

The Texas Commission on Environmental Quality (commission) proposes amendments to §§116.770, 116.772, and 116.776. Sections 116.770 and 116.772 are proposed as revisions to the state implementation plan (SIP) and will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

When the legislature first created the Texas Clean Air Act in 1971, the legislature did not require existing significant sources of air emissions to comply with (i.e., were grandfathered from) the then new requirement to obtain a permit. These existing sources are commonly known as grandfathered facilities. If grandfathered facilities had not been modified since 1971, they continued to be authorized to operate without a permit. The legislature addressed the issue of grandfathered facilities in 1997 and 1999, requiring the creation of: 1) a voluntary emissions reduction plan for the permitting of grandfathered facilities; and 2) directing the commission to implement directives regarding the permitting of grandfathered electric generating facilities. Then, the 77th Legislature, 2001, amended the Texas Health and Safety Code, Texas Clean Air Act, to require that all grandfathered facilities obtain permits. The mandatory permitting requirements of House Bill 2912 were 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, electric generating facility 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 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.

Additionally, House Bill 2914, §78, created a new incentive program to assist in retrofitting reciprocating internal combustion engines associated with pipelines. To implement this incentive program, the commission adopted §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 order to be eligible for reimbursement under this program, the owner or operator of a grandfathered reciprocating internal combustion engine was required to make an annual reduction in emissions of nitrogen oxides (NO_x) as compared to the emissions reported for the facility in the 1997 industrial point source emissions inventory.

Most recently, the 78th Legislature, 2003, enacted House Bill 638, relating to emissions reductions incentives and the emissions reductions incentives account. House Bill 638 changes the reimbursement eligibility requirement from a 50% reduction in annual emissions to the 50% reduction in NO_x emissions rate needed to obtain a pipeline facilities permit. It also prohibits the commission from requiring more stringent emissions reduction criteria than the reductions already required to obtain a pipeline facilities permit in order to receive money from the emissions reductions incentives account; prohibits persons, or affiliates of persons, who contribute money to the emissions reductions incentives account from receiving money from the fund; and allows grandfathered reciprocating internal combustion engines associated with pipelines that meet certain criteria to be considered permitted by statute.

To implement these revisions to the Texas Clean Air Act, the commission is proposing to amend the rules in Chapter 116, Subchapter H, Permits for Grandfathered Facilities.

SECTION BY SECTION DISCUSSION

Section 116.770, Requirement to Apply

The commission proposes to change the section title from “Requirement to Apply” to “Requirement to Apply or Register” to better specify the purpose of the section.

Proposed §116.770 adds new subsections (b) and (c), which would specify that certain facilities are considered permitted and that the owners and operators of those facilities must submit registrations. Specifically, proposed §116.770(b) would state that a reciprocating internal combustion engine required to obtain a pipeline facility permit that is subject to a mass emissions cap established by the commission is considered permitted if the facility is located in an ozone nonattainment area and is in compliance with all state and federal requirements for that area by June 20, 2003. 30 TAC §101.351(a) currently specifies that a mass emissions cap applies to the Houston/Galveston ozone nonattainment area.

Proposed §116.770(b) would implement new Texas Health and Safety Code, §382.05186(j). Proposed §116.770(b)(2) would require that the grandfathered reciprocating internal combustion engines satisfy any currently applicable state or federal regulations in effect as of June 20, 2003, the effective date of House Bill 638, in order to be considered permitted. In addition, the commission proposes new §116.770(c), which would require owners and operators of facilities that are considered permitted under §116.770(b) to submit registrations on or before July 1, 2004. The registration requirement is necessary for the executive director to determine whether all facilities that are considered to be

permitted meet the criteria outlined in House Bill 638. The proposed subsections would require registration rather than require those facilities to obtain a permit under Chapter 116, qualify for a permit by rule, or shut down. The commission proposes that registrations be submitted by July 1, 2004. This date would allow owners and operators of facilities that are considered permitted to submit registrations a year after the effective date of House Bill 638. This date is also approximately six months after the anticipated adoption date of these rules.

Section 116.772, Notice of Shutdown

The commission proposes to change the cross-references in §116.772(a) and (b) to parallel changes made in §116.770.

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

The commission proposes to amend the title of §116.776 from “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” to “Emissions Reductions Incentives for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region.” In addition, the commission proposes new §116.776(a) specifying that incentives will be made available through a grant program administered under §116.776 and 30 TAC Chapter 14, Grants. The commission also proposes new §116.776(b)(6) to specify that, to seek a distribution from the account, the owner or operator must enter a contract with the commission in

accordance with a request for grant applications. A request for grant applications is a request for proposals. The section is renumbered accordingly. Also, the commission proposes to amend §116.776(b) to specify that reimbursement is based on eligibility criteria and grant program requirements and proposes to amend §116.776(c) and (d) to use the term “incentive criteria” rather than “criteria for distribution”. The proposed amendments would make clear that the commission is implementing the statute through a grant program. The commission proposes amendments to §116.776(b)(1) to specify that eligibility for reimbursement of the cost of controls from the emissions reductions incentives account would be based on hourly emissions reductions rather than annual emissions reductions. Specifically, proposed §116.776(b)(1) would require owners or operators of grandfathered reciprocating combustion engines associated with pipelines to reduce hourly NO_x emission rates, expressed in terms of grams per brake horsepower-hour, by at least 50%, in order to be eligible for reimbursement. The existing section, proposed as subsection (b)(1), requires owners or operators to make 50% reduction in the annual emissions of NO_x as compared to the 1997 Industrial Point Source Emissions Inventory. Proposed §116.776(b)(1) is consistent with Texas Health and Safety Code, §382.051865(a), as amended. The commission proposes amendments to §116.776(b)(3) and (8) to specify that a 50% reduction in NO_x may be achieved by replacing a grandfathered engine with an engine with a NO_x emission rate at least 50% lower than the rate of the grandfathered engine, and that the engines must obtain authorization under Chapter 116 or 30 TAC Chapter 106. In addition, the commission proposes amendments to §116.776(b)(8) to delete the language specifying when the registration of replacement for an electric engine be submitted. Also, the commission proposes amendments to §116.776(b)(10) to specify that engines with a NO_x emission rate at least 50% lower than the rate of the grandfathered engine, in addition to electric engines, must be installed and operated

and the grandfathered engine be permanently shut down before the executive director can authorize payment from the emissions reductions incentive account. The commission also proposes new §116.776(b)(12), which would specify that a person or an affiliate of a person who pays or contributes to the emissions reductions incentives account is ineligible to receive money from the account. This would implement new Texas Health and Safety Code, §382.051866(e). The commission also proposes to amend §116.776(c) by adding the word “rate” when specifying that the commission may reimburse costs associated with achieving emissions reductions between 30% and 50% of an engine’s hourly NO_x emissions rate. The proposed amendment to §116.776(c) would be consistent with Texas Health and Safety Code, §382.05165(c), as amended. Lastly, the commission proposes to change the criteria for distribution of funds based on the statutory changes outlined by House Bill 638 and meetings with stakeholders held during the summer of 2002. House Bill 638 modifies Texas Health and Safety Code, §382.051865(d), to prohibit the commission from requiring any more stringent reduction criteria than the 50% reduction in grams per brake horsepower-hour for determining the eligibility for an emissions reduction project under the reimbursement program. The commission proposes to eliminate paragraphs (1) - (3) from existing §116.776(c), and add a new criterion in §116.776(d)(2) specifying that the executive director will put a cap on the amount of reimbursement for each engine, if it determines it is appropriate in order to maximize equitable distribution of the fund. The criteria will be implemented by reimbursing owners and operators of engines for 40% of the cost of controls up to a maximum of \$100,000 per engine. This amount of reimbursement was agreed upon by the participants in the stakeholder meetings. The commission anticipates signing contracts for more engines than can be covered by the amount of money appropriated to the agency for this purpose. Therefore, renumbered §116.776(d)(2) will allow the commission to reimburse owners or operators who achieve the reductions

earlier and thus provide the most benefit to the air quality in Texas. Based on General Appropriations Act (2003), Article IX, §8.01(d), the unexpended balance in the emissions reductions incentives account at the end of Fiscal Year 2003 is available for distribution in Fiscal Year 2004 and 2005. Therefore, the commission may also issue a subsequent request for grant applications, and/or recalculate the distribution of funds under these grant applications in order to distribute funds between all grantees according to the criteria specified in the request for grant application and contracts issued under it.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Analyst with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the agency or most units of state and local government due to implementation of the proposed amendments. The proposed amendments could result in an increased number of units of state and local government that own or operate grandfathered reciprocating internal combustion engines associated with pipelines in the East Texas Region that would be eligible for partial reimbursement of the costs of pollution controls. The commission anticipates there will be some units of government eligible for these reimbursements; however, the total number is unknown at this time. Additionally, certain units of state government that own or operate grandfathered reciprocating internal combustion engines associated with pipelines in the Houston/Galveston ozone nonattainment area may benefit from cost savings by not having to apply for pipeline facility permits.

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 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, including Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties. All other counties in Texas are considered to be in the West Texas Region.

The proposed amendments implement provisions of House Bill 638, 78th Legislature, 2003. House Bill 638 changes the requirement for partial reimbursement of the cost of pollution controls on grandfathered reciprocating internal combustion engines associated with pipelines in the East Texas Region from a 50% reduction in annual NO_x emissions to the 50% reduction in the hourly NO_x emissions rate, expressed in terms of grams per brake horsepower-hour. To comply with this requirement, owners or operators of affected equipment could make changes to existing equipment, or replace a grandfathered engine with an engine with a NO_x emission rate at least 50% lower than the rate of the grandfathered engine. The new engines would have to obtain authorization under Chapter 116 or Chapter 106 before distribution from the incentives account may be requested. Additionally, the bill eliminated the requirement for the owners or operators of grandfathered reciprocating internal combustion engines located in the Houston/Galveston nonattainment area to obtain a permit for those engines, if the equipment was in compliance with state and federal emission control requirements. The

proposed amendments are intended to implement these provisions. The commission does not know how many engines will be affected by these provisions.

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 required by the permits. The commission anticipates that changing the reimbursement requirements from a specific annual 50% reduction to a 50% reduction in the hourly emission rate will make it easier for more owners or operators of affected engines in the East Texas Region to apply for partial reimbursement of the costs of pollution control equipment. The commission anticipates that more owners and operators will be eligible to apply for partial reimbursement because the reduction in grams per brake horsepower-hour is more representative of the emissions controls added to an engine than a reduction in annual emissions. These engines run intermittently and may not run the same amount of time from year to year. Consequently, for an engine that ran very little in 1997 but most of the time in 2002, one would see little or no reduction in annual emissions even though significant emission controls may have been added. 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.

House Bill 2914, 77th Legislature, 2001, appropriated \$16.2 million to the commission for the retrofitting of internal combustion engines. Under this provision, the commission was authorized to provide funds for competitive grants under the emissions reductions incentive program.

In the Fiscal Year 2002 - 2003 biennium, the agency received \$10.8 million for this purpose and intends to obligate that amount, plus any interest earned as of August 31, 2003, in grant awards. The unexpended balance in the emissions reductions incentives account at the end of Fiscal Year 2003 would be made available for distribution in Fiscal Years 2004 - 2005. The commission anticipates receiving the remaining \$5.4 million in Fiscal Year 2004, and intends to distribute this funding in Fiscal Years 2004 - 2005. The reimbursement to the grant recipients will be processed using a "charge back" method as authorized in Senate Bill 1, 77th Legislature, Article IX, §6.34, and as outlined in 34 TAC §5.56(f), relating to Appropriation Year Determination.

The provisions in House Bill 638 that remove the permit requirement for certain affected grandfathered reciprocating internal combustion engines in the Houston/Galveston nonattainment area are anticipated to result in costs savings, which are not anticipated to be significant, to the owner or operators of these engines. The commission anticipates that facilities that qualify to be considered permitted under the provisions of House Bill 638 will realize cost savings by not having to go through the permit application process and public notice. The proposed amendments will allow qualifying engines in the Houston/Galveston nonattainment area to register with the commission. No registration fee is anticipated. Previously, an owner or operator of an affected engine would have to apply for a permit and go through public notice. The permit application process costs approximately \$10,000, while public notice costs range from \$700 to \$4,350, depending on the size of the city newspaper in which the notice is published. Of note, in order to qualify to be considered permitted, affected engines must still meet existing state and federal pollution control requirements.

PUBLIC BENEFIT 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 eligibility for the partial reimbursement of the cost of controls.

However, this benefit may be offset by fewer reductions in NO_x emissions from pipeline engines because there will no longer be a requirement to achieve a 50% reduction in annual emissions of NO_x. Additionally, there will be no opportunity for the public to comment on permits for engines located in the Houston/Galveston nonattainment area since they will now be permitted by statute.

The proposed amendments, which are intended to implement certain provisions of House Bill 638, are not anticipated to result in additional costs for owners or operators of affected grandfathered reciprocating internal combustion engines associated with pipelines. The commission anticipates that more grandfathered engines in the East Texas Region will be eligible to receive partial reimbursement for installed pollution controls. Additionally, the commission anticipates costs savings for those eligible engines in the Houston/Galveston nonattainment area that are eligible to be considered permitted without having to go through the permit or public notice process. Details of the eligibility for reimbursement and the potential cost savings can be found in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT section of this preamble.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small and micro-businesses as a result of implementation and enforcement of the proposed amendments, which are intended to implement

provisions of House Bill 638. There are no known small or micro-businesses with equipment that would be affected by the proposed amendments. However, if there are small or micro-businesses operating equipment affected by the proposed amendments, they would be eligible for the partial reimbursement for pollution controls and may experience cost savings as discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT section of this preamble.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in accordance with the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule. 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. The proposed rulemaking implements requirements from House Bill 638, 78th Legislature, 2003, which prohibits the commission from requiring more stringent emissions reduction criteria than the reductions already required to obtain a pipeline facilities permit in order to receive money from the emissions reductions incentives account; prohibits persons, or affiliates of persons, who contribute money to the

emissions reductions incentives account from receiving money from the fund; and allows grandfathered reciprocating internal combustion engines associated with pipelines that meet certain criteria to be considered permitted by statute. The proposed rules would allow more grandfathered reciprocating internal combustion engines associated with pipelines to be eligible for reimbursement from the emissions reductions incentives account.

The proposed rules are not anticipated to 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 the proposed rules allow more engines to be eligible for reimbursement. Similarly, the requirements of the proposed rules are expected to result in little or no impacts on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. All grandfathered reciprocating internal combustion engines associated with pipelines affected by the proposed rules are already required to meet control requirements specified by House Bill 2912.

Additionally, 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 proposed rules do not exceed the requirements of the Federal Clean Air Act or the Texas Clean Air Act. Additionally, the proposed rules do not exceed a requirement of a delegation

agreement, since there is no agreement that is applicable to this rulemaking, and are not proposed solely under the general powers of the agency.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The purpose of the proposed rules is to fulfill the commission's obligation to implement House Bill 638, 78th Legislature, 2003. The proposed rules will advance this purpose by prohibiting the commission from requiring more stringent emissions reduction criteria than the reductions already required to obtain a pipeline facilities permit in order to receive money from the emissions reductions incentives account; prohibiting persons, or affiliates of persons, who contribute money to the emissions reductions incentives account from receiving money from the fund; and allowing grandfathered reciprocating internal combustion engines associated with pipelines that meet certain criteria to be considered permitted by statute. The proposed rules will not burden private real property. The ability of an owner or operator to claim a reimbursement or be considered permitted by statute will 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 taking under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program be considered during the rulemaking process. The commission reviewed this action for consistency and has determined that the proposed rules do not impact any Texas Coastal Management Program goals or policies. The prohibition against requiring more stringent emissions reduction criteria than the reductions already required to obtain a pipeline facilities permit in order to receive money from the emissions reductions incentives account; the prohibition against persons, or affiliates of persons, who contribute money to the emissions reductions incentives account from receiving money from the fund; and allowing grandfathered reciprocating internal combustion engines associated with pipelines that meet certain criteria to be considered permitted by statute will not change any otherwise applicable requirement associated with controls of the affected engines. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This proposal has no impact on owners and operators of sites subject to the operating permit program unless they also own or operate grandfathered reciprocating internal combustion engines associated with pipelines. If so, the owners and operators of sites subject to the operating permit program will be required to revise their permits or permit applications. 30 TAC §122.10(2) specifies that all of the requirements of Chapter 116 are applicable requirements. Therefore, owners and operators of

grandfathered reciprocating internal combustion engines associated with pipelines will be required to revise the operating permit to reflect that the facilities are considered permitted, rather than grandfathered.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on October 30, 2003 at 2:00 p.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons 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 faxed to (512) 239-4808. Comments must be received by 5:00 p.m., November 10, 2003, and should reference Rule Log

Number 2003-043-116-AI. For further information, please contact Debra Barber, Policy and Regulations Division at (512) 239-0412.

SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES

DIVISION 1: GENERAL APPLICABILITY

§116.770, §116.772

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, Texas Clean Air Act, §382.011, which authorizes the commission to administer the requirements of the Texas Clean Air Act; §382.012, which provides for 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 Texas Clean Air Act; §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; §382.05186, which requires pipeline facilities permits; §382.051865, which requires a reimbursement program for certain emissions reductions from reciprocating internal combustion engines associated with pipelines; §382.051866, which requires an emissions reductions incentives account; and Texas Water Code, §5.103, which authorizes the commission to adopt rules.

The proposed amendments implement Texas Health and Safety Code, Texas Clean Air Act, §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; §382.05181, concerning Permit Required; §382.05186, concerning Pipeline Facilities Permits; §382.051865, concerning

Reimbursement Program for Certain Emissions Reductions from Reciprocating Internal Combustion Engines Associated with Pipelines; §382.051866, concerning Emissions Reductions Incentives Account; and Texas Water Code, §5.103, concerning Rules.

§116.770. Requirement to Apply or Register.

(a) 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.

(b) A reciprocating internal combustion engine that is subject to the requirement to obtain a pipeline facilities permit and to a mass emissions cap as established by commission rule is considered permitted with respect to all air contaminants if the facility is:

(1) located in an area designated as a nonattainment area for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area by June 20, 2003.

(c) The owner or operator of a reciprocating internal combustion engine that is considered permitted under subsection (b) of this section must submit a registration to the commission on or before July 1, 2004, which must include Form PI-1G, Grandfathered Facility Permit Application.

§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(a) 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(a) or §116.774 of this title shall cease emitting air contaminants by:

(1) - (2) (No change.)

(b) The owner or operator of a grandfathered facility who applies for a permit prior to the deadlines specified in §116.770(a) 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) - (d) (No change.)

SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES

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

§116.776

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, Texas Clean Air Act, §382.011, which authorizes the commission to administer the requirements of the Texas Clean Air Act; §382.012, which provides for 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 Texas Clean Air Act; §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; §382.05186, which requires pipeline facilities permits; §382.051865, which requires a reimbursement program for certain emissions reductions from reciprocating internal combustion engines associated with pipelines; §382.051866, which requires an emissions reductions incentives account; and Texas Water Code, §5.103, which authorizes the commission to adopt rules.

The proposed amendment implements Texas Health and Safety Code, Texas Clean Air Act, §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; §382.05181, concerning

Permit Required; §382.05186, concerning Pipeline Facilities Permits; §382.051865, concerning Reimbursement Program for Certain Emissions Reductions from Reciprocating Internal Combustion Engines Associated with Pipelines; §382.051866, concerning Emissions Reductions Incentives Account; and TWC, §5.103, concerning Rules.

§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) Emissions reductions incentives will be made available to eligible facilities through a grant program administered under this section and Chapter 14 of this title (relating to Grants).

(b) [(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 incentive account [Emissions Reductions Incentives Account] based on the following eligibility criteria and grant program requirements.

(1) The owner or operator of grandfathered reciprocating internal combustion engine or engines associated with pipelines must reduce the hourly emissions rate of nitrogen oxides (NO_x), expressed in terms of grams per brake horsepower-hour, by at least 50%. [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 engine with a NO_x emission rate which is at least 50% lower than the emission rate of the grandfathered engine or 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 owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the emissions reductions incentives account is sought, must enter a contract with the commission in accordance with a request for proposals (grant applications) under Chapter 14 of this title.

(7) [(6)] The owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the emissions reductions incentives account [Emissions Reductions

Incentives Account] is sought, must identify, at the time the permit application is filed, the facilities for which reimbursement is requested.

(8) [(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]. The owner or operator who elects to achieve the 50% reduction in NO_x emissions rate by replacing a grandfathered engine or engines with new combustion engines must obtain authorization for the new engines under this chapter or Chapter 106 of this title (relating to Permits by Rule).

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

(10) [(9)] For grandfathered reciprocating internal combustion engines replaced by electric engines or engines with a NO_x emission rate which is at least 50% lower than the emission rate of the grandfathered engine, the replacement [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 [Emissions Reductions Incentives Account].

(11) [(10)] Facilities required by any other state or federal law to make reductions in emissions of NO_x are not eligible for reimbursement.

(12) A person or an affiliate of a person who pays or contributes money to the emissions reductions incentives account is ineligible to receive money from the account.

(c) [(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 rate 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 incentive criteria for distribution outlined in subsection (d) [(c)] of this section.

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

[(1) whether the facility is located in an attainment area for ozone or a near 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]

(1) [(4)] when the reductions are actually achieved; and [.]

(2) if the executive director determines that a cap is appropriate in order to maximize equitable distribution of the fund, a cap on the amount to be reimbursed for each engine.

(e) [(d)] Verification of emissions reductions. Prior to reimbursement from the emissions reductions incentives account [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.

