

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§116.10, 116.111, 116.116, 116.311, 116.614, 116.615, and 116.710 *with changes* to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8808).

These amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Revisions to 30 TAC Chapter 101, Subchapter F, Emission Events and Scheduled Maintenance, Startup, and Shutdown Activities and federal new source review (NSR) rules, and ongoing implementation of the Federal Operating Permits Program (Title V or FOP) have resulted in considerable interest and inquiries from the regulated community and others regarding what maintenance, startup, shutdown (MSS), and other episodic emissions should be and can be authorized by an NSR permit or other authorization. The commission has historically restricted authorization to emissions associated with steady-state production, and has generally excluded emissions associated with MSS activities. In an effort to aid applicants and agency staff, the commission is adopting criteria to determine which emissions that are generated outside of production operations should be authorized.

The commission will authorize emissions from normal operations under this chapter and under 30 TAC Chapter 106, Permits by Rule. Normal operations are activities that result in emissions from production, MSS, and certain quantifiable and anticipated (QUAN) emissions that are predictable but cannot be scheduled. The commission is concurrently adopting amendments to Chapter 106 and is also

issuing a standard permit as an additional mechanism to authorize MSS emissions. Both actions are published in this issue of the *Texas Register*.

This rulemaking consists of three mechanisms for authorizing MSS emissions, which are of the same type as currently available for emissions from production. These three mechanisms for MSS mirror those that have existed for many years for production emissions, and include: permits by rule (PBRs), which are for smaller facilities or activities with insignificant emissions; a standard permit that allows somewhat more flexibility for emissions that exceed the quantities established in the PBRs but cannot trigger any federal review; and regular NSR permits that allow maximum flexibility for larger, more complex facilities. The commission is adopting rules in Chapters 106 and 116, as well as a standard permit for MSS, for the authorization of emissions for which, generally, no authorization mechanism has been available from the commission. These rules provide flexibility for owners and operators and also allow efficient use of commission resources to focus on larger and more complex facilities. This permitting approach also provides consistency in permitting and enforcement activities by the commission.

All changes are intended to assist in reducing excess emissions and improve overall air quality in Texas. In all cases, any authorized portion of normal operations must comply with National Ambient Air Quality Standards (NAAQS) and state property line standards, and be protective of public health and welfare. The amended rules in this chapter and new rules in Chapter 106 allow predictable or planned MSS operations to be authorized, and are adopted to comply with EPA policies regarding the permitting of planned MSS emissions. These operations include periodic plant turnarounds that can be

very extensive facility-wide or plant-wide maintenance events that may occur every two to ten years.

The rules also allow companies to group the MSS emissions of similar facilities and activities into one authorization.

The emission limits of §106.261, New Facilities and Changes to Authorized Facilities (and corresponding uses of §106.268, Maintenance, Startup, and Shutdown (MSS) Emissions and §106.269, Quantifiable, Anticipated (QUAN) Emissions, which reference §106.261) are based on SCREEN3 modeling results using conservative parameters for point and area sources. The MSS standard permit requires an air dispersion modeling analysis to demonstrate that MSS activities meet air quality standards and effects screening level guidelines. Larger, permitted facilities will periodically undergo impact reviews as a result of amendments to their permits. In addition, the commission intends to modify the RG-324 guidance document, *Modeling and Effects Review Applicability*, to ensure that all site-wide emissions, including MSS and QUAN emissions authorized by PBR, standard permit, or permit, will be evaluated appropriately.

The new and amended rules and standard permit that allow the authorization of QUAN and planned MSS emissions are individually and collectively protective of human health and welfare. At existing facilities, these MSS and QUAN emissions are already present, and the initiative to authorize these emissions by PBR and standard permit will not tend to increase actual emissions related to these facilities.

These amendments comply with EPA's policy regarding excess emissions, which provides that startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment. EPA policy also states that planned maintenance is a predictable event and should be included in a permit. Therefore, predictable, quantifiable emissions associated with planned MSS activities can and should be authorized.

The commission is concurrently issuing a non-rule standard permit, titled Air Quality Standard Permit for Maintenance, Startup, and Shutdown Activities, to authorize certain MSS emissions from otherwise authorized facilities. The MSS standard permit can be used by facilities authorized by PBR, another standard permit, or any type of Chapter 116 permit to separately authorize MSS emissions not already included in those authorizations. Notice of this standard permit is published in the IN ADDITION section of this issue of the *Texas Register*.

In addition to a permit amendment, authorization of MSS emissions can be accomplished using the new §106.268 and the MSS standard permit. Each facility or group of related facilities can authorize a specific MSS activity using only one of these authorization mechanisms, but a combination of PBRs, standard permits, and NSR permits may be used at a site to authorize MSS. For example, a specific maintenance activity on a series of connected tanks can be authorized using only one method because these are related facilities. An independent facility may authorize the same maintenance activity using a different authorization method. The commission is providing these mechanisms to provide flexibility, while ensuring protection of public health and welfare.

The commission is adopting standard terminology in these rules relating to the consolidation of authorizations and inclusion of PBRs and standard permits into existing NSR permits. PBRs and standard permits that are consolidated into an existing NSR permit are “incorporated” into the permit and subsequently voided. This action will require best available control technology (BACT) and impacts review. PBRs and standard permits that are “referenced” in the NSR permit maintain the PBR or standard permit as the authorizing mechanism and no BACT review is conducted. An impacts review may be required based on guidance in commission publication RG-324. However, the commission will evaluate the cumulative impact of emissions from a site during NSR construction or modification permit reviews.

SECTION BY SECTION DISCUSSION

The commission makes administrative changes throughout these sections to be consistent with Texas Register requirements and other commission rules and guidelines and to remove obsolete citations and terminology.

§116.10. General Definitions.

The commission amends §116.10 by adding a definition of air contaminant as new paragraph (2) that contains an exclusion from the requirement to obtain authorization under Chapter 116 or Chapter 106 for emissions of carbon dioxide, water vapor, nitrogen, methane, hydrogen, oxygen, argon, neon, helium, krypton, and xenon. These compounds are either inert gases or have minimal toxicity. In addition, this revision codifies the standing practice of excluding these compounds from the requirement for an authorization. The commission solicited comments as to whether ethane should

require authorization under Chapters 106 and 116 since it is excluded from the federal definition of volatile organic compound (VOC). The commission has determined that, except in the case of emissions from municipal solid waste (MSW) landfills, ethane will not require authorization under Chapters 106 and 116.

The commission is adding references to forms PI-7-CERT, or APD-CERT in the definition of “allowable emissions” in §116.10(3)(B) as these forms are currently used by the commission to allow regulated entities a mechanism to establish federally enforceable emission limits.

The definition of “Normal operations” in new §116.10(16) establishes the type of activities that may be authorized and includes emissions from production, MSS, and QUAN. In response to public comment, the commission is defining in more detail what constitutes production including the planning, coordinating, and directing of material inputs and outputs to engage in the manufacture, storage, handling, or creation of any product for any purpose. The definition of normal operation also specifies maintenance as discrete periods of time when activities occur to ensure the proper and continuing operation of a facility, group of related facilities, or an emission control device. Startups and shutdowns can occur when associated with maintenance or batch-style production. The commission is also including the word “predictable” in §116.10(16)(C) to emphasize the point that QUAN emissions are predictable but unscheduled. The definition of normal operations excludes acts of God, accidents, malfunctions, or other activities not consistent with good engineering practices. The existing definitions in the section have been renumbered accordingly to accommodate the new definitions.

The commission is correcting a typographical error in §116.10(18).

§116.111. General Application.

The commission amends §116.111 by revising subsection (a)(2), which requires an owner or operator to demonstrate that emissions from normal operations meet the conditions for issuance of a permit under this chapter. MSS emissions may be authorized by a PBR, standard permit, NSR permit alteration, or as part of an amendment or renewal of an NSR permit, depending on individual facility and site circumstances. If there are any increases or changes in character or quantity of allowable emissions which require a case-by-case permit review, these MSS emissions will be subject to BACT and off-property impacts review to ensure statutory compliance and protection of public health and welfare. Generally, QUAN emissions will be authorized only by §106.269. However, in limited circumstances, authorization may be requested through a permit review provided that emissions are minimal, activities are part of routine operation, and releases are inherent to the process.

Authorization in a permit will be at the discretion of the division director of the Air Permits Division.

The new §116.111(a)(2)(M) requires the authorization of MSS activities causing an increase in change or character of emissions, change of operation methods, or change in methods of emissions control and is applicable when another authorization mechanism, such as PBR or standard permit, has not been claimed. The commission has further considered issues raised during the public comment period relating to retroactive federal prevention of significant deterioration (PSD) or nonattainment new source review (NNSR) applicability based on MSS emissions submitted as part of emission inventories.

The commission determined that it will not limit federal permitting in this rule and is deleting the language from §116.111(a)(2)(M) concerning exemptions from nonattainment and PSD review.

The first step to determine federal NSR applicability is to compare the difference between the proposed post-project emission rate minus the baseline emission rate to a significance level. EPA's NSR reform rules state that baselines must include startup, shutdown, and malfunction emissions. On January 11, 2006, the commission adopted a version of baseline determination in the definition of "baseline actual emissions" in §116.12(3), Nonattainment and Prevention of Significant Deterioration Review Definitions, that allows the inclusion of MSS, but not malfunction emissions in baseline emissions. Sources may establish baselines using any consecutive 24 months during the previous ten years (five for electric generating facilities). Baseline emissions must also have been timely and accurately reported in accordance with 30 TAC Chapter 101, Subchapter F and §101.10, Emissions Inventory Requirements. Finally, MSS baseline emissions must also be adjusted to reflect any additional controls required to meet BACT and impacts review as required by an applicable authorization. Baseline excludes noncompliant emissions as required by the EPA.

Adopted new §116.111(a)(2)(N) provides that each MSS activity at a facility or group of related facilities at a site may be authorized by only one authorization mechanism, but that a combination of PBRs, standard permits, and NSR permits issued under this chapter may be used to authorize MSS emission activities at a given facility or site. The PBRs and standard permits have been reviewed for protectiveness and an NSR permit will require an individual protectiveness review. This multi-tiered permitting approach ensures that there are no adverse off-property impacts while providing maximum

authorization and operational flexibility. This subparagraph also provides that the term “site” is defined in 30 TAC §122.10, General Definitions.

§116.116. Changes to Facilities.

The commission amends §116.116 by adding a new subsection (b)(5), that prohibits the use of permit amendments solely to authorize emissions from MSS activities except under certain circumstances.

The rule provides that permit amendments solely to authorize emissions from MSS activities are allowed if the amendments are concurrent with a renewal action as required by §116.311(b), Permit Renewal Application. The revision also provides that permit amendments solely to authorize emissions from MSS activities are allowed if the amendments are filed within six months of a designated deadline adopted by the commission in Chapter 101, Subchapter F in order to authorize emissions for which an affirmative defense will no longer be available.

Section 116.116(d) specifies that PBRs and standard permits can be used instead of permit amendments or alterations. This addition allows permitting flexibility and is included to ensure that permitting actions may occur using the most appropriate level of review.

In response to public comment, the commission will allow voluntary incorporation of MSS into a permit. These changes will apply to all PBRs and standard permits registered or claimed after the effective date of these adopted rules. While incorporation is not required, owners or operators may reset §§106.263, 106.268, and 106.269 cumulative limits by doing so, allowing the use of additional PBRs or standard permits. Facility owners or operators that opt to incorporate PBRs and standard

permits, will undergo a BACT and impacts review. Public notice and fee requirements do not apply because the associated emissions were previously authorized. PBRs or standard permits that are referenced in permits remain authorized by the PBR or standard permit; however, the permit will identify the facilities and reference the registration or claim in the permit conditions and the maximum allowable emissions rate table (MAERT). The facilities will be listed by registration number (if assigned), hourly and annual emissions type and amount, effective date of a PBR or standard permit, and any other unique historical information. Registrations for these PBRs or standard permits will not be voided and no additional review is required. In both cases (incorporation or reference), these PBR or standard permit registrations or claims will also be discussed in the commission's Technical Review Summary and final action letter.

Section 116.116(d)(2) is revised to allow the voluntary incorporation of any standard permit or PBR into an NSR permit when it is amended. All standard permits and PBRs that directly affect the emissions of permitted facilities must, at a minimum, be referenced when an NSR permit is amended. Referencing will not require a BACT review and may require an impacts review based on commission guidance addressing when additional modeling is required. In addition, because the requirements of §116.116(d)(2) and (3) were identical, the commission has included standard permits within subsection (d)(2) of the section and deleted subsection (d)(3).

The commission is not adopting §116.116(e)(1)(C), which prohibited trading between those emissions represented and designated as production with those represented and designated as MSS or QUAN, or between those designated as MSS and QUAN with production.

The commission is clarifying §116.116(f) to state that discrete emission reduction credits (DERCs) may be used to exceed production emissions but not MSS and QUAN emissions because the protectiveness of the MSS and QUAN authorization methods have been determined based on their restricted emissions.

The commission is not adopting the changes in §116.116(e) and (f) that would have changed “Notwithstanding” to “With the exception of.” These changes would have inverted the meaning of the subsections.

§116.311. Permit Renewal Application.

The commission amends §116.311 to address MSS emissions associated with permit renewal applications. Specifically, new subsections (b) - (d) establish conditions for the inclusion, incorporation, or reference of MSS emissions in a permit at renewal. Existing subsections (b) and (c) have been re-designated as subsections (e) and (f).

The new §116.311(b) allows the inclusion of MSS emissions into a permit at renewal if there will be no increase in allowable emissions, change in character of emissions, change in method of operation, or change in control of emissions. Otherwise, other appropriate authorization (permit amendment, PBR, or standard permit) of MSS emissions is required before these emissions can be incorporated into or referenced in the permit during renewal. Authorization of MSS emissions may be obtained by meeting the conditions of an applicable PBR, standard permit, flexible permit, or concurrent permit

amendment. In response to public comment, the commission has added qualified facility status to the list of methods that may be used to authorize MSS.

Adopted new §116.311(c) specifies that MSS emissions may be incorporated into a permit at renewal with appropriate review and exclusions consistent with those required for permit amendments. This subsection also provides that the term “site” is defined in §122.10.

Adopted new §116.311(d) requires the referencing of changes authorized under PBR or standard permit when a permit is renewed. Proposed §116.311(d)(1) and (2) are not adopted, while the criteria for referencing of the PBR and standard permit authorizations proposed in §116.311(d)(2)(A) - (E) have been re-designated as adopted §116.311(d)(1) - (5).

§116.614. Standard Permit Fees.

The commission amends §116.614 regarding fees for a standard permit. The regulated community frequently requests clarification as to fee amounts for various standard permit actions and when fees are applicable. These changes are intended to eliminate this confusion, provide flexibility, and ensure consistency with the registration mechanisms of the Air Permits Division. The commission modifies the language in new §116.614(1) for consistency in singular and plural references and to specify that fees are assessed for standard permit registration. Section 116.614(1) provides a reduced fee category for small businesses, nonprofit organizations, and small local governments consistent with the rule requirements of PBR registrations. These groups generally own and operate smaller facilities, justifying a reduced fee of \$450 for new and renewed standard permits, and \$225 for amended and

revised registrations. For all other entities, the commission retains in new §116.614(2), the \$900 initial registration and renewal fee requirements. The fee for amendments and revisions is reduced to \$450, because a full review is not required. The executive director reviews only changes that result in an increase in emissions. Additionally, in new §116.614(3), the commission adds language to address when fees are not applicable, including actions that are not reviewed (certifications and notifications), automatic renewal of registrations without review, and resubmittals within six months of a review. Because the commission assesses fees to recoup its costs, there is no need to collect fees if no, or minimal, review is performed. Finally, in the new §116.614(4), the commission allows a refund of fees in certain cases, particularly where no resources are expended by the commission.

§116.615. General Conditions.

The commission amends §116.615 by revising paragraph (2) to designate when registration updates are required to be submitted by standard permit holders. Specifically, existing references to “notifications” are replaced with “registrations” to state precisely when increases in emissions or construction of new facilities must be submitted to the executive director for review. New paragraph (2)(A) requires compliance with §116.611(b) for new facilities or new groups of facilities. New paragraph (2)(B) provides the deadline for submitting registrations. For MSS emissions, the commission adopts a deadline of 90 days in new paragraph (2)(C) because these emissions may require extensive review for federal applicability issues and possibly evaluation of appropriate character and quantity of releases as well as good engineering practices. In response to public comment, the proposed deadline was reduced from 180 days to 90 days. The commission also adopts rule language to recognize that owners and operators of some facilities that have no MSS emissions, or do not choose

to authorize MSS under their standard permit, will not be required to submit additional paper work to the executive director.

The commission also amends §116.615(3), which refers to the use of a standard permit in lieu of a permit amendment. This paragraph states that all changes authorized by a standard permit to a facility previously permitted under §116.110 may be incorporated into the permit for the facility at such time as the permit is amended or renewed. At a minimum, with the exception of the MSS standard permit, standard permits must be referenced. It is the option of the permit holder to voluntarily incorporate or reference the MSS standard permit in a permit.

Finally, the commission amends §116.615(6) to replace the reference to Office of Air Quality to the commission's appropriate regional office because those offices have responsibility for providing this assistance.

§116.710. Applicability.

The commission amends §116.710 by revising subsection (a) to allow authorization of MSS activities by a new or amended flexible permit, consistent with the new definition of normal operations in §116.10(16). The requirement in §116.710(a)(1), which limits flexible permits to one per regulated entity remains in effect. The intent is, wherever practical, to allow flexibility by establishing separate emission caps for MSS activities. This is particularly applicable for larger regulated entities where the total number of MSS activities among large numbers of facilities in a given category (e.g., tanks, pumps, compressors) can be reliably predicted, rather than authorizing each activity for each specific

piece of equipment. In response to public comment, the commission is adding the option of adding MSS emissions through amendment of a flexible permit.

The production caps in a flexible permit are determined by summing estimated cap contributions based upon facilities operating at represented capacities with all controls meeting BACT, and the MSS cap will be similarly determined. Emissions from MSS activities at affected facilities will be estimated based upon being controlled to BACT levels, then summed to determine the MSS cap. The overall MSS cap will be comprised of categories of equipment. For example, the MSS cap for VOC could consist of estimated cap contributions from pumps, compressors, valves, vessels, exchangers, furnaces, boilers, and tanks. The actual emissions from each of these individual categories of facilities can be greater or less than their estimated cap contributions, as long as the total emissions from all categories are kept below the cap. In addition, the commission is making other administrative changes to improve readability and update terminology.

REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a “major environmental rule.” Under Texas Government Code, §2001.0225, 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, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments provide flexibility for authorizing facilities that have

emissions that have not historically been authorized from MSS activities. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure. The amendments improve regulatory flexibility and are therefore unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of “major environmental rule.”

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKING IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), “taking” means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected

private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for the rules. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The amendments also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the amendments will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action 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, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The amendments provide flexibility for authorizing emissions from facilities that have not been historically authorized. These changes will assist in reducing excess emissions, improve compliance with state and federal air pollution control requirements, and improve overall air quality in Texas. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Prior to the effective date of these rules, potential to emit (PTE) calculations, used to determine applicability of the Federal Operating Permits Program, did not include emissions that were not authorized, such as those from MSS or emission events. As of the effective date of these rules, owners and operators of sites that would have newly authorized emissions would be required to recalculate PTE to include authorized MSS emissions and reevaluate applicability of their sites to the Federal Operating Permits Program. Further, the amended sections are applicable requirements under 30 TAC §122.10(2). Operating permit holders are required to revise their permits to incorporate any NSR changes, according to the appropriate operating permit revision process. In accordance with

§122.130(b)(1), PTE must be recalculated, and a Title V application submitted for sites with emissions exceeding major source thresholds, upon authorization of new emissions including MSS.

PUBLIC COMMENT

A public hearing on the proposal was held in Austin on January 31, 2006. Air Consulting and Engineering Solutions (ACES); Arkema, Inc. (Arkema); Association of Electric Companies of Texas, Inc. (AECT); BP Products North America, Inc., Texas City site (BP); Crain, Caton and James, P.C. (CCJ); Celanese Chemicals, Clear Lake Plant (Celanese); City of Houston (Houston); ConocoPhillips Company (ConocoPhillips); Dow Chemical Company (Dow); Duke Energy Field Services (Duke); ExxonMobil Downstream and Chemical (ExxonMobil - D&C); ExxonMobil Production Company (ExxonMobil - P); Galveston Houston Association for Smog Prevention (GHASP); Gulf Coast Waste Disposal Authority (GCA); Harris County Public Health and Environmental Services (HCPHES); Haynes and Boone, LLP (Haynesboone); Sierra Club, Houston Regional Group (HSC); Shell Chemical LP - Deer Park Chemical Plant and Shell Deer Park Refinery (Shell Chemicals); Source Environmental Sciences, Inc., on behalf of numerous clients (Source); Texas Chemical Council (TCC); Baker Botts L.L.P. on behalf of the Texas Industry Project (TIP); Texas Instruments Incorporated (TI); Texas Oil and Gas Association (TxOGA); Texas Pipeline Association (TPA); and United States Environmental Protection Agency (EPA) submitted comments during the comment period which closed on February 3, 2006. While some commenters supported parts of the proposal, all were in general opposition and had numerous suggestions for changes.

RESPONSE TO COMMENTS

GHASP stated that the proposed MSS and QUAN permitting structure unnecessarily complicates permitting, compliance, and enforcement. GHASP urged the commission to hold stakeholder meetings to consider the issue of compliance with the Federal Clean Air Act (FCAA) and EPA guidelines, and the proposed permitting structure, and then re-propose these rules with simpler rules. GHASP further commented that these rules are difficult, if not impossible to enforce. For example, GHASP suggested a simpler rule that would require all of the emissions limits for a given unit be included in one authorization. Specifically, it proposes the withdrawal of the standard permit and PBR, concurrently proposed with changes proposed to Chapter 116.

The commission is not making changes in response to this comment. The commenter expressed concern with regard to the commission's ability to determine if the emissions would be protective of human health and the environment, and the ability of the commission to adopt rules that will comply with the requirements of the FCAA.

The commission has historically restricted authorization to emissions associated with steady-state production, and has generally excluded emissions associated with MSS activities. This rulemaking consists of three mechanisms for authorizing MSS emissions, which are of the same type as currently available for emissions from production. These three mechanisms for MSS mirror those that have existed for many years for production emissions, and include PBRs, for the smaller facilities or activities with insignificant emissions; a standard permit that allows somewhat more flexibility for emissions that exceed the quantities established in the PBRs but cannot trigger any federal review; and regular NSR permits that allow maximum flexibility for

larger, more complex facilities. The commission is adopting rules in Chapters 106 and 116 and a standard permit for MSS, to authorize emissions for which limited authorization has been available from the commission. These authorization mechanisms provide flexibility for owners and operators and also allow efficient use of commission resources for focus on larger and more complex facilities. This permitting scheme also provides consistency in permitting and enforcement activities by the commission. For facilities authorized by permit, the permit can include authorization for emissions from both operation and from MSS activities. As previously discussed in this preamble, the scheme was developed to ensure public health while providing flexibility to regulated industries and allowing an efficient use of the commission's resources.

These amendments comply with EPA's policy regarding excess emissions, which provides that startups and shutdowns of process equipment are part of the normal operation of a source and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment. EPA policy also states that planned maintenance is a predictable event and should be included in the permit. Therefore, predictable, quantifiable emissions associated with planned MSS activities can and should be permitted. The commission is adopting a definition of "normal operations" to specify the categories of emissions for which authorization can be obtained.

The commission expects that many of the authorizations sought will be for actual emissions, which are currently unauthorized, and therefore, there will be no adverse impact to the state's air quality by authorizing these emissions. Rather, by providing specific limitations based on the

protectiveness review for the PBRs, the MSS standard permit, and the reviews that will be performed for individual NSR permit applications, the commission expects reductions in actual emissions. Further, because these emissions were actually emitted but were never authorized, the commission is strengthening its SIP by adding the specific, protective requirements for authorization of these emissions. These changes, together with the commission's recent adoption of changes to its emissions events rules in Chapter 101, Subchapter F, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8884), provide incentive for excess emissions to be reduced, and corresponding reductions in reporting of excess emissions under Chapter 101 and Chapter 122, Federal Operating Permits Program, of the commission's rules.

The commission agrees that verification of compliance with the MSS and QUAN authorizations will present some difficulties but considers the problem manageable. The MSS standard permit and QUAN PBRs require recordkeeping similar to other authorizations, which provides the basis for enforcement.

EPA commented that all PTE emissions, including quantifiable MSS emissions must be included in both NNSR and PSD applicability determinations and air quality permit reviews. Also, EPA requested that the commission explain how to ensure that authorized MSS emissions will not exceed the emission inventory MSS levels. GHASP also commented that there is no requirement for operators to justify any reduction in baseline emissions estimates below actual historic emissions and requested that the commission explain how it will address retroactive PSD and nonattainment reviews. EPA noted that the commission intends to authorize existing MSS emissions under Chapter 116 without retroactive

PSD or NNSR if the emissions were previously submitted and accepted as part of the emission inventory. EPA requested an explanation of the regulatory requirement that triggers these requirements for a permit amendment to allow for an increase in emissions. EPA requested that the commission confirm that MSS emissions would be included when calculating PTE to determine applicability of federal standards such as Title V, New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and maximum achievable control technology (MACT) for all stationary sources. GHASP commented that the rules do not provide specific language indicating what triggers a recalculation of PTE when MSS emissions are evaluated for authorization. Further, the commission should clarify that MSS emissions must be included in emissions calculations that determine whether a source is major or minor.

The commission is deleting language concerning possible exemption of federal permitting review. The authorization of MSS does not affect the application of any federal permitting requirements. When MSS and QUAN emissions are authorized, the PTE must be recalculated in determining applicability of Title V, MACT, and other federal standards and requirements.

EPA commented that in some situations, the authorization of MSS emissions for existing permitted entities will trigger a permit amendment. For example, if a permitted entity did not include MSS emissions in determining PTE for its existing permit, and now will be a major source by inclusion of MSS emissions (either by PBR or standard permit), the source must amend its existing permit to document the new major source status. EPA recommended revisions to the notification requirements for PBRs and standard permits to identify such sources.

The PBR or standard permit cannot be used when a federal review is triggered. This is a long-standing existing general requirement for all facilities authorized by standard permits (§116.610(b) and PBRs (§106.4(a)(2)), both of which are included in the state's approved SIP. In the case where MSS emissions trigger federal NSR review, a concurrent case-by-case permit amendment will be required. In addition, if a site becomes major for Title V due to authorization of MSS emissions, a federal operating permit application is required.

EPA requested an explanation of how the commission will ensure that authorization of MSS emissions in PBRs, standard permits, and individual NSR permits will provide a technology review and impacts analysis similar to those requirements that would have been imposed if the emissions had been reviewed in the original construction or modification permitting action.

PBR and standard permit authorizations undergo a protectiveness review that is integral to the development of the general authorizations that can be applied to multiple, similar sources. PBRs are developed for insignificant emissions and are not required to have a BACT review. The MSS standard permit requires BACT and an impacts review.

When appropriate, a case-by-case permit review may be required. New emissions from MSS activities will be subject to a BACT and effects review in the permitting process, which is the commission's standard practice for new or modified facilities. Protectiveness reviews are always integral in every air quality authorization mechanism issued by the commission to ensure that emissions are protective of human health and welfare.

The proposal process for PBRs and standard permits includes the opportunity for public comments, which are addressed by the commission when it adopts PBRs and standard permits. Individual reviews associated with permit or permit amendments that authorize increases in emissions are subject to notice if required by 30 TAC Chapter 39, Public Notice. The new PBRs, MSS standard permit, and amendments to Chapter 116 do not make any changes to public notice requirements or opportunities. The current notification requirements for federal permits in Chapter 39 comply with federal requirements for opportunity for public participation regarding the draft permit. Neither a PBR nor a standard permit can be used to authorize changes at facilities that will be subject to PSD or NNSR review. Such a change may only be authorized with a concurrent permit amendment, which is subject to public notice and comment.

HCPHES, Houston, and GHASP expressed concern that emissions submitted as part of an emissions inventory are not reviewed regarding protection of human health, the environment, the FCAA, and the SIP. HCPHES suggested clarification as to which startup and shutdown emissions must be included in the air quality analysis, effects analysis, and air toxics review, and suggested a review whenever a permit application represents a significant emissions increase over the levels studied in a prior air toxics review. Houston suggested that instead of the current proposal, permits could be called in or reviewed on a set schedule. GHASP stated that the process for reviewing emission inventory submission cannot represent a BACT/lowest achievable emission rate (LAER) review and that not all MSS emissions are subject to PSD or NNSR review.

The commission is deleting language concerning possible exemption of federal permitting review.

The authorization of MSS does not affect the application of any federal permitting requirements.

When MSS and QUAN emissions are authorized, the PTE must be recalculated in determining applicability of Title V, MACT, and other federal standards and requirements.

EPA expressed concern that the MSS permitting rules may provide a blanket authorization for emissions which should be defined as emissions events (or upsets). EPA stated that only emissions that are predictable, quantifiable, tied to a specific narrow event of limited duration, and part of normal operation of the source, should be considered in the permit review.

The commission agrees that only predictable, quantifiable emissions that are part of normal operation of a source should be authorized, and therefore no change to the rules is necessary.

The rules do not provide for any authorization of emissions events, including emissions from upset events. Emissions events are defined in Texas Health and Safety Code, Chapter 382 (TCAA) as “an upset, or unscheduled maintenance, startup, or shutdown activity, that results in the unauthorized emissions of air contaminants from an emissions point.” The commission further defines “Upset event” in §101.1(110), Definitions, as “an unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions.” An MSS activity that was reported under §101.211, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements, but had emissions that exceeded the reported amount by more than a reportable quantity due to an unplanned and unavoidable breakdown or excursion of a process or operation is also an upset. The TCAA and §101.1(109) define an upset

event as “For activities with unauthorized emissions that are expected to exceed a reportable quantity or with excess opacity, an unplanned maintenance, startup, or shutdown activity is: (A) a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or (B) a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective action to minimize or avoid an upset or malfunction.”

Clearly, MSS emissions are not the same as emissions events. However, because the commission has not historically provided an authorization mechanism for MSS emissions, owners and operators were required to report these unauthorized emissions under the commission’s rules requiring reporting of MSS activities. By adopting these rules, the commission has determined that many MSS emissions should be provided authorization mechanisms and no longer reported as unauthorized emissions under §101.211.

EPA requested that the commission explain how to ensure that, prior to authorization of MSS emissions above existing SIP limitation, the commission has determined whether MSS emissions above existing permit emission limitations can be eliminated or reduced through planning, design, and implementation of operating procedures for the process and control equipment, including BACT or LAER.

No change is being made to the rule in response to this comment. MSS activities authorized by a regular NSR permit that result in total emissions in excess of the current permit allowables require an appropriate authorization.

While the commission has not always required the authorization of MSS emissions, it has required that these emissions be minimized to the extent practical to qualify for the affirmative defense in §101.222, Demonstrations. Emissions authorized are consistent with the application of BACT as appropriate, reasonably available control technology (RACT), and good engineering practices for the control of air pollution emissions to assure that protectiveness and NAAQS compliance are achieved. The review that EPA suggests is already part of the process. Inclusion of MSS emissions that results in total emissions less than the current permit allowables, may be authorized by a permit alteration.

EPA commented that the commission should explain that, for major sources, whether a site-specific amendment is required instead of a PBR or standard permit.

MSS emissions from major sources can be authorized using a PBR, the MSS standard permit, or a permit amendment. If the facility qualifies for the PBR or standard permit, the owner or operator may obtain this authorization prior to the phasing out of the affirmative defense in §101.222(h). In no case is a source allowed to circumvent PSD or NNSR permitting requirements, which may require a permit amendment.

EPA recommended that the commission make the determination in individual permit reviews that compliance with existing emission limitations is infeasible. GHASP and HCPHES also suggested a requirement to demonstrate that compliance with BACT/LAER limits during startup or shutdown is infeasible.

All individual permit reviews require a BACT or LAER determination, and the appropriate emissions limitations for applicable BACT or LAER will be added to the permit on a case-by-case basis.

EPA recommended that sources be required to certify to an emissions limitation equivalent to existing actual MSS emissions.

No change is being made to the rule in response to this comment since certification is not necessary. MSS emissions have not been static from one year to the next as operations at facilities change over time, so a requirement to certify to an express limit outside of the permitting process seems somewhat arbitrary. Because in most cases these rules will be used to provide the initial authorization of MSS activities, the emphasis in the authorization is on meeting the requirements for authorization, including health effects and BACT as applicable, and ensuring that the MSS emissions will be compliant with permit requirements. In addition, every owner or operator reporting emissions into the emissions inventory certifies to the accuracy and completeness of the submittals.

EPA asked that the commission confirm that sources with permits authorizing MSS emissions cannot qualify for the PBR or the standard permit, and recommended that a corresponding provision be added to §106.4(f), Requirements for Permitting by Rule.

Facilities or sources that authorize MSS emissions for a specific activity at a facility or group of related facilities using an NSR permit or permit amendment must continue to use the NSR permit for additional authorization of the activity. Other activities at the same facility may be authorized using the PBR or standard permit.

EPA stated that SIP emission limitations (such as BACT) must apply at all times including periods of shutdown, startup, malfunction, and scheduled maintenance. Exceptions may be established for necessary and justified startup and/or shutdown events, but may not be appropriate for scheduled maintenance. EPA commented that it should be possible to schedule control equipment maintenance during a unit outage, or plan for control equipment redundancy, spare parts, etc., such that an exception to a SIP limitation should rarely be necessary. EPA stated that the commission must ensure that authorizing MSS emissions will not relax existing BACT, LAER, and minor NSR permit limitations.

The commission agrees in part with this comment. Although the commission does not authorize emissions associated with malfunctions, it agrees that the control equipment should be properly operated and maintained. As the TCEQ reviews permit applications for MSS emissions, it will determine BACT for MSS activities and sources. With the exception of insignificant sources and

activities meeting the requirements of the PBR, all planned MSS activities and sources will be required to demonstrate BACT and that the emissions, with the appropriate controls applied, will be protective of human health and the welfare. BACT for MSS activities will not necessarily be the same as for production emissions.

EPA stated that authorization of MSS emissions must follow the same step-by-step technology review process used to determine the SIP limit. The technology review should include consideration of any specific operating practices and available control technologies to minimize emissions during startup and shutdown.

The commission agrees that careful consideration must be made when determining the control requirements and emissions limits established in any authorization, but has determined that there is a role for PBR and standard permit authorization mechanisms as many facility types can use the same type of control and establish comparable limits. In addition, the administrative and substantive provisions of the three permitting mechanisms are part of the state's approved SIP.

The loss of the ability to claim an affirmative defense against penalties related to such scheduled activities will provide an incentive for owners or operators to seek authorization for the activities before they engage in them. Due to the large number of facilities to be reviewed for MSS activities, the commission developed several options for authorizing these activities depending on the quantity and nature of the emissions. NSR permits and the MSS standard permit require BACT, and the PBR will only authorize insignificant emissions.

EPA stated that amendments to incorporate MSS emissions should include an enforceable permit condition that requires the owner or operator to minimize the frequency and duration of operation in startup or shutdown mode, including careful and prudent planning, operation, and maintenance to avoid unnecessary, preventable, or unreasonably frequent or lengthy startups and shutdowns. EPA stated that where an MSS limit is established, the permit should include a limit on the number of hours for which the MSS limit may apply.

The commission has made no changes in response to this comment. The commission assumes that owners and operators benefit economically from reducing periods of maintenance and startup following an emissions event. In most cases, emission limits for MSS provide sufficient restrictions. In certain permits, the information presented in the application may result in establishing time limits for certain MSS activities in permit conditions. Additionally, MSS emissions would be entered into the MAERT with short-term and annual emission rates, effectively limiting MSS emissions.

GHASP commented that both these rules and individual permits should provide that authorized planned maintenance emissions constitute the standard for evaluating whether the operator demonstrated adequate minimization of unauthorized unplanned maintenance emissions, and should apply to unplanned startup activity and opacity events.

The commission has made no changes in response to this comment. Permits authorize facilities, and do not provide requirements with regard to unauthorized emissions, as GHASP requests.

The commission declines to make any changes in these permitting rules that would apply to unauthorized emissions. Unauthorized emissions, by definition, do not meet permit requirements, and will be evaluated on a case-by-case basis in the enforcement process. The permit limits are one factor in determining whether a facility will qualify for an affirmative defense.

EPA commented that it will review the commission's rules for consistency with 40 CFR Part 51 and FCAA, §110(l). EPA stated that it cannot approve a SIP revision that would interfere with attainment, reasonable progress, or any other applicable requirement of the FCAA. EPA requested information to determine that the MSS permitting rules will not increase emissions beyond historic levels, and that short-term emissions will not deteriorate air quality.

The commission agrees that its permits must be consistent with the requirements of the FCAA and the rules adopted under its authority. The commission's position is that these rules will not interfere with attainment, reasonable progress, or any other applicable requirement of the FCAA. This rulemaking, together with revisions to Chapter 106 and development of a standard permit for MSS emissions, provides authorization mechanisms for MSS emissions, assuring proper control and air quality protection. Emissions increases under a permit amendment will require BACT and impacts reviews, as has been done for production operations emissions in the past. Although these mechanisms may result in an increase in authorized emissions, these control technology and impacts reviews will result in an overall decrease in actual emissions. These rules do not allow any relaxation of existing permitting levels or requirements that are approved into

the state's SIP. Rather, these rules are adopted to comply with EPA policies regarding permitting of maintenance emissions.

EPA requested an explanation of how the commission will ensure that authorization of MSS emissions in PBRs, standard permits, and individual permits will provide public participation similar to those requirements that would have been imposed if the emissions had been reviewed in the original construction or modification permitting action, specifically whether the commission has made an on-the-record determination, which is subject to public participation in accordance with 40 CFR §51.161. EPA stated that this generally requires a 30-day comment period, availability of the state's air quality analysis, preliminary decision to approve or disapprove the permit and the draft permit, and the opportunity for a public hearing. EPA requested clarification of whether the proposed rules would provide the opportunity for public participation on the draft permit and the state's preliminary analysis to authorize MSS emissions in PSD or NNSR permits. GHASP commented that authorizations for MSS emissions appear to be subject to the normal public participation requirements.

The proposal process for PBRs and standard permits includes the opportunity for public comment. Comments are addressed by the commission when it adopts PBRs and standard permits. Individual reviews associated with permits or permit amendments that authorize increases in emissions are subject to notice if required by Chapter 39, Public Notice. The new PBRs, MSS standard permit, and amendments to Chapter 116 do not make any changes to public notice requirements or opportunities. The current notification requirements for federal permits in Chapter 39, Public Notice, comply with federal requirements for opportunity for public

participation regarding the draft permit. The process for issuing PBRs and standard permits is part of the state's approved SIP.

Celanese commented that applicants should be allowed to apply for permits promptly. The proposed delay of up to seven years for the opportunity to apply for permit amendments for MSS activities is unprecedented, arbitrary, and unfair. AECT stated that for some companies the only way to avoid ongoing enforcement for future MSS would be to apply for a permit amendment. AECT suggested adding language, stating that any site that has received a notice of violation, and did not meet the criteria for an affirmative defense, can apply for an amendment.

Currently, there are more than 14,000 active NSR permits in Texas. The commission has one of the nation's largest minor source permitting programs, as well as a large number of major sources. The opportunity to seek authorization for MSS emissions is not limited to major sources. Due to this large number of active permits, the commission developed the three permitting mechanisms, as discussed earlier, to provide as much flexibility as possible without relaxation of SIP-approved permitting programs. The commission's air permitting staff has limited experience permitting emissions from MSS activities, and therefore this case-by-case review will involve developing an understanding of the methods and techniques available to minimize the emissions from these activities.

Texas is one of the most industrialized states in the country with large numbers of diverse industries. The state has several international ports, and one of the nation's largest complexes of

refining and petrochemical companies. Furthermore, there are a wide variety of industries in the state, including a large number of oil and gas production facilities. The schedule in §101.222(h) provides time for the commission to gain a better understanding and development of BACT, and conduct impacts analyses. Requiring companies in various industries to submit applications at the same time as those from similar facilities will allow the commission to compare how companies plan to control MSS emissions. This will facilitate an understanding of the best ways to control and minimize these emissions.

In addition, the schedule allows for review of the most important emissions, starting with those facilities that are complex, and have large amounts of unauthorized emissions or have emissions with a greater possibility for off-site impacts. This schedule will decrease the likelihood that these emissions of concern are not adequately reviewed for best available technology and protection of public health and physical property.

The schedule for the phasing out of the ability to claim an affirmative defense is based on the level of excess emissions reported by industry type in the 2002 emissions inventory. The standard industrial classification (SIC) codes specifically listed in the revised phase-out schedule in §101.222(h)(1) are those that reported more than 98% of the total excess emissions reported to the commission's emissions inventory for calendar year 2002.

The TCEQ will make every effort to review applications for permit emissions associated with planned MSS activities before the loss of the ability to claim an affirmative defense according to

the schedule contained in §101.222(i). However, because the actual number of applications that may be submitted is unknown at this time, final action may not occur for all applications before the expiration of the ability to claim an affirmative defense for planned MSS activities.

Therefore, as explained in the recent adoption of revisions to Chapter 101, Subchapter F (30 TexReg 8884), for those actions that may still be pending, the commission will continue to use its enforcement discretion when reviewing excess emissions from planned MSS activities. In addition, in that rulemaking, the commission added §101.222(j), which references §116.114, Application Review Schedule. Section 101.222(j) requires that the executive director meet certain application processing deadlines. It also requires applicants to make good faith efforts to submit, in a timely manner, adequate information that demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director. Therefore, the commission has provided a reasonable and fair approach to transition the change of many emissions from unauthorized to authorized.

The commission declines to make the suggested change because it would not add clarity to the obligation of an owner or operator to seek authorization for emissions from certain operating conditions or risk enforcement for unauthorized emissions. The commission plans to implement the authorization of planned MSS activities in conjunction with the schedule for the phasing out of the affirmative defense in §101.222.

AECT concurred with the proposed definition of “air contaminant.” EPA supported the identification of each of the noble gases as air contaminants in §116.10(2). EPA recommended that the commission

maintain a similar definition of “air contaminants” as a “regulated air pollutant” in 40 CFR §70.2, and in certain EPA guidance concerning regulated pollutants under Title V. EPA further recommended that the commission maintain a definition equivalent to the definitions of “regulated NSR pollutant” in 40 CFR §51.165(a)(1)(xxxvii) and §51.166(b)(49).

Texas Health and Safety Code, §382.003 defines air contaminant as “particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.” This definition encompasses EPA’s regulated air pollutant definition.

EPA stated that even though ethane is not considered a VOC, it is a regulated pollutant under 40 CFR Part 60, and therefore should be included in the §116.10 definition of air contaminant. Dow, TIP, ACES, ExxonMobil - P, and TxOGA suggested that ethane should be added to the list of materials that technically meet the definition of an air contaminant, but are excluded from the requirement to obtain authorization under Chapters 106 and 116. If ethane is added as a VOC, Dow expects there to be a large number of permit applications. Dow, TIP, and ExxonMobil - P proposed that the environmental impact of ethane emissions are minimal, and that the commission should continue with the current practice of not requiring authorization of ethane emissions, as in the definition of a reportable quantity in §101.1(89)(B)(iv). ACES suggested that if ethane is treated as an air contaminant that there be an implementation of a "phased" approach to permitting ethane emissions that would allow for modifying existing authorizations to include ethane emissions, so that unauthorized emissions of ethane would not result in immediate violations of the requirement to obtain a permit. ACES also suggested that the rule

clarify whether ethane would be treated as an "other contaminant" or with a separate limit. GHASP also opposed the definition for excluding methane and ethane and stated that these compounds are unhealthy for humans and may react with other compounds to form less benign compounds.

The regulated NSR pollutant for purposes of PSD is "municipal solid waste landfills emissions (measured as nonmethane organic compounds)." Chapter 116 has been revised to state that ethane, except as regulated as part of MSW landfills emissions, is excluded from the requirement to obtain authorization.

HSC opposed the proposed definition of air containment, which does not define carbon dioxide and methane as air contaminants. HSC stated that both gases cause health and welfare problems due to their role in increasing overall world temperature.

The commission is not changing the rule in response to this comment. On January 18, 2002, the commission considered a report prepared by commission staff regarding greenhouse gases, which was prepared in response to a decision of the commission on August 25, 2000. The commission adopted the executive director's report, which included recommendations related to greenhouse gas reduction incentives, such as expanding the commission's pollution prevention incentive programs to include carbon dioxide and other greenhouse gases; actively promoting and expanding programs such as those endorsed by Senate Bill 5 for increased energy efficiency and conservation for governmental, residential, public, commercial, and industrial sectors; and expanding and actively promoting the use of clean technology and renewable energy resources,

and carbon sequestration. The commission also adopted recommendations relating to collecting information about greenhouse gases. These recommendations are included in a summary of the meeting dated February 8, 2002. However, the commission did not direct staff to make any specific changes with regard to permitting of these contaminants.

ExxonMobil - P commented that the last sentence of §116.10(3)(B) should be changed to read “PI-8 or APD-CERT” to account for existing PI-8s in place and APD-CERTs now being used since the PI-8 was retired.

The commission agrees with the commenter’s suggestion and is making the change.

TIP supported the concept of authorizing normal operations including MSS that are predictable as well as planned.

The commission appreciates the support.

AECT opposed the definition of normal operations, stating that considering MSS and QUAN as normal operations would be contrary to various commission and EPA rules and to current and past commission permitting practice. AECT also stated that adding MSS and QUAN to this definition would cause an uncertain compliance status for many facilities and cited §116.115(b)(2)(G), General and Special Conditions; §116.615(9), General Conditions; and §116.715(c)(9), General and Special Conditions, which refer to use of air pollution emission capture and abatement equipment during normal

operations. It would be impractical, unsafe, and contrary to good engineering practices to require control equipment be operated for periods of emissions due to MSS or QUAN. AECT suggested if such a revision is not made, that the commission include a statement in the preamble clarifying that §§116.115(b)(2)(G), 116.615(9), and 116.715(c)(9) use of air pollution capture and abatement equipment is not required during MSS activities.

The commission has determined that MSS emissions and QUAN should be part of normal operations because these emissions are predictable or planned. While air pollution emission capture and abatement equipment may be operated during production, MSS and QUAN emissions may also be expected to be routed to an appropriate control device. A PBR (for which BACT is not required), or other authorization such as a standard permit could be used to authorize MSS emissions. The commission agrees that there may be instances where emission control is not required, but the permit must document what control, if any, is required during periods of emissions from MSS or QUAN. In cases where MSS is authorized on a case-by-case basis, BACT may be no control.

TCC stated that the proposed definition of normal operations is too subjective and could negate the ability for many sources to permit many MSS activities that are part of normal operations.

The commission does not agree with the commenter. The definition provides wide latitude to incorporate MSS emissions that are planned. The definition is meant to include the different types of activities that are part of facility operations, except for the following exclusions: acts of

God, accidents, malfunctions, noncompliant operations, emissions events, and releases not consistent with good engineering practices.

Dow, Celanese, BP, ConocoPhillips, CCJ, Duke, ExxonMobil - D&C, GCA, Shell Chemical, and TI urged the commission to simplify the definition of normal operations to be as inclusive as possible when considering MSS activities and emissions, so that the majority of MSS activities can be authorized via the MSS options available. Celanese, ConocoPhillips, CCJ, Duke, ExxonMobil - D&C, and Shell Chemical suggested a nonexclusive list of examples should be established. TIP commented that the term "normal operations" is critical in establishing the type of emissions that may be permitted and suggested the term be accompanied by a list of the types of operations covered. TIP, Duke, and GCA stated that the terms "noncompliant operations" and "good engineering practices" are vague and should be deleted and suggested a preamble language citing examples that represent good engineering practices. TCC commented that the term "noncompliant operations" is too broad and could prevent many MSS and QUAN emissions previously not authorized from being permitted.

The commission is not changing the rule in response to these comments. All production emissions and emissions that are planned or predictable are part of this definition. The definition excludes the following: acts of God, accidents, malfunctions, and other releases not consistent with good engineering practices. The definition provides sufficient flexibility to encompass a number of types of industries with regard to both production and MSS activities. The term "noncompliant operations" refers to activities resulting in "unauthorized emissions," which is defined in §101.1(108), Definitions. The role of good engineering practice is to ensure that proper

operation, and maintenance of equipment are in place to prevent failure and is based on methods and standards recognized by industry and regulators.

TxOGA recommended that the exclusion of accidents and malfunctions from the definition of “normal operations” be modified to allow QUAN emissions to include accidents and malfunctions.

The commission disagrees that QUAN emissions should include emissions from accidents and malfunctions because these types of events are neither predictable nor planned. QUAN emissions are different in nature than accidents and malfunctions. QUAN emissions are those emissions from a well-maintained, operated, and managed facility that are predictable, but unscheduled. An example is emissions that may be released intermittently from a pressure relief valve; line switching; compressor blowdowns, not associated with MSS activities; or even a burst seal well before the end of its life expectancy.

HCPHES commented that the creation of QUAN releases is problematic because unexpected emissions are already addressed through the existing emissions event rules. HCPHES stated that if unexpected emissions are from a well-maintained, operated, and managed facility, the emissions event would satisfy the demonstration criteria and be subject to the provided affirmative defense.

The emissions events rules referred to by the commenter are found in Chapter 101, Subchapter F and require recording and reporting of certain unauthorized and unexpected emissions including emission events. The affirmative defense provided under these rules will become unavailable.

The type of emissions that will be authorized by §106.269 are those which may have been recorded or reported under Chapter 101 rules because they were unauthorized. However, the definition of QUAN limits these types of emissions to those which are unscheduled but predictable, quantifiable, and anticipated. Therefore, these emissions are expected, but are unscheduled as to precise time and frequency, as compared to the regularity of emissions from production or steady-state operations. The purpose of establishing the definition and the associated PBR is to provide a mechanism for authorizing these emissions in a way that is protective of the environment and, by authorizing these emissions, remove the need to report them in Title V deviation reporting. These actions implement the commission's desire to permit currently unauthorized emissions where it is possible to do so, meeting applicable off-property impacts and BACT requirements.

EPA indicated support for the definitions of MSS emissions and normal operations, but EPA commented that a definition for production operations and group of related facilities is also needed to clarify the rule language. EPA commented that the commission should define the phrase "group of related facilities, and related increases," which is used in a number of proposed sections and subsections, including §106.4(a)(1) and (4) - (7), (e), (f)(1) - (7), and (g) and §116.615.

The commission agrees that definition of the term "production operation" in the definition of "normal operations" is necessary and is making the change in §116.10(16)(A). Production (steady-state or batch) operation is defined as the planning, coordinating, and directing of material inputs to engage in the manufacture, storage, handling, or creation of any products for

any purpose. However, the commission is not revising the rule to include a definition of “group of related facilities” because that term is covered by individual applications of the term “facility.” The term “facility” is defined in both the Texas Health and Safety Code, TCAA, §382.003(6), and §116.10(6) as a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. Because each piece of equipment can be a facility in itself, it often takes more than one facility (group of facilities) to make a product or multiple products. In the definition of “normal operations,” the commission is making changes to the specifications of startup and shutdown to clarify that those activities, like maintenance, can take place at or on a facility or group of related facilities.

TIP and ExxonMobil - D&C commented that the term “planned” be deleted or “predictable” added to §116.10(16)(B)(i) for consistency with §116.10(16)(B). TIP’s comments on §116.10(16)(B)(iii) included the same points about the inclusion of “predictable” and the exclusion of “planned” and “facility” as it made in the comments on other portions of the definition of “normal operations” emphasizing that maintenance may not always be planned but could be a reaction to predictable problems identified in the field. TIP and Duke also suggested that the term “at a facility” be deleted because it is too restrictive on the types of maintenance that may be necessary. TIP further suggested that the word “appropriate” be added with “necessary” as descriptors of maintenance. Duke, ExxonMobil - D&C, and GCA stated that the term “necessary” for maintenance activity could exclude prudent, appropriate maintenance. TIP made an identical comment to that in §116.10(16)(B)(i) concerning the relationship of emission events and shutdown, maintenance, and startup. TIP also

preferred the term “complete or partial shutdown, standby, or other non-production operating mode” to the term “zero production.” TxOGA suggested that the phrasing “on or at a facility that is necessary” be removed stating that the removal of this phrasing will eliminate arguments as to whether activities are prudent and appropriate.

The commission is not adding the term “predictable” to §116.10(16)(B)(i) - (iii) because the concept of predictability is contained within “planned.” The commission is adding “predictable” to §116.10(16)(C) but is not including the term “planned” in order to make the clear distinction that QUAN emissions are predictable but cannot be scheduled or planned.

The commission is retaining the term “at a facility” to provide specificity for the location of MSS activities. This term encompasses a single facility or multiple facilities, including control devices. The commission disagrees with adding the term “appropriate” because it does not add any value to the definition because “necessary” also covers any appropriate maintenance. The commission determined the suggested changes to describing shutdown are already covered by the rule language and is not making the suggested change.

ExxonMobil - D&C, Dow, TIP, Duke, GCA, and TCC urged the commission to decouple an emissions event and maintenance activities that follow an emissions event. Dow commented that any enforcement activity should be limited to the emissions from the emissions event, and an owner or operator should be allowed to authorize the required or desired maintenance activities after the emissions event is over. TIP stated that the exclusion was too broad and that a small emission event

may precede critical maintenance. TCC commented that the exclusion of startups following a shutdown due to an emission event should be eliminated and that, after an emission event, the facility has time to recover from an upset condition and begin the process of startup in a controlled, orderly, and well-operated manner according to operating procedures and take the necessary steps to curtail emissions during an emission event in a controlled manner consistent with its written operating procedures. GHASP concurred with the commission that it is inappropriate to include unplanned emissions resulting from maintenance activities necessary because of an emissions event. GHASP stated that operators should be required to exercise control over the emissions associated with maintenance and startup.

The commission is not changing the rule in response to this comment and has determined that any maintenance activities that follow an emissions event should not be authorized. Maintenance emissions resulting from normal operations as defined in §116.10(16) are those resulting from established and representable maintenance activities that can be scheduled and have predictable emissions. Maintenance activities that follow an emissions event are unscheduled and may have unpredictable emissions. The commission is not proposing to authorize emissions for MSS activities associated with emissions events and declines to adopt rules that provide for specific operational requirements for unauthorized emissions. Startups after shutdowns attributable to unplanned emissions events, regardless of how well-controlled and orderly the startup, are not authorized because the frequency of occurrence is unpredictable, and shutdowns and startups that follow an emissions event may have unpredictable emissions. This decision complies with EPA's policies with regard to permitting of emissions from planned MSS activities. If planned

maintenance is performed early because a unit is shutdown, the maintenance is authorized.

Additionally, the startup would be authorized if planned maintenance is performed early on the facility associated with the emission event. Any MSS emissions associated with facilities that are shut down due to an emission event and where no maintenance was performed on the facility associated with the emission event are not authorized by these rules.

Dow commented that the definition of startup should be reworded to include any startup regardless of the reason for the prior shutdown, and to include the transition from zero production rate to a rate that is lower than the normal operating rate. In addition, Dow commented that the definition of startup does not recognize some facilities, such as a start-up heater, that are not involved in production. Duke and GCA stated that the zero production requirement for startup or shutdown activities arbitrarily excludes many valid startups and shutdowns.

The current definition includes transitions from zero production to rates lower than normal production. Authorization of the periodic operation of equipment during the defined startup of the process it serves (e.g., coincidentally named “start-up heater”) is also covered by the rule language.

AECT commented that air contaminants emitted from a permitted facility during startup and shutdown should be considered authorized by the permit limits for those air contaminants, even if there is no specific statement in the permit that such limits apply to the facility’s startup and shutdown emissions. AECT stated that under TCAA, §382.0518, Preconstruction Permit, the facility must have a permit,

not the startup or shutdown emissions from the facility. When the commission and predecessor agencies issued the permit, they clearly understood that startup and shutdown emissions would occur. AECT also commented that for electric generating utilities (EGU) startup and shutdown, the commission has previously determined that these emissions are “generally non-harmful, if unconfined” (22 TexReg 7044) (July 29, 1997).

The commission disagrees with the comment that startup and shutdown emissions should be considered authorized by the permit limits even though these emissions were not previously represented or specified in the permit. Even if current allowables have sufficient margin to accommodate startup and shutdown emissions, their initial representation would require authorization by one of various possible mechanisms (i.e., alteration, amendment, standard permit, etc.). Given current understanding about the nature of emissions from EGUs, the specific determination relative to these that they are "non-harmful, if unconfined" does not apply in all cases; accordingly, the commission will review these emissions prior to their authorization in permits.

Dow commented that the definition of shutdown fails to recognize scenarios where an integrated process plant can have multiple individual pieces of equipment where one can be shutdown, but another part of the plant can continue to run.

Shutdowns can occur when associated with maintenance or because of batch-style production of the facilities. This can apply to individual pieces of equipment, as well as to process units and the

definition is being revised to acknowledge that shutdowns are not limited to a single facility. The definition of shutdown includes activities at or on related facilities, and therefore encompasses the scenario presented in this comment.

TIP suggested that the phrase concerning emptying, degassing, and depressurization of equipment be moved to a list describing shutdown events. TIP also objects to drawing a bright line that distinguishes between the beginning and end of shutdown, maintenance, and startup. TIP commented on the need to keep emission events and shutdown, maintenance, and startup as separate and distinct activities.

The emptying and degassing or depressurization of equipment is part of the shutdown process for many different industries and is included in the specification for shutdowns. Thus, a separate list describing this event is not necessary. The commission agrees that the conditions of shutdown and maintenance may overlap and is deleting language that refers to the bright line distinction. MSS associated with emissions events will not be authorized, and this is included in the proposed rule language. This decision complies with EPA's policies with regard to permitting of emissions from MSS activities and excess emissions.

TxOGA suggested that the term "or on a facility" be replaced with "a regulated entity."

The commission is not making the suggested change. The term "regulated entity" is used to describe the collection of facilities and regulated activities at a site while the term "facility," as defined in Texas Health and Safety Code, TCAA, §382.003(6), and §116.10, has a different and

established meaning. MSS applies to activities at a specific piece, or pieces, of equipment that constitute a facility or a related facility. The term “regulated entity” is not specific enough to allow identification of individual facilities and activities.

EPA commented that the category of QUAN emissions is not defined in §116.10, is described only in very general terms, and is not clearly distinguished from emission events. HSC opposed the definition of normal operations of QUAN. HSC stated that these emissions are preventable and should be eliminated or maximally reduced. ACES and Arkema stated that QUAN should be clearly defined with examples to clearly distinguish it from other MSS emissions, otherwise it will cause significant confusion. ACES commented that the proposed approach to authorizing QUAN emissions separately from other MSS emissions is confusing and unworkable. ACES proposed that QUAN emissions be integrated into other predictable or planned MSS emissions.

The commission is adding the term “predictable” to the definition of QUAN in §116.10(16)(C) in recognition that well-run facilities may still have incidences of emissions that may be statistically predictable but cannot be scheduled. The commission disagrees that these emissions are entirely preventable. QUAN emissions are arguably different in nature from the most commonly reported emissions events, those incidents resulting from inadequate maintenance, malfunctions, accidents, operational errors, improper design, and disasters, and therefore should be taken out of the classification of “emission event” by providing an authorization mechanism.

The principal distinction between QUAN and MSS emissions is that MSS can be scheduled; QUAN emissions, though predictable, cannot. It is impossible to compile an inclusive list of events that would qualify under the QUAN definition due to the large variety of facilities authorized, but the commission expects QUAN emissions to be limited. The commission has chosen the relatively limiting authorization mechanism of a PBR not only to limit emissions, but provide facility owners or operators their flexibility in determination of QUAN emissions. The PBR will also provide relatively quick authorization. The commission agrees that these emissions should be reduced to the greatest extent possible. Section 106.269 includes specific requirements that limit the use of the PBR, such as meeting both the short-term emissions limitations and annual emission limitations of §106.261, New Facilities and Changes to Authorized Facilities. Section 106.269 also requires that the total of site-wide annual QUAN emissions plus the emissions authorized under §106.263 and §106.268 may not exceed any applicable emission limit under §106.4(a)(1) - (3) for any rolling 12-month period. Examples of QUAN emissions are emissions that may be released intermittently from a pressure valve, compressor blowdowns, or even a burst seal (well before its life expectancy). This is further discussed in the Chapter 106 rulemaking, adopted concurrently and published in this issue of the *Texas Register*.

Emissions events are defined in the Texas Health and Safety Code, TCAA, §382.0215(a)(1) as “an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.” QUAN emissions are not the same as the most commonly reported

emissions events, those unexpected incidents resulting from inadequate maintenance, malfunctions, accidents, and disasters.

Because the commission has not historically provided an authorization mechanism for QUAN emissions, owners and operators were required to report these unauthorized emissions under the commission's rules requiring reporting of emissions events, and previously, rules regarding reporting of upsets. By adopting these rules, the commission has determined that QUAN emissions should be provided an authorization mechanism and no longer reported as emissions events. Generally, QUAN emissions will only be authorized by 30 TAC §106.269. However, in limited circumstances, authorization may be requested through a permit review provided that emissions are minimal, activities are part of routine operation, and releases are inherent to the process.

TIP, ACES, ExxonMobil - D&C, and GCA commented that the limitation of the QUAN category to the authorization defined in §106.269 be removed because the restrictions in §106.269 go beyond the "normal operations" principle.

The commission agrees that QUAN emissions are distinguishable from the historical understanding of "normal operations." However, with the new definition of "normal operations" adopted in §116.10(16), the commission has determined that normal operations include three specific categories of emissions, each of which is subject to specific authorization requirements. For QUAN emissions, the commission specifically limits the quantity of emissions

that can be authorized and adopts specific requirements that the commission has determined as necessary and appropriate for this category of normal emissions. This determination is further explained in rules concurrently adopted in Chapter 106.

Houston stated that the proposed definition of QUAN should be revised. Houston also stated that the current definition was unnecessary and complex, and could be used to permit releases that may in fact be violations. Houston cited examples of intermittent releases from relief valves and seal failures as emissions events that could have been prevented by good maintenance or engineering, rather than normal operations. Houston further commented that allowing sources to apply QUAN to these types of emissions expands the affirmative defense rather than narrowing it.

The commission has made no changes in response to this comment. As discussed previously, the types of emissions in this comment are emissions that when unauthorized should be reported as emissions events under the requirements in §101.201. However, the commission has determined that normal operations include three specific categories of emissions, each of which is subject to specific authorization requirements, and QUAN is one of those categories. QUAN emissions are those emissions from a well-maintained, operated, and managed facility. These emissions are anticipated and quantifiable, but unscheduled. Further, these emissions are predictable, thus they should be included as part of the normal operations definition. Examples of QUAN emissions are those that may be released intermittently from a pressure valve, compressor blowdowns not associated with maintenance, or even a burst seal (well before its life expectancy). For QUAN emissions, the commission specifically limits the quantity of emissions that can be

authorized and adopted specific requirements that the commission has determined as necessary and appropriate for this category of normal operations. This determination is further explained in rules concurrently adopted under Chapter 106. By definition, these emissions do not include emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice. As noted previously, the commission has added “predictable” to the QUAN emissions definition to help make the distinction that QUAN emissions can be predicted but not scheduled and thus distinguish it from MSS. The authorization mechanism for QUAN emissions, §106.269, does not expand the affirmative defense because the commission is not revising its rule relating to the opportunity to claim an affirmative defense, §101.222, as part of this rulemaking.

The QUAN PBR is one of the mechanisms implementing the commission’s desire to permit currently unauthorized emissions where it is possible to do so, meeting applicable off-property impacts and BACT requirements. These rules do not allow any relaxation of existing permitting levels or requirements which are approved into the state’s SIP. Rather, these rules are adopted to comply with EPA policies regarding permitting of maintenance emissions.

Commenting on §116.10(18), TxOGA recommended the correction of an apparent typographic error, “12(E)(i) or (ii) [(9)(E)(I) or (ii).”

The commission notes the typographical error in §116.10(18), and has revised the rule accordingly.

Commenting on §116.111, Houston stated that the proposed rules do not address how MSS emissions will be segregated from the normal emissions from operations.

The commission will continue its current practice of including short-term allowables for emissions attributable to normal operations, including MSS emissions. The use of separate or aggregate annual allowables for MSS and non-MSS type emissions will depend on considerations such as the process and source specifics and required controls. Some authorizations may indicate combined annual allowables while others may require separate annual allowables.

EPA requested clarification of the language in §116.111(a)(2), concerning the authorization of MSS emissions in a permit.

The commission is not making any changes in response to this comment. The conditions upon which MSS emissions may be authorized in a permit, amendment, or special permit amendment are specified in paragraph §116.111(a). Section 116.111(a)(2) specifies information required to be included in the application that demonstrates that the various requirements for meeting the specified conditions are met. The requirements include protection of public health and welfare, capability for measurement of emissions, BACT/NSPS/NESHAP for source categories, performance demonstrations, federal NSR, air dispersion modeling, hazardous air pollutants, and mass cap and trade allowances.

EPA requested that the commission clarify in §116.111(a)(2)(M) whether the emission inventory accepted by the executive director has been used in the recent SIP attainment demonstration, and how the emissions inventory in the attainment areas are being used to determine compliance with the NAAQS.

The commission is deleting the language in §116.111(a)(2)(M) which referred to emissions inventories. However, the commission uses emissions inventory data in SIP development to develop reductions plans and rules for attainment demonstrations and other requirements of the FCAA. Commission staff reviews the inventories submitted for both attainment and nonattainment areas, and submits the inventory to EPA annually in accordance with the requirements of the consolidated emission reporting rules.

TIP commented that §116.111(a)(2)(M) should not include language allowing inclusion of existing MSS emissions if the emissions have been previously submitted as part of an emission inventory. TIP stated these existing emissions have already been reported and accounted for in the SIP and a determination of federal NSR should not be determined in relation to an emission inventory requirement. Dow, CA, TCC, and TxOGA stated that this provision addressing federal NSR applicability for existing MSS emissions is unnecessary, and should be deleted. Source stated that the phrase “if previously submitted” is unclear. Source suggested the phrase read “if submitted as a part of an emissions inventory accepted by the executive director prior to the issuance date of the subject permit.”

Dow, TIP, ACES, and Arkema urged the inclusion of MSS emissions and federal NSR permitting on a case-by-case basis. AECT disagreed with the proposed approach of looking to the emissions inventory to determine whether a facility's startup and shutdown emissions are existing. AECT suggested that the term "if previously submitted as part of an emissions inventory accepted by the executive director" be replaced with the phrase "provided the permit holder can demonstrate to the satisfaction of the commission's permits staff that the MSS emissions are existing."

The commission is deleting the language in §116.111(a)(2)(M) concerning emission inventory submissions and federal NNSR or PSD applicability. The commission is not placing any limitation on potential federal permitting. Most retroactive reviews will not result in any additional control requirements or emission reductions beyond those achieved under the permitting requirements in Chapter 116 or other rules adopted for control of criteria pollutants in nonattainment areas. The commission must address federal permitting requirements for newly authorized emissions, even if those emissions have been actually emitted, as evidenced by reporting to the commission's emissions inventory as required by §101.10 or by recording and reporting the emissions as required by §101.201 and §101.211. Compliance with those rules does not provide authorization for the emissions, but rather is one source of information that will be used by the Air Permits Division in determining whether federal permitting is required for MSS emissions.

GHASP commented that the rules do not make it clear whether, or to the extent to which, startup and shutdown emissions must be included in the air quality analysis, impacts analysis, and air toxics review.

All startup and shutdown emissions not associated with emissions events must be included in the review.

Dow, TIP, ACES, Celanese, BP, ConocoPhillips, Duke, ExxonMobil - D&C, GCA, Shell Chemical, TI, and TCC commented that authorization of MSS should not be restricted to only one method per facility. Dow suggested allowing the MSS PBR to be stacked in conjunction with the MSS of an NSR permit or standard permit. TIP stated that some facilities may have some MSS emissions already authorized and this provision unnecessarily restricts further authorization to the method in use. TCC stated that the term “facility” is inappropriate in this provision and should be removed.

The restriction intended by the current language is activity specific for each facility or groups of related facilities. Various authorization methods may be used at or for the same facility to authorize different activities resulting in MSS emissions, provided that the same method is used for any given activity. The commission is balancing the need for authorization flexibility and the need for an easily accountable method of tracking MSS emissions. This multiple authorization method with restrictions will accomplish this.

TxOGA suggested deleting the words “facility or” in §116.111(a)(2)(N). TxOGA stated that emission authorization is always for an activity, which may include one or more facilities.

The commission is changing the rule to clarify that the emission authorization is for an MSS activity from a facility or group of related facilities.

Dow, TIP, ACES, Celanese, BP, ConocoPhillips, Duke, and ExxonMobil - D&C, GCA, Shell Chemical, and TCC, and TxOGA commented that the alternative forms of permit for normal operations should not be mutually exclusive. AECT stated that denying inclusion in an amendment based on an asserted PBR or standard permit applicability is unprecedented and impractical. TCC stated that there is no technical basis to restrict the authorization of MSS unless in conjunction with a permit amendment that would otherwise not meet the requirements of a PBR or standard permit.

The commission is changing §116.116(b)(5) in response to this comment to allow a permit amendment for the authorization of MSS even if a PBR or standard permit would apply. The commission is retaining the requirement that only one method of authorization may be used for a specific activity to limit the amount of MSS emissions authorized.

Dow, TIP, AECT, BP, ConocoPhillips, CCJ, Duke, Exxon Mobil - D&C, GCA, Shell Chemical, and TI suggested that the restriction on the time frame for filing permit amendments in §116.116(b)(5)(B) addressing MSS emissions be removed. Dow, TIP, BP, ConocoPhillips, Shell Chemical, and TI stated that the restriction imposed by this subparagraph is unnecessary and prevents owners or operators from

starting or continuing the permit amendment process to authorize MSS emissions. TIP cited the preamble to the proposal that stated the six-month restriction was intended to preserve affirmative defense eligibility but that the affirmative defense criteria are subjective and do not provide protection from enforcement. TIP preferred establishment of an enforcement policy allowing time for facilities to obtain adequate authorization for MSS and stated that the commission should not restrict permit applications to manage its work load. CCJ stated the delays are unprecedented, arbitrary, and unfair.

The commission has made no changes in response to these comments. The six-month time frame will ensure that the reviews conducted are fair, expeditious, and effective. Opportunity for authorization of certain MSS-related emissions has been available to owners or operators under Chapter 116, and these adopted rules do not require those emissions obtain authorization. The commission acknowledges that, due to the phase-out of the affirmative defense in §101.222 and other changes to the commission's rules in Chapter 101, Subchapter F, owners and operators of facilities with unauthorized emissions from planned MSS activities will be motivated to seek authorization. To accommodate the expected authorizations, the commission is adopting amendments to Chapters 106 and 116, and a standard permit to provide as much flexibility as possible for applicants and for managing the commission's work load that will meet all legal requirements for authorization. The commission is acting within its authority when it establishes requirements by rule that must be met in order for an owner or operator to apply for authorization of emissions of air contaminants to manage its work load. The commission's enforcement policies and affirmative defense criteria are not addressed by these amendments. As discussed earlier, the commission has developed the schedule that will best implement the

commission's desire to permit currently unauthorized emissions where it is possible to do so, and meeting applicable off-property impacts and BACT requirements. These rules do not allow any relaxation of existing permitting levels or requirements that are approved into the SIP. Rather, these rules are adopted to comply with EPA policies regarding permitting of maintenance emissions. Therefore, the commission has provided a reasonable and fair approach to transition the change of many emissions from unauthorized to authorized.

EPA noted that §116.116(d)(2) and §116.615(3) require that changes to a permitted facility authorized by a PBR or a standard permit shall be incorporated into the permit when the permit is amended or renewed. EPA commented that the proposed §116.116(d) is more limiting in what changes will be incorporated into a permit. EPA commented that MSS emissions authorized under §106.268 and §106.269 will not be incorporated into the permit for a previously permitted facility, and EPA expressed concern that the commission may not have authority to evaluate the cumulative impact of numerous such authorizations that may occur at major sources. EPA requested that the commission explain how cumulative impacts from numerous PBRs will be evaluated, and how the commission can ensure that multiple PBRs will not interfere with attainment, reasonable progress, or any other applicable requirements of the FCAA. EPA recommended that the commission include provisions in the PBR and the standard permit for MSS emissions to require a cumulative impacts analysis, or continue to incorporate all PBRs and standard permits into a permit in accordance with the existing SIP.

The commission notes EPA’s concern, but is revising §116.116(d)(2) to allow the voluntary incorporation of PBRs and standard permits into NSR permits during amendment. The commission’s permitting programs (PSD, NNSR, and minor NSR) are implemented along with the other SIP elements in a framework that allows for consideration for both immediate and cumulative impacts. The development of the SIP for nonattainment areas provides certainty that the effects of the various authorizations employed at a site are protective of all effects from criteria pollutants. In Texas Water Code, §5.130, the Texas Legislature specifically provided the commission with the charge to “. . . develop and implement policies . . . to protect the public from cumulative risks in areas of concentrated operations.” The commission implements this charge through several mechanisms including the Air Pollutant Watch List, which addresses specific geographic areas and pollutants of concern. Site-specific restrictions can be imposed based on the commission’s practice of considering cumulative risks in its authorization process. Sections 106.268, 106.269, 106.261, and 106.4 are site-wide requirements which will authorize emissions only when the impact of the emissions are insignificant. In addition, §116.116(d)(2) requires an impacts review of all emissions from PBRs and standard permits incorporated in a permit. These rules do not allow any relaxation of existing permitting levels or requirements which are approved into the state’s SIP. Rather, these rules are adopted to comply with EPA policies regarding permitting of maintenance emissions.

EPA commented that proposed changes to §116.116(d)(2)(A)(iii) and (3)(A)(iii), concerning the incorporation of PBRs and standard permits when a permit is amended, do not require public

participation. EPA stated that the site-specific determinations during this reauthorization process should be subject to public participation requirements.

PBRs are adopted through the rulemaking process provided by Texas Government Code, Texas Administrative Procedure Act, Chapter 2001, which provides an opportunity for public participation. Standard permits, authorized by Texas Health and Safety Code, TCAA, §382.05195, are adopted under a very similar process. Public notice for individual uses of PBRs and standard permits is not necessary because the development process of the authorizations provides opportunity for public participation.

TIP, AECT, Arkema, BP, ConocoPhillips, CCJ, Duke, and ExxonMobil - D&C, GCA, Shell, Haynesboone, TI, TxOGA, and TCC objected to the PBR incorporation method as proposed in §116.116(d)(2) and (3). They stated that the process requires a double review of a proposed facility and that the Texas Clean Air Act does not require such repeat authorization. TxOGA recommended that a BACT evaluation and off-property impacts review be required for incorporation of a PBR that is “directly related” to a permitted facility only if the change results in an increase in the facility’s emission rates or the addition of an air contaminant not previously emitted. GCA stated that the approach to review previously authorized PBR projects and impose full BACT and impacts review post-construction eliminates the practical use of PBRs for smaller projects. GCA commented that the commission’s authority to impose BACT for changes to existing facilities is limited and that the definition does not include insignificant increases at a permitted facility (TCAA, §382.003(9)(B)). GCA also commented that projects qualifying for a PBR are not significant contributors of air

contaminants (TCAA, §382.05196) and are permitted under the TCAA if they meet the criteria of a PBR and are insignificant and not subject to BACT review. GCA believed the detailed case-by-case review of modifications is not required and that the TCEQ should remove such restrictiveness in the new general PBR and eliminate the concept of post-construction review. Dow stated that performing a review of a change or facility that has already been authorized under a PBR will create significant concerns about the long-term approvability of the change, and urged the commission to adopt a policy that allows for referencing of PBRs. TIP cited the proposal preamble that BACT and effects review are required because a PBR would be incorporated into a permit with the PBR subsequently voided. TIP stated that the time for technology and effects review is before construction. TIP recommended that the existing §116.116(d)(2) be retained and that the proposed new language in subsection (d)(2) and (3) not be adopted.

Haynesboone stated that §116.116 (d)(2) and (3) attempts to place into the rules a radical revision to the system of “incorporating” permits by rule and standard permits into a permit that is undergoing review for amendment or renewal. Haynesboone commented that the commission is attempting to permit the very activities its rules state do not require a permit. Haynesboone stated that not incorporating MSS PBRs and standard permits goes against the purpose of incorporation in the first place. Haynesboone states that the purpose of incorporation was to have all Chapter 116 authorizations for a particular facility in one permit.

TIP, Dow, and TCC objected to the new §116.311(d), which could require a BACT and effects review at the incorporation of a PBR or standard permit into a permit. TIP stated that the process requires a

double review of a proposed facility and that the TCAA does not require such repeat authorization. Dow suggested that sources authorized by PBR be added to the permit during the renewal process without a concurrent permit amendment application.

The commission is revising §116.116(d)(2) and (d)(2)(B), and §116.311(d) to require that PBRs and standard permits be referenced when a permit amendment or permit renewal is issued, except for §106.268, §106.269, and the Air Quality Standard Permit for Maintenance, Startup, and Shutdown Activities. Incorporation of PBRs or standard permits is voluntary. If the owner or operator seeks to have the facilities authorized by the PBR incorporated into the permit, then an application to do so must be filed and a BACT and off-property impacts review will be performed. Referencing does not require BACT review and may require impacts review. For sources that are not *de minimis*, or whose operations will result in air contaminant emissions that are significant, TCAA, §382.0518(b)(1) requires the commission to determine that the proposed facility will use at least BACT, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility. If incorporated into the permit, the original PBR authorization becomes void. If at a future time, significant changes are warranted in the operation of the authorized facility such that a new permit or permit amendment is required, then the proposed emissions impacts and techniques to control the source using BACT would be evaluated and mandated, consistent with the statute for such changes. Any authorized emissions prior to the proposed change become the baseline emissions upon which the existing and proposed new emissions are evaluated. Because the changes previously authorized by PBR taken together with the original representations and

emissions now constitute the floor from which changes to the nature or quantity of emissions from the permitted facility are judged, it has always been, and continues to be, appropriate that the BACT review associated with the amendment request consider the authorized emissions from the source.

TIP, Duke, and TxOGA objected to the proposed change in §116.116(e)(1) using the phrase “with the exception of,” which inverts the requirements of subsection (e) and makes changes to qualified facilities subject to physical or operational change requirements. TIP made the same comment concerning §116.116(f).

The commission agrees, and has retained the original rule language in §116.116(e) and (f).

ExxonMobil - D&C and GCA stated that the qualified facility flexibility provisions of §116.116(e)(1) reflect statutory language and should remain unchanged and stated that TCAA, §382.003(9)(E), definitions established a statutory exclusion from the “modification” definition, using the same terms reflected in the current rule. BP, ConocoPhillips, CCJ, and Shell Chemical commented that the proposed new restrictions in the qualified facility flexibility rules should be eliminated because the restrictions conflict with important statutory provisions. TIP also objected to the addition of §116.116(e)(1)(C), which requires that there be no change in emission status from those emissions reviewed as MSS to production emissions. TIP stated that qualified facility status is based on statute and the commission lacks authority to modify it. EPA and HSC supported the change in

§116.116(e)(1)(C) that will prohibit trading between MSS and QUAN emissions and production emissions.

The commission disagrees that the proposed language conflicts with the statute cited by the commenters. The commission's proposed language is within the commission's authority to interpret that portion of the statute since the proposed language was not a modification of the statutory language but rather an additional interpretation of the statutes. However, at this time the commission declines to extend its interpretation of the statute to adopt the new subparagraph (C).

EPA commented that MSS emissions should not be available for the generation of emission credits because the PBR and standard permit rules do not require a facility to have enforceable emission limits, the facility is not required to monitor actual emissions by an EPA-approved method, and MSS emissions are not part of the original NSR permit for a facility.

The commission is not addressing the generation of credits in this rulemaking. Credits are generated by reductions in actual emissions that are real, quantifiable, and enforceable.

TCC commented that this provision on emission credits in §116.116(f) should not be revised at this time until the revisions to Chapter 101, Subchapter H, Emissions Banking and Trading, to address the issues of discrete emission credits are finalized.

The commission disagrees with the comment. This section lays out requirements on MSS and QUAN emissions to be considered in the use of emission credits, and this is not affected by Chapter 101 requirements, but rather changes Chapter 116 to correctly reference the appropriate sections in Chapter 101.

TCC commented that qualified flexibility should be included in the authorization mechanisms for MSS emissions in §116.311(b) and (c).

The commission included MSS authorized under flexible permit in the proposed §116.311(b). The commission agrees that the use of §116.116(e), changes to qualified facilities, should be included in §116.311(c) as one of the authorized mechanisms when MSS emissions already exist in the permit and is making the necessary addition.

AECT supported §116.311(b) because it would allow permits to clearly provide that emissions during startups or shutdowns of permitted facilities are authorized by the permit limits.

The commission appreciates the support.

TIP commented that the proposed §116.311(b) and (c) make the same unnecessary restriction on MSS authorizations methods as §116.111(a)(2)(N) and that some facilities may have some MSS emissions already authorized. TIP also commented that this provision unnecessarily restricts further authorization to the method in use.

The restrictions in §116.311(b) and (c) are intended for specific activities at specific facilities. In §116.311(b), MSS activities from the permitted facility or facilities may be included during the permit renewal if those activities' emissions will not cause an increase in the current permit allowables. In §116.311(c), various authorization mechanisms such as PBR, standard permit, or permit amendment may be used to authorize MSS emissions from the different activities, as long as the same type of authorization is used for any given activity.

CCJ stated that §116.311 should clearly state that permit applicants are not obligated to include non-permitted MSS emission sources in their renewal applications. Dow, TCC, TxOGA, and Arkema suggested that the commission allow the incorporation of §106.268 and §106.269, and the MSS standard permit into NSR air permits during renewal on an optional basis. TCC stated that if the emissions meet the PBR, or standard permit requirements and the emission limitations, they should be included in the permit. Arkema requested that all authorizations be treated consistently: either require full consolidation in the site-wide NSR permit; or allow the Title V permit to serve as the consolidation mechanism. Arkema is interested in allowing regulated entities the opportunity to include all authorized emissions into a single consolidated site-wide NSR permit, allowing the regulated entity and the commission the opportunity to review one document.

The commission is changing the rule in response to this comment, and the incorporation of MSS emissions during renewal will remain voluntary. All PBRs and standard permits, including those for MSS and QUAN, will be referenced in the permit at renewal but the authorization under their respective PBR or standard permit will remain. However, if an owner or operator wants to

incorporate its PBRs or standard permits, including those authorizing MSS and QUAN, then a concurrent permit amendment application would also be required with the renewal application. The amendment process requires both BACT and off-property impacts review. Referencing does not require BACT review and may require impacts review.

Source stated that it is unclear which MSS sources are required to be included in a permit and that it should be made clear that non-permitted MSS emission sources are not required to be permitted.

Source suggested the commission change the phrase from §116.311(b) to read “Emissions from MSS . . . (General Definitions) although not required may be included during the renewal”

If an owner or operator chooses to authorize MSS activities, that can be done via a permit amendment, the MSS standard permit, or PBR. The inclusion of MSS emissions during renewal of an NSR permit is voluntary. The commission declines to make the recommended rule change because §116.311(b) indicates an optional incorporation.

TxOGA recommended a correction of an apparent typographical error in §116.311(d)(1) to read “116.311(d)(2)(A).” TxOGA recommended a change to §116.311(d)(2) for consistency with §116.311(d)(1), equating a mandatory “roll-in” with “reference.”

The citations identified have been eliminated in the restructuring of adopted §116.311(d).

HSC suggested that in the statement "increases in emissions or construction of new facilities should be submitted to the executive director" in the preamble discussion on this section, the "should" be changed to "must" so it does not indicate that this requirement is not an option.

The commission agrees with this comment, and the preamble was changed.

HSC supported §116.615(2), which provides that all representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes to the facility must be constructed and operated.

The commission appreciates the support.

TxOGA recommended clarification of the description as to when the executive director must be notified for new construction or a change in the method of control of emissions.

Registration with the executive director is required for any standard permit if there are any changes in representations that will result in the construction of a new facility, the construction of a new group of project-related facilities, a change in the character of emissions, a change in the method of emission control, or an increase in the discharge of the various emissions as compared to the representations in the original registration. This registration is required even if the facility remains eligible for the standard permit once the equipment/operational changes are made. Due to the diversity of facilities and activities covered by standard permits, some standard permits

may vary from the registration requirements in §116.615; therefore, a phrase has been added to the rule language to clarify that the registration criteria in §116.615 apply unless it is otherwise specified in a standard permit.

TIP, GCA, and TCC commented that the 180-day period in §116.615(2)(C) is too long and is inconsistent with the 90-day period proposed in the MSS standard permit. They suggested the current time lines of 45 days should be retained.

The commission agrees that the 180-day authorization period is inconsistent with the 90-day authorization period specified in the MSS standard permit. The commission has also determined that the 90-day authorization period is appropriate, and the rule has been revised accordingly. The number of standard permit registrations that will be received cannot be calculated at this point but is expected to be significant based on the number of permits in the state. The 90-day authorization deadline will accommodate permit reviewer work loads while still ensuring an appropriate level of review because these emissions may require an extensive technical review for federal applicability issues and may have issues arise during the evaluation of the character and quantity of emissions.

TCC objected to language in §116.615(3) excluding MSS emissions authorized under a standard permit from being incorporated into the permit. TCC stated that if the emissions meet the standard permit requirements and emission limitations, they should be included in the permit.

The commission agrees with this comment and has made the appropriate rule language and preamble changes to allow the voluntary reference or incorporation of the MSS emissions authorized under the MSS standard permit into permits. Incorporation includes BACT and impacts review, and must be specifically requested in writing by the applicant. Referencing does not require BACT review and may require impacts review.

EPA commented that §116.710 would establish an emission cap for MSS activities at sources with a flexible permit. EPA stated it has not approved the underlying flexible permit rules into the SIP, and further review is necessary to determine whether an MSS emissions cap is consistent with the federal Plantwide Applicability Limit (PAL) rule.

An emissions cap in an NSR permit is consistent with the PAL rule. Emissions authorized under the flexible permit cap, including MSS emissions, will be subject to any site-wide limit established under the PAL rule. The commission has incorporated the PAL rule in Chapter 116, Subchapter C, Division 1, Plant-wide Applicability Limits.

TCC requested further clarification regarding §116.710 as to whether existing flexible permits can include MSS emissions.

An existing flexible permit may be amended to include MSS emissions. The commission has revised the rule language to reference authorization of MSS activities.

SUBCHAPTER A: DEFINITIONS

§116.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various permits and authorizations; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0515, concerning Application for Permit, which requires a person applying for a permit to submit certain information to the commission; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or

modification of an existing facility; and §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; and §382.057, concerning Exemption, which authorizes the commission to exempt certain changes from the requirements of Texas Health and Safety Code, §382.0518.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0511, 382.0515, 382.0513, 382.0518, and 382.055.

§116.10. General Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) [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 that [which] are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in this chapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

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

(2) **Air contaminant**--As defined in Texas Health and Safety Code, §382.003,
particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any
combination of those items, produced by processes other than natural. For the purpose of obtaining an
authorization under this chapter and Chapter 106 of this title (relating to Permits by Rule), the
following air contaminants are excluded: carbon dioxide, water vapor, nitrogen, methane, ethane
(except as part of regulated municipal solid waste landfill emissions), hydrogen, oxygen, argon, neon,
helium, krypton, and xenon.

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

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

(B) Facility permitted by rule--For a facility operating under Chapter 106 of
this title (relating to Permits by Rule), the allowable emissions shall be the least of the emissions rate

allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule, or the federally enforceable emission rate established on a PI-8, **PI-7-CERT**, or **APD-CERT** form.

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

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

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

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

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

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

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

(A) loading and unloading of liquid bulk materials;

(B) loading and unloading of liquified gaseous materials;

(C) loading and unloading of solid bulk materials;

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

(E) abrasive blasting and painting.

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

(8) [(7)] **Federally enforceable**--All limitations and conditions that [which] are enforceable by the United States Environmental Protection Agency (EPA) [EPA], including:

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

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

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

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

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

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

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

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

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

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

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

(B) insignificant increases at a permitted facility;

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

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

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

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

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, an air pollution control method that is at least as effective as the 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 change will occur;

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

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

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

_____ (A) production (steady-state or batch) that includes the planning, coordinating, and directing of material inputs and outputs to engage in the manufacture, storage, handling, or creation of any product for any purpose;

(B) maintenance, startups, or shutdowns (MSS) that are ~~predictable or~~ planned:

(i) maintenance--a planned activity at or on a facility that is necessary to ensure the proper and continuing operation of a facility, group of facilities, or emission control device. This term does not include maintenance that is necessary because of an emission event as defined in §101.1 of this title (relating to Definitions);

(ii) startup--a planned activity at or on a facility that primes, prepares, and transitions a facility or group of related facilities from zero production to normal production. This term does not include startups that are necessary following a shutdown solely due to an emission event;

(iii) shutdown--a planned activity at or on a facility that includes the period of time where the facility or group of related facilities is brought from production to the cessation of production and includes emptying and degassing or depressurization of equipment. ~~Shutdown ends at the point startup or maintenance begins.~~ This term does not include shutdowns that are necessary solely because of an emission event; and

(C) certain predictable, unscheduled, but quantifiable and anticipated events that result in emissions ~~emission releases~~ that meet the conditions of §106.269 of this title (relating to Quantifiable, Anticipated (QUAN) Emissions ~~Emission Releases~~). This does not include emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice.

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

(18) [(16)] **Qualified facility**--An existing facility that satisfies the criteria of either paragraph (12)(E)(i) or **(ii)** [(9)(E)(i) or (ii)] of this section.

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

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.111, §116.116

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various permits and authorizations; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0515, concerning Application for Permit, which requires a person applying for a permit to submit certain information to the commission; §382.0518, concerning Preconstruction

Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; §382.061, concerning Delegation of Powers and Duties, which provides the commission with authority to delegate certain duties to the executive director; and §382.062, concerning Application, Permit, and Inspection Fees, which authorizes the commission to collect various fees.

The adopted amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0511, 382.0515, 382.0513, 382.0518, 382.055, 382.061, and 382.062.

§116.111. General Application.

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

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

(2) information that [which] demonstrates ~~that~~ emissions from normal operations of the facility, including any associated dockside vessel emissions, or represented maintenance, startup, and

shutdown (MSS) as defined in the definition of normal operations in §116.10 of this title (relating to General Definitions), meet all of the following.

(A) Protection of public health and welfare.

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

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

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

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

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

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

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

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed

facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

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

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

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter C of this chapter (relating to **Plant-wide Applicability Limits**

~~Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources
(FCAA, §112(g), 40 CFR Part 63)).~~

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

(M) MSS emissions. If the proposed facility will have any increase or change in character of air contaminant emissions, change in method of operation, or change in method of control of emissions resulting from MSS activities as defined in the definition of normal operations in §116.10 of this title, the owner or operator may obtain authorization by a permit by rule, standard permit, flexible permit, or permit amendment. Existing emissions from MSS activities may be added to the permit as allowable emissions under this subchapter without being subject to subparagraphs (H) or (I) of this paragraph if previously submitted as a part of an emissions inventory accepted by the executive director.

(N) MSS emission authorizations. The owner or operator of the site, as defined in §122.10 of this title (relating to General Definitions), may use only one authorization mechanism for each facility or MSS activity at a facility or group of related facilities, but may use a combination of authorization mechanisms for different activities at a given facility or group of related facilities at the site. The authorization mechanisms include, including a permit permits by rule under Chapter 106 of this title (relating to Permits by Rule), standard permits permit under Subchapter F of

this chapter (relating to Standard Permits), and new source review permits issued under this chapter.
section to authorize MSS emissions.

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

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

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

§116.116. Changes to Facilities.

(a) Representations and conditions. The following are the conditions upon which a permit, special permit, or special exemption are issued:

(1) representations with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption; and

(2) any general and special conditions attached to the permit, special permit, or special exemption itself.

(b) Permit amendments.

(1) Except as provided in subsection (e) of this section, the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause:

(A) a change in the method of control of emissions;

(B) a change in the character of the emissions; or

(C) an increase in the emission rate of any air contaminant.

(2) Any person who requests permit amendments must receive prior approval by the executive director or the commission. Applications must be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

(3) Any person who applies for an amendment to a permit to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) under Subchapter C of this chapter (relating to **Plant-wide Applicability Limits Hazardous Air Pollutants**; ~~Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)~~) shall comply with the [provisions] requirements in Chapter 39 of this title (relating to Public Notice).

(4) Any person who applies for an amendment to a permit to construct a new facility or modify an existing facility shall comply with the [provisions] requirements in Chapter 39 of this title.

(5) ~~Authorization of any maintenance, startup, and shutdown (MSS) emissions shall only be requested in conjunction with an amendment that would otherwise not meet the requirements of a permit by rule or standard permit.~~ Any person who applies for an amendment to a permit shall not request an amendment solely for emissions from maintenance, startup, and shutdown (MSS) MSS activities except for:

(A) those concurrent amendments as required by §116.311(b) of this title (relating to Permit Renewal Application); or

(B) amendments filed within six months of a designated deadline for authorization of planned MSS emissions in Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

(c) Permit alteration.

(1) A permit alteration is:

(A) a decrease in allowable emissions; or

(B) any change from a representation in an application, general condition, or special condition in a permit that does not cause:

(i) a change in the method of control of emissions;

(ii) a change in the character of emissions; or

(iii) an increase in the emission rate of any air contaminant.

(2) Requests for permit alterations that must receive prior approval by the executive director are those that:

(A) result in an increase in off-property concentrations of air contaminants;

(B) involve a change in permit conditions; or

(C) affect facility or control equipment performance.

(3) The executive director shall be notified in writing of all other permit alterations not specified in paragraph (2) of this subsection.

(4) A request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(a)(2)(C) of this title.

(5) Permit alterations are not subject to the requirements of §116.111(a)(2)(C) of this title.

(d) Permits by rule under Chapter 106 of this title (relating to Permits by Rule) or standard permits under Subchapter F of this chapter (relating to Standard Permits) in lieu of permit amendment or alteration.

(1) A permit amendment or alteration is not required if the changes to the permitted facility qualify for ~~a an exemption from permitting or permit by rule under Chapter 106 of this title or by meeting the conditions of a standard permit under Subchapter F of this chapter~~ unless prohibited by permit condition as provided in §116.115 of this title (relating to General and Special Conditions).

(2) All changes authorized under ~~a standard permit under Subchapter F of this chapter or Chapter 106 of this title to a permitted facility after the effective date of this rule, with the exception of those emissions authorized under §106.268 and §106.269 of this title (relating to Maintenance, Startup, and Shutdown (MSS) Emission Releases; and Quantifiable, Anticipated (QUAN) Emission Releases)~~, shall be **consolidated in the** incorporated into that facility's permit **for that facility** when the permit is amended in accordance with the following. [or renewed:]

(A) New facilities added to a process or production line that result in increases in production, changes to method of control, or changes to method of operation or that change the type or increase the quantity of emissions from permitted facilities, are considered directly related to the permitted facilities, and the permit by rule or standard exemption (SE) shall be incorporated into the permit and the changes reauthorized under the amendment. Applicants may also request facilities or changes to be **incorporated** rolled into a permit.

(i) This review must include an evaluation of current best available control technology (BACT) standards.

(ii) This review must include an off-property impacts review for the site based on the commission's agency's Effects Evaluation Flowchart and Air Quality Modeling Guidelines.

(iii) Emissions that meet the conditions of a permit by rule (PBR) or standard permit or SE will not be required to meet the public notice requirements listed in §39.402 of this title (relating to Applicability to Air Quality Permit Amendments).

(iv) No additional fees will be charged for these facilities.

(v) Upon issuance of the amended permit (including references in Special Conditions and Maximum Allowable Emission Rates Table), any PBR or standard permit or SE registrations or claims shall be voided.

(B) New facilities added to a process or changes in the method of operation that do not directly change the type or quantity of emissions from permitted facilities are considered indirectly related to the permitted facilities. New facilities added to a site that do not in any way change the type or quantity of emissions from permitted facilities are considered stand-alone, independent operations and unrelated to the permitted facilities. The PBR or SE may be incorporated by reference into the permit. Any PBR or standard permit not incorporated into the permit under subparagraph (A) of this paragraph must be referenced in the permit.

(i) This review does not include an evaluation of current BACT standards.

(ii) This review ~~may~~ **must** include an off-property impacts review for the site based on the ~~commission's~~ **agency's** Effects Evaluation Flowchart and Air Quality Modeling Guidelines.

(iii) Emissions that meet the conditions of a PBR ~~or SE~~ **or standard permit** will not be required to meet the public notice requirements listed in §39.402 of this title.

(iv) No additional fees will be charged for these facilities.

(v) Upon issuance of the amended permit (~~including references in Special Conditions and Maximum Allowable Emission Rates Table~~), any **PBR or standard permit** ~~or SE~~ registrations or claims shall remain **in effect** ~~authorized under Chapter 106 of this title~~.

~~(3) All changes authorized by standard permit after the effective date of this rule, to a facility previously permitted under §116.110 of this title (relating to Applicability), except for authorization of MSS emissions under the "Maintenance, Startup, and Shutdown (MSS) Emission Releases Standard Permit," shall be incorporated into that facility's permit at such time as the permit is amended in accordance with the following.~~

~~(A) New facilities added to a process or production line, increases in production, changes to method of control or replacement of control technologies, or changes to method of operation that change the type or increase the quantity of emissions from permitted facilities are considered directly related to the permitted facilities, and the standard permit shall be incorporated into the permit and the changes reauthorized under the amendment. Applicants may also request facilities or changes to be rolled into a permit.~~

~~(i) This review must include an evaluation of current BACT standards.~~

~~(ii) This review must include an off-property impacts review based on the agency's Effects Evaluation Flowchart and Air Quality Modeling Guidelines.~~

~~(iii) Emissions that meet the conditions of a standard permit will not be required to meet the public notice requirements listed in §39.402 of this title.~~

~~(iv) No additional fees will be charged for these facilities.~~

~~(v) Upon issuance of the amended permit (including Special Conditions and Maximum Allowable Emission Rates Table), any standard permit registrations or claims shall be voided.~~

~~(B) New facilities added to a process or changes in method of operation that do not directly change the type or quantity of emissions from permitted facilities are considered indirectly related to the permitted facilities. New facilities added to a site that do not in any way change the type or quantity of emissions from permitted facilities are considered stand-alone, independent operations and unrelated to the permitted facilities. The standard permit may be incorporated by reference into the permit.~~

~~(i) This review does not include an evaluation of current BACT standards.~~

~~(ii) Emissions that meet the conditions of an standard permit will not be required to meet the public notice requirements listed in §39.402 of this title.~~

~~(iii) This review must include an off-property impacts review based on the agency's Effects Evaluation Flowchart and Air Quality Modeling Guidelines.~~

~~(iv) No additional fees will be charged for these facilities.~~

~~(v) Upon issuance of the amended permit (including references in Special Conditions and Maximum Allowable Emission Rates Table) any standard permit registrations or claims shall remain authorized under Subchapter F of this chapter.~~

(e) Changes to qualified facilities.

(1) ~~With the exception of~~ [Notwithstanding] any other subsection of this section, a physical or operational change may be made to a qualified facility if it can be determined that the change does not result in:

(A) a net increase in allowable emissions of any air contaminant; ~~and~~ [and]

(B) the emission of any air contaminant not previously emitted. ~~;~~ [and] [.]

~~(C) the change of status from emissions reviewed and designated as MSS or certain quantifiable and anticipated (QUAN) to emissions designated and reviewed as production.~~

(2) In making the determination in paragraph (1) of this subsection, the effect on emissions of the following shall be considered:

(A) any air pollution control method applied to the qualified facility;

(B) any decreases in allowable emissions from other qualified facilities at the same commission air quality account number that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(C) any decrease in actual emissions from other qualified facilities at the same commission air quality account number that are not included in subparagraph (B) of this paragraph.

(3) The determination in paragraph (1) of this subsection shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical or operational change would result in emissions of an [a] air contaminant category or compound above the allowable emissions for that air contaminant category or compound, the amount above the allowable emissions must be offset by an equivalent decrease in emissions at the same facility or a different facility. In making this offset, the following applies.

(A) The offset shall be based on the same time periods (e.g., hourly and annual rates) as the allowable emissions for the facility at which the change will occur.

(B) Emissions of different compounds within the same air contaminant category may be interchanged.

(C) For allowable emissions for individual compounds, any interchange shall adjust the emission rates for the different compounds in accordance with the ratio of the effects screening levels of the compounds.

(D) For allowable emissions for air contaminant categories, interchanges shall use the unadjusted emission rates for the different compounds.

(E) The effects screening level shall be determined by the executive director.

(F) An air contaminant category is a group of related compounds, such as volatile organic compounds, particulate matter, nitrogen oxides, and sulfur compounds.

(4) Persons making changes to qualified facilities under this subsection shall comply with the applicable requirements of §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities) and §116.118 of this title (relating to Pre-change Qualification).

(5) As used in this subsection, the term "physical and operational change" does not include:

(A) construction of a new facility; or

(B) changes to procedures regarding monitoring, determination of emissions, and recordkeeping that are required by a permit.

(6) Additional air pollution control methods may be implemented for the purpose of making a facility a qualified facility. The implementation of any additional control methods to qualify a facility shall be subject to the requirements of this chapter. The owner or operator shall:

(A) utilize additional control methods that are as effective as BACT [best available control technology (BACT)] required at the time the additional control methods are implemented; or

(B) demonstrate that the additional control methods, although not as effective as BACT, were implemented to comply with a law, rule, order, permit, or implemented to resolve a documented citizen complaint.

(7) For purposes of this subsection and §116.117 of this title, the following subparagraphs apply.

(A) Intraplant trading means the consideration of decreases in allowable and actual emissions from other qualified facilities in accordance with paragraph (2) of this subsection.

(B) The allowable emissions from facilities that were never constructed shall not be used in intraplant trading.

(C) The decreases in allowable and actual emissions shall be based on emission rates for the same time periods (e.g., hourly and annual rates) as the allowable emissions for the facility at which the change will occur and for which an intraplant trade is desired.

(D) Actual emissions shall be based on data that is representative of the emissions actually achieved from a facility during the relevant time period (e.g., hourly or annual rate).

(8) The existing level of control may not be lessened for a qualified facility.

(f) Use of credits. ~~With the exception of~~ ~~Notwithstanding~~ any other subsection of this section, discrete emission reduction credits may be used to exceed permit **production emission** allowables as described in §101.376(b)(1) [§101.29(d)(4)(v)] of this title (relating to Discrete Emission Credit Use [Banking and Trading]) if all applicable conditions of Chapter 101, Subchapter H, Division 4 [§101.29] of this title (relating to Discrete Emission Credit Banking and Trading) are met. **Discrete emission reduction credits may not be used to exceed emissions designated as MSS or quantifiable and anticipated (QUAN) as defined in §116.10(16)(B) and (C) of this title (relating to General Definitions).** This subsection does not authorize any physical changes to a facility.

SUBCHAPTER D: PERMIT RENEWALS

§116.311

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various permits and authorizations; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0515, concerning Application for Permit, which requires a person applying for a permit to submit certain information to the commission; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or

modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; §382.061, concerning Delegation of Powers and Duties, which provides the commission with authority to delegate certain duties to the executive director; and §382.062, concerning Application, Permit, and Inspection Fees, which authorizes the commission to collect various fees.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0511, 382.0515, 382.0513, 382.0518, 382.055, 382.061, and 382.062.

§116.311. Permit Renewal Application.

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

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

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

(3) the facility meets the requirements of any applicable New Source Performance Standards as listed under [Title] 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) [EPA] under the authority of the Federal Clean Air Act (FCAA) [FCAA], §111, as amended;

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

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

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

(b) Emissions from maintenance, startup, or shutdown (MSS) as defined in the definition of normal operations in §116.10 of this title (relating to General Definitions) may be included during the renewal review if there are no increases over the current allowables or change in character of air contaminant emissions from the current allowables, change in method of operation, or change in

method of control of emissions. Authorization of MSS emissions may also be obtained by meeting the conditions of an applicable permit by rule (PBR), standard permit, flexible permit, or concurrent permit amendment.

(c) Emissions from MSS authorized under §106.268 and §106.269 of this title (relating to Maintenance, Startup, and Shutdown (MSS) Emissions Emission Releases; and Quantifiable, Anticipated (QUAN) Emissions Emission Releases), or the Air Quality Standard Permit for Maintenance, Startup, and Shutdown Activities may “Maintenance, Startup, and Shutdown (MSS) Emission Releases Standard Permit” will not be incorporated in into a facility’s permit at renewal. Incorporation at renewal requires a concurrent permit amendment. Each activity at a facility or group of related facilities facility or MSS activity at the site, as defined in §122.10 of this title (relating to General Definitions), may only use one of these authorization mechanisms, but the site may utilize a combination of PBRs, standard permits, flexible permits, and permits to authorize an MSS activity.

(d) All changes authorized by a PBR or standard exemption (SE) under Chapter 106 of this title (relating to Permits by Rule) or a standard permit under Subchapter F of this chapter (relating to Standard Permits) after the effective date of this rule, to a facility previously permitted under §116.110 of this title (relating to Applicability), except those in subsection (c) of this section, shall, at a minimum, be referenced in incorporated into that facility’s the permit for that facility at such time as the permit is renewed in accordance with the following.

~~(1) If there are new facilities added to a process or production line, increases in production, changes to method of control or replacement of control technologies, or changes to the method of operation that change the type or increase the quantity of emissions from permitting facilities, these changes are considered directly related to the permitted facilities, and the PBR, SE, or standard permit shall be rolled into the permit and the changes authorized under a concurrent permit amendment, following the requirements in §116.116(b)(2) of this title (relating to Changes to Facilities):~~

~~(2) If there are new facilities added to a process or changes in the method of operation that do not directly change the type or quantity of emissions from permitted facilities, these changes are considered indirectly related to the permitted facilities. If there are new facilities added to a site that do not in any way change the type or quantity of emissions from permitted facilities or change the method of control, these changes are considered stand-alone, independent operations and unrelated to the permitted facilities. These changes may be voluntarily incorporated by reference into a permit upon request of an applicant.~~

(1) ~~(A)~~ This review does not include an evaluation of current **best available control technology** BACT standards.

(2) ~~(B)~~ This review **may** ~~must~~ include an off-property impacts review **for the site** based on the commission's ~~agency's~~ Effects Evaluation Flowchart and Air Quality Modeling Guidelines **and consistent with the requirements of Texas Clean Air Act, §382.055.**

~~(C) Emissions are not required to meet the public notice requirements listed in §39.402 of this title (relating to Applicability to Air Quality Permit Amendments).~~

(3) ~~(D)~~ No additional fees will be charged for these facilities.

(4) ~~(E)~~ Upon issuance of the new permit (including references in Special Conditions and Maximum Allowable Emission Rates Table), any PBR, ~~SE~~, or standard permit registrations or claims shall remain in effect.

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

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

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

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

SUBCHAPTER F: STANDARD PERMITS

§116.614, §116.615

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various permits and authorizations; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0515, concerning Application for Permit, which requires a person applying for a permit to submit certain information to the commission; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or

modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; §382.051915, concerning Standard Permit, which authorizes the commission to issue standard permits for new or existing similar facilities; §382.061, concerning Delegation of Powers and Duties, which provides the commission with authority to delegate certain duties to the executive director; and §382.062, concerning Application, Permit, and Inspection Fees, which authorizes the commission to collect various fees; and §382.057, concerning Exemption, which authorizes the commission to exempt certain changes from the requirements of Texas Health and Safety Code, §382.0518.

The adopted amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0511, 382.0515, 382.0513, 382.0518, 382.051915, 382.055, 382.061, 382.062 and 382.057.

§116.614. Standard Permit Fees.

Any person who registers to use a standard permit or an amended standard permit, or to renew a registration to use a standard permit shall remit, at the time of registration, a flat fee [of \$900 for each standard permit being registered, unless otherwise specified in a particular standard permit. No fee is required if a registration is automatically renewed by the commission]. All standard permit fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) and delivered with the permit registration to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3087. [No fees will be

refunded.] A registrant who submits a standard permit registration or update for review by the commission shall remit one of the following fees with the PI-1S registration form, unless otherwise specified in a particular standard permit.

(1) Any small business (as defined in Texas Government Code, §2006.001), nonprofit organization organizations, and municipality, county municipalities, counties, and independent school district districts with a population populations of 10,000 or fewer residents shall remit:

(A) \$450 for each new standard permit being registered or renewed; or

(B) \$225 for any amended standard permit registration as required by the executive director or for any revised representations which result in an increase in emissions of a standard permit registration.

(2) All other entities shall remit:

(A) \$900 for each new standard permit being registered or renewed; or

(B) \$450 for any amended standard permit registration as required by the executive director or for any revised representations which result in an increase in emissions of a standard permit registration.

(3) This fee does not apply to:

(A) certifications or notifications that do not require review by the executive director;

(B) resubmittal of a previously reviewed registration if received within six months of a written response on the original action; or

(C) a registration that is automatically renewed by the commission.

(4) Fees will be refunded **or an account credited** when determined that no review is needed or performed at the discretion of the executive director.

§116.615. General Conditions.

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

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

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes to the facility [thereto], must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). If the facility remains eligible for a standard permit, the owner or operator of the facility shall register with [notify] the executive director [of] any change in conditions that [which] will result in construction of a new facility or group of related facilities, a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous registration [notification] of a change in representations, **unless otherwise specified in a standard permit**. Registration [Notice] of changes in representations must be received by the executive director in accordance with the requirements of §116.611 and §116.614 of this title (relating to Registration to Use a Standard Permit; and Standard Permit Fees) [no later than 30 days after the change].

(A) Registrations for the construction of new facilities or a group of related facilities must comply with §116.611(b) of this title.

(B) Registrations for all changes other than maintenance, startup, and shutdown (MSS) activities must be received by the executive director no later than 30 days after the change.

(C) Registrations for the authorization of MSS activities are not subject to the review deadlines in §116.611(b) of this title, but instead, construction or emission releases may begin after receipt of written notification from the executive director that there are no objections or 90 ~~180~~ days after receipt of the registration, whichever occurs first. Those owners or operators of facilities that have no MSS emissions, or do not choose to authorize MSS under their standard permit, are not required to submit registration or notification to the executive director.

(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under §116.110 of this title [(relating to Applicability)] may shall be administratively incorporated in into the that facility's permit for the facility at such time as the permit is amended or renewed. Authorizations will, at a minimum, be referenced in the permit ; except for authorization of MSS emissions under the Maintenance, Startup, and Shutdown (MSS) Emission Releases Standard Permit.

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

(5) Startup [Start-up] notification.

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

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

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

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

(6) Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the commission's appropriate regional office [Office of Air Quality] and any other air pollution control ~~agency program~~ having jurisdiction prior to sampling to

obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

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

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, the United States Environmental Protection Agency [EPA], or any air pollution control **agency** ~~program~~ having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with

the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.

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

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the Texas Clean Air Act [TCAA] and the conditions precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control ~~agency program~~ **agency program** having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

SUBCHAPTER G: FLEXIBLE PERMITS

§116.710

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various permits and authorizations; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0515, concerning Application for Permit, which requires a person applying for a permit to submit certain information to the commission; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or

modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; §382.061, concerning Delegation of Powers and Duties, which provides the commission with authority to delegate certain duties to the executive director; and §382.062, concerning Application, Permit, and Inspection Fees, which authorizes the commission to collect various fees.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0511, 382.0515, 382.0513, 382.0518, 382.055, 382.061, and 382.062.

§116.710. Applicability.

(a) Flexible permit. A person may obtain a flexible permit that [which] allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Changes to Facilities [Amendments and Alterations]). A person may obtain a flexible permit that authorizes a facility's predictable or planned maintenance, startup, or shutdown (MSS) activities as defined in the definition of normal operations in §116.10 of this title (relating to General Definitions). A person may obtain a flexible permit under §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:

- (1) only one flexible permit may be issued at a regulated entity [an account site];

(2) modifications to existing facilities covered by a flexible permit, **or authorization of MSS activities from the existing facilities**, may be authorized [handled] through the amendment of an existing flexible permit;

(3) permitting of a new facility may be authorized [handled] through the amendment of a flexible permit; and

(4) a flexible permit may not cover sources at more than one regulated entity [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, provided however, that all facilities covered by a 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 flexible permit and all rules and regulations of the commission.

(c) Submittal under seal of Texas licensed professional engineer. All applications for a flexible permit or flexible permit amendment shall comply with §116.110(e) of this title.

(d) Responsibility for 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.