric generating facility (EGF) or a facility described in §116.911(f) of this title (relating to Electric Generating Facility Permit Application) is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered or electing EGF or a facility described in §116.911(f) of this title, and that request is reasonable, the commission shall hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft EGFP must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the grandfathered or electing EGF or a facility described in §116.911(f) of this title is located, or in the municipality nearest to the location of the grandfathered or electing EGF or a facility described in §116.911(f) of this title. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

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

(d) - (j) (No change.)

§116.926. Permit Fee.

(a) Fees required. Any person who applies for a permit in accordance with §116.917 of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating

Facility Sites) must remit a fee of \$450 at the time of application for such permit. If the facility is a small business stationary source facility, as defined in TCAA, §382.0365(h), the fee shall be \$100.

(b) Payment of fees. All permit fees must be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission and delivered to Texas Natural Resource Conservation Commission, P. O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the commission will begin examination of the application.

(c) Return of fees. Fees must be paid at the time an application for a permit is submitted in accordance with this subchapter. If the applicant withdraws the application prior to issuance of the permit, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule) is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a permit has been issued by the commission.

§116.928. Delegation.

The commission may delegate to the executive director the authority to take any action on a permit issued under this subchapter.

§116.930. Amendments and Alterations of Permits Issued Under this Subchapter [Modifications].

The owner or operator planning a modification of a facility permitted under this subchapter must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification. Amendments and alterations for permits issued in accordance with this subchapter are subject to the requirements of Subchapter B of this chapter.