

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§101.1, 101.201, 101.211, and 101.221 - 101.223.

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

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The rules concerning emissions events and maintenance, startup, and shutdown activities were required by House Bill (HB) 2912, §5.01 and §18.14, 77th Legislature, 2001 and HB 2129, §1, 79th Legislature, 2005. Division 3 of the rule was amended in December 2003, and one of the amendments was inclusion of an expiration date of June 30, 2005, for §§101.221 - 101.223, in anticipation that these rules might require further consideration and revisions. The commission proposed a revision of Division 3 in March 2005, to extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submitted a revised version of §§101.221 - 101.223 to the EPA for review and approval into the SIP. Upon submittal of the revisions to the EPA, these sections would expire on June 30, 2006. This rulemaking action would remove the expiration clause. It would also modify and add definitions and would revise the notification and reporting requirements, and demonstration criteria. It would also provide for an affirmative defense for certain emissions from scheduled maintenance, startup, and shutdown activities. The commission also proposes to add the definition “Regulated entity” to incorporate statutory requirements of HB 2129.

In development of this proposed rulemaking, the commission sought comment from stakeholders at meetings held between March 4, 2005, and April 1, 2005. Numerous oral comments were received at seven stakeholder meetings and written comments were accepted through April 6, 2005. All comments were considered and evaluated by commission staff. These proposed revisions would implement many of the concepts from the comments received. Some comments are best able to be addressed through operational changes and currently many of these changes are underway. For example, the agency is currently modifying the electronic reporting system to implement several changes including allowing for a single incident report for emissions events covering multiple facilities. Other revisions were suggested that are beyond the scope of the commission's authority and have not been proposed.

SECTION BY SECTION DISCUSSION

General Administrative Rule Language Changes

The commission proposes to change the word "which" to "that" and the word "shall" to "must" in numerous locations in the rule language to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

The commission proposes to spell out acronyms the first time they are used in a section and to delete acronyms that are only used once in a section. The commission also proposes to replace the words "site" or "facility" with "regulated entity" in numerous sections to comply with HB 2129.

Additionally, some text is revised to recognize that emissions events would now be contained within one report instead of a report for each facility.

SUBCHAPTER A, DEFINITIONS

The proposed amendment to §101.1, concerning Definitions, adds the definitions of “Boiler,” “Combustion turbines,” and “Excess opacity event.” The definition of “Boiler” in 30 TAC Chapter 117 is duplicated in these general definitions since the term is used in multiple state air regulations. The definition of “Stationary gas turbine” is also duplicated in the general definitions and renamed in Chapter 101 as “Combustion turbine” since the term is also used in multiple state air regulations. The term “Excess opacity event” is proposed to be defined so that it is clear what is meant by an excess opacity event.

Proposed §101.1(25), renumbered as §101.1(27), would amend the definition of “Emissions event” to further define that any upset event or unscheduled maintenance, startup, or shutdown activity from a common cause is considered one event. Further, the unauthorized emissions from the event can also result from one or multiple emission points at a regulated entity.

Proposed §101.1(68), renumbered as §101.1(71), would amend the definition of “Non-reportable emissions event” to no longer simply state that non-reportable emissions events are those that are not reportable emissions events, but to more clearly define them as any emissions event in a 24-hour period that does not result in an unauthorized emission equal to or in excess of a reportable quantity (RQ).

Proposed §101.1(85) would define “Regulated entity” as all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person.

The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flow lines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation. These changes were required by HB 2129. The remainder of the subsections are renumbered accordingly.

There are several revisions proposed to the definition of “Reportable quantity (RQ).” First, the proposed amendment to §101.1(84)(A), renumbered as §101.1(88), would clarify that RQ values apply to facilities and not regulated entities, therefore, the language “for each facility” has been added.

Second, when determining if a compound is listed in either 40 Code of Federal Regulation (CFR) Part 302, Table 302.4 or 40 CFR Part 355, Appendix A, the owner or operator must use either the listed compound name or the Chemical Abstracts Service (CAS) number, whichever is more specific.

Although the commission believes that this concept is already widely being followed, specific rule language is needed since some compounds can have multiple names. The compound name used by the owner or operator might not be the exact compound name listed in the two tables, but the CAS number should be the same. The proposed amendment to the definition of “Reportable quantity” would clarify that the RQ requirements are for each facility given the changed definition of emissions event.

Second, proposed §101.1(88)(A)(i)(III)(-p-), would provide for RQs for “oxides of nitrogen.” The new RQs for oxides of nitrogen would combine all of the oxides of nitrogen, including nitrogen oxide and nitrogen dioxide into item (-p-) and delete item (-q-). The RQ would be 200 pounds in ozone nonattainment areas, ozone maintenance areas, ozone early action compact areas, Nueces County, and

San Patricio County. Nueces and San Patricio Counties are included because design value for that area is close to exceeding the national ambient air quality standards (NAAQS) for ozone. The 200-pound figure is based upon adding the current RQs for nitrogen oxide and nitrogen dioxide together. For all other areas of the state, where ozone levels are not approaching the ozone NAAQS, the RQ would be 5,000 pounds.

The commission is also proposing to establish a statewide specific RQ of 5,000 pounds for certain compounds, all of which are either chlorofluorocarbons (CFC), hydrofluorocarbons (HFC), or hydrochlorofluorocarbons (HCFC) in proposed items (-q-) - (-ss-). The compounds are neither criteria pollutants nor precursors of ozone, and therefore, the 100-pound default for the nonattainment, near nonattainment, maintenance, and early action compact areas should not apply.

In proposed §101.(88)(A)(ii), the default RQ for all other air contaminants when there is not a listed RQ is being revised, such that the default RQ for nonattainment areas, near-nonattainment areas, maintenance areas, and early action compact areas and Nueces and San Patricio Counties will remain at 100 pounds, while the default RQ for all other areas is being proposed at 5,000 pounds.

In proposed §101.1(88)(C), boilers and combustion turbines that are fueled by gaseous fuels other than natural gas would be allowed to report only opacity, provided that the fuel being burned does not contain hazardous air pollutants or highly reactive volatile organic compounds at more than 0.02% by weight.

The proposed amendment to §101.1(86), renumbered as §101.1(90), would clarify that the emissions from a scheduled maintenance, startup, or shutdown activity will be considered as part of the activity as long as they do not exceed the estimates in the notification by more than an RQ. Additionally, the term “facility” is replaced with “regulated entity.” These changes were required by HB 2129.

The commission proposes to amend §101.1(87) by deleting the definition of “Site” in order to incorporate the definition of “Regulated entity” to comply with applicable statutory provisions of HB 2129. The remaining definitions in §101.1 are renumbered accordingly.

Subchapter F: Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities

Division 1: Emissions Events

Section 101.201 - Emissions Event Reporting and Recordkeeping Requirements

The commission proposes to add requirements for reporting to local air pollution control agencies with jurisdiction to §101.201(a)(1)(B) to clarify that local air pollution agencies should receive initial notifications and final reports.

The commission proposes to amend §101.201(a)(2) to clarify that owners and operators of regulated entities, except for boilers or combustion turbines, are required to report emissions events for each facility with emissions that exceed an RQ. The revised definition of “Emissions event” could cause confusion about whether emissions from all facilities involved in a reportable emissions event should be included in the notification and report.

The commission proposes to amend §101.201(a)(2)(B) and (3)(B) to provide new language that requires identification of the commission Regulated Entity Number (RN) of the regulated entity experiencing an emissions event. Now that the commission has changed to a Central Registry system, the air account number is no longer the primary identifier of the regulated entity. The RN is necessary to report incidents via the agency's electronic reporting system. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in notifications and final reports must be reported. Accordingly, §101.201(a)(2)(C) and (3)(C) is proposed to be deleted, since the information required by subsection (a)(2)(B) and (3)(B) gives the agency sufficient information regarding location. Subsequent subparagraphs are relettered accordingly in §101.201(a)(2) and (3).

The commission proposes to delete language requiring the reporting of authorized emissions limits and if applicable, the estimated opacity and the authorized opacity limit in proposed §101.201(a)(2)(H), relettered as subparagraph (G).

The commission proposes to add the term "best known" and "at the time of the notification" to existing §101.201(a)(2)(I), relettered as subparagraph (H), and to existing §101.201(a)(3)(D), relettered as subparagraph (C). This revision would clarify that the cause of the emissions event is based on best available information at the time of the notification.

The commission proposes to amend §101.201(a)(3) to clarify that owners and operators of boilers and combustion turbines are required to report emissions events for each facility with emissions that exceed

an RQ. The revised definition of “Emissions event” could cause confusion about whether emissions from all facilities involved in a reportable emissions event should be included in the notification and report.

The commission proposes to amend §101.201(a)(3)(E), relettered as subparagraph (D), to remove the requirement to report the facility identification numbers or emission point numbers.

The commission proposes to amend §101.201(a)(3)(I) by deleting the provision to report the authorized opacity limit in the initial notification. Opacity is not an emission and therefore not necessary for evaluation of impacts.

The commission proposes to amend §101.201(b) by deleting the phrase, “such records shall identify.”

The commission proposes to amend §101.201(b) by separating subsection (b) into two paragraphs.

The commission proposes §101.201(b)(1) to outline the provisions required in final records of reportable emissions events. Existing paragraphs in §101.201(b) are relettered as subparagraphs (A) - (L).

The commission proposes to amend §101.201(b)(1)(B) and (2)(B) to provide new language that requires identification of the commission RN of the regulated entity experiencing an emissions event. Now that the commission has changed to a Central Registry system, the air account number is no longer the primary identifier of the regulated entity. The RN is necessary to report incidents via the

agency's electronic reporting system. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in prior notifications and final reports must be reported.

Proposed §101.201(b)(7), renumbered as subsection (b)(1)(G), is amended to provide language that requires reporting of air contaminants by facility, and to allow reporting of air contaminants in the final report that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period without speciation, instead these compounds or mixtures of air contaminants may be identified together as "other." This provision is intended to address concerns expressed at the stakeholder meetings that it is difficult and unnecessary to speciate and report very small quantities of chemicals involved in a reportable event.

Proposed §101.201(b)(8), renumbered as subsection (b)(1)(H), is amended to eliminate reporting of the authorized opacity limit and opacity estimate in the final report. The proposed amendment adds language that requires that the methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission to clarify how these estimates should be calculated. Language has also been added to allow the compounds or mixtures of air contaminants listed as "other" under §101.201(b)(1)(G) to be treated as a group for estimating emissions.

The commission proposes to amend §101.201(b)(10), renumbered as §101.201(b)(1)(J), to add the terms “best known” and “at the time of the notification” to clarify that the cause of the emission event is based on best available information at the time of reporting.

The commission also proposes §101.201(b)(2)(A) - (J) to provide separate provisions for required records for non-reportable emissions events.

The proposed requirements in §101.201(b)(2)(A), (C), (E), and (F) are the same as the language in §101.201(b)(1).

The commission proposes §101.201(b)(2)(D) to require the reporting of the common name of the process unit or area, the common name of the facility that experienced the emissions event, and the common name of the emission point where the unauthorized emissions were released to the atmosphere.

The commission proposes §101.201(b)(2)(G) to require reporting of air contaminants by facility, and to allow reporting of air contaminants in the final report that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period without speciation, instead these compounds or mixtures of air contaminants may be identified together as “other.” This provision is intended to address concerns expressed at the stakeholder meetings that it is difficult and unnecessary to speciate and report very small quantities of chemicals involved in a reportable event.

The commission proposes §101.201(b)(2)(H) to require that when estimating total quantities and the authorized emissions limits for those compounds or mixtures described in proposed §101.201(b)(2)(G), the methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Language has also been added to allow the compounds or mixtures of air contaminants listed as “other” under §101.201(b)(2)(G) to be treated as a group for estimating emissions.

The commission proposes §101.201(b)(2)(I) to require the recording of the best known cause of the emissions event at the time of recording.

The commission proposes §101.201(b)(2)(J) to require the recording of any additional information necessary to evaluate the emissions event.

The commission proposes to add requirements for reporting to local air pollution control agencies with jurisdiction to §101.201(c) to clarify that local air pollution agencies should receive initial notifications and final reports.

The proposed amendment to §101.201(d) would add language that allows the use of gaseous fuels other than natural gas, provided the hazardous air pollutants or highly reactive volatile organic compound content of the fuel does not exceed 0.02% by weight.

The commission proposes to amend §101.201(e) by deleting duplicative language that is now covered in the proposed definition of “Excess opacity event” in §101.1. The commission proposes to add reporting to local air pollution control agencies with jurisdiction to §101.201(e) - (g) to clarify that local air pollution agencies should receive initial notifications and final reports.

The commission proposes to amend §101.201(e)(2) by adding the requirement to identify the commission RN of the regulated entity experiencing an excess opacity event. Now that the commission has changed to a Central Registry system, the air account number is no longer the primary identifier of the regulated entity. The RN is necessary to report incidents via the agency’s electronic reporting system. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in notifications and final reports must be reported.

The commission proposes to amend §101.201(e)(9) by adding the term “best known” and “at the time of the notification” to clarify that the cause of the excess opacity event is based on the best known information at the time of the notification.

The commission proposes to clarify §101.201(f) by adding language requiring the submittal of a technical analysis of emissions events to appropriate local air pollution agencies with jurisdiction.

The commission proposes to delete the existing language in §101.201(h) and proposes new language to require annual emissions event reporting by March 31 of each calendar year or as directed by the executive director. This report would be required for owners or operators that are subject to reporting

under §101.10, Emissions Inventory Requirements, and owners and operators that are not subject to reporting under §101.10 and are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experience at least one emissions event during the calendar year. For those entities that already submit an emission inventory report, this information would be included in that report. For entities that do not submit an emission inventory report, this report must be submitted electronically except that small businesses may submit by other viable means.

Division 2: Maintenance, Startup, and Shutdown Activities

Section 101.211 - Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.

The commission proposes to amend §101.211(a) to clarify that actual emissions from maintenance, startup, or shutdown activities that exceed the estimated emissions in the initial notification by more than an RQ are emissions events. This change is required by HB 2129.

The commission proposes to amend §101.211(a), to add “with jurisdiction” to clarify that local air pollution agencies should receive initial notifications and final reports.

The commission proposes to amend §101.211(a) by adding a reference to §101.1 where excess opacity is proposed to be defined, and accordingly delete the reference to §101.201(e) for excess opacity.

The commission proposes to amend §101.211(a)(1)(B) and (2)(B) and (b)(1)(B) and (2)(B) to add language that requires the identification of the commission RN of the regulated entity experiencing the

activity. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in prior notifications and final reports must be reported.

The commission proposes to amend §101.211(a)(1)(F) to denote that these scheduled maintenance, startup, and shutdown activities are not emissions events, but are emissions activities.

The commission proposes to amend §101.211(a)(1)(H) to provide language that requires reporting of air contaminants by facility, and to allow reporting of air contaminants in the final report that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period without speciation, instead these compounds or mixtures of air contaminants may be identified together as “other.”

The commission proposes to amend §101.211(a)(1)(I) and existing language in subsection (b)(9), renumbered as subsection (b)(1)(I), to add language that requires that the methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission to clarify how these estimates should be calculated. Language has also been added to allow the compounds or mixtures of air contaminants listed as “other” under §101.211(a)(1)(H) to be treated as a group for estimating emissions.

The commission proposes to amend §101.211(b) by separating subsection (b) into two paragraphs.

The commission proposes §101.211(b)(1) to outline provisions regarding final records for regulated

entities that are required to notify of scheduled maintenance, startup, or shutdown activities. The existing paragraphs in §101.211(b) are relettered as subparagraphs (A) - (K).

Proposed §101.211(b)(2), renumbered as subsection (b)(1)(B), is amended to provide language that requires identification of the commission RN of the regulated entity experiencing the activity. If the regulated entity does not have an RN or air account number, the location of a release and a contact telephone number in notifications and final reports must be reported.

Proposed §101.211(b)(5), relettered as subsection (b)(1)(E), is amended to add “experienced the emissions activity” and accordingly delete “experienced the emissions event” to denote that the associated scheduled maintenance, startup, and shutdown activities are not emissions events, but are emissions activities.

Proposed §101.211(b)(8), renumbered as subsection (b)(1)(H), is amended to provide language that requires reporting of air contaminants by facility, and to allow reporting of air contaminants in the final report that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period without speciation, instead these compounds or mixtures of air contaminants may be identified together as “other.”

The commission proposes to amend §101.211(b)(9), relettered as subsection (b)(1)(I), to delete the reference to existing paragraph (8) and to refer to the relettered subparagraph (H). Also, the commission proposes that compounds or mixtures of air contaminants, that have an RQ greater than or

equal to 100 pounds and the amount released is less than one pound in a 24-hour period, are not required to be included in the report. Language has also been added to allow the compounds or mixtures of air contaminants listed as “other” under §101.211(b)(8) to be treated as a group for estimating emissions.

The commission also proposes §101.211(b)(2)(A) - (I) to add provisions regarding final records for facilities that were not required to notify of scheduled maintenance, startup, or shutdown activities.

The proposed requirements in §101.211(b)(2)(A) - (G) are the same as the proposed requirements in §101.211(b)(1).

The commission proposes §101.211(b)(2)(H) to require the recording of the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1, that are known through common process knowledge, past engineering analysis, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 and that were unauthorized. The commission also proposes that compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period may be reported without speciation, instead these compounds or mixtures of air contaminants may be identified together as “other.”

The commission proposes §101.211(b)(2)(I) to require that when estimating total quantities and the authorized emissions limits for those compounds or mixtures described in proposed §101.211(b)(2)(G),

the methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Language has also been added to allow the compounds or mixtures of air contaminants listed as “other” under §101.211(b)(2)(H) to be treated as a group for estimating emissions.

The commission proposes to add language to §101.211(c) to require that reporting for scheduled maintenance, startup, or shutdown activities must also be reported to appropriate local air pollution agencies with jurisdiction.

The commission proposes to amend §101.211(d) to allow boilers and combustion turbines equipped with a continuous emission monitoring system using fuels with less than 0.02% hazardous air pollutants or highly reactive volatile organic compounds, are exempt from creating and submitting final records if the information in the initial notification is the same as in the final report.

The commission proposes to add language to §101.211(e) to require that a copy of the requested technical plan for a scheduled maintenance, startup, or shutdown activity be sent to the local air pollution agency with jurisdiction.

The commission proposes to add §101.211(f) to require annual reporting of emissions resulting from scheduled maintenance, startup, and shutdown activities. This report would be required for owners or operators that are subject to reporting under §101.10, Emissions Inventory Requirements, and owners

and operators that are not subject to reporting under §101.10 and are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experience at least one scheduled maintenance, startup, or shutdown activity during the calendar year. For those entities that already submit an emission inventory report, this information would be included in that report. For entities that do not submit an emission inventory report, this report must be submitted electronically except that small businesses may submit by other viable means.

Division 3: Operational Requirements, Demonstrations, and Actions to Reduce Excessive Emissions

Section 101.221 - Operational Requirements

The proposed amendment to §101.221(d) adds the phrase “including New Source Performance Standards (40 Code of Federal Regulations Part 60) and National Emission Standards for Hazardous Air Pollutants (40 Code of Federal Regulations Parts 61 and 63)” to specify particular federal requirements that also regulate emissions from maintenance, startup, and shutdown activities.

The commission proposes to delete §101.221(g).

Section 101.222 - Demonstrations

The commission proposes to amend §101.222(b)(1) to clarify when the commission will initiate enforcement for failure to report and for the underlying emissions event itself. The proposed amendment also provides that subsection (b) does not apply for minor omissions or inaccuracies that do not impair the commission’s ability to review the event according to this rule, unless the owner or operator knowingly or intentionally falsified the information in the report.

The proposed amendment to §101.222(b)(3) and (d)(2) provides a reasonableness standard for determining this criteria. The proposed amendment would also change the criteria of “could not have been avoided by good design, operation, and maintenance practices” to “could not have been reasonably avoided by technically feasible design, operation, and maintenance practices consistent with good engineering practice.”

The commission proposes to add §101.222(b)(12) to provide a new criteria for the affirmative defense. By definition, maintenance, startup, or shutdown emissions that are not reported prior to their occurrence are considered unscheduled maintenance, and therefore fall into the category of emissions events. However, under this new provision, if the owner or operator was reasonably able to provide notification to the agency prior to the activity but did not provide the notification, the owner or operator would lose the ability to claim the affirmative defense. This provision would provide a disincentive for owners or operators to decide to skip notification and be treated as an emissions event.

The proposed amendment to §101.222(c) deletes language that provides that emissions from scheduled maintenance, startup, and shutdown activities are required to be included in certain permits unless the owner or operator proves the criteria in subsection (c)(1) - (9). The proposed language provides that an affirmative defense is available for all claims in enforcement actions for these emissions, other than claims for administrative technical orders and actions for injunctive relief, if the owner or operator proves the criteria listed in the rule. The affirmative defense applies only to the emissions from these activities, and does not apply to subsequent or independent obligations, such as recordkeeping or

reporting. The proposed amendment to §101.222(c) would also remove references to maintenance emissions that will be addressed in proposed §101.222(h).

The commission proposes to add language to §101.222(c)(1), (d)(1), and (e)(1), which provides that failure to report information that does not impair the commission's ability to review the event will not result in enforcement action and loss of opportunity to claim the affirmative defense.

The proposed amendment to §101.222(e) deletes language that provides that emissions from scheduled maintenance, startup, and shutdown activities are required to meet the requirements of §111.111(a), unless the owner or operator proves the criteria in subsection (e)(1) - (9). The proposed language provides that an affirmative defense is available for all claims in enforcement actions for certain emissions, other than claims for administrative technical orders and actions for injunctive relief, if the owner or operator proves the criteria listed in the rule. The affirmative defense applies only to the emissions from these activities, and does not apply to subsequent or independent obligations, such as recordkeeping or reporting. The proposed amendment to §101.222(e) would also remove references to maintenance emissions, which will be addressed in proposed §101.222(h).

The proposed amendment to §101.222(h) would delete the current language providing an expiration date for the section. The proposed new language would phase out the affirmative defense for emissions from routine maintenance activities. The commission intends to begin allowing authorization of these types of emissions as permits come in for renewal, amendment, or issuance. This would include activities such as plant turnarounds and preventative maintenance such as routine replacement

of facility parts that are regular and quantifiable. Upon permit amendment, alteration, renewal, or issuance, the affirmative defense will no longer be available for these types of emissions. For those facilities that are authorized through other mechanisms such as permits by rule, standard permits, standard exemptions, and special exemptions, the rule would allow two years for those facilities to have their routine maintenance activities authorized before losing the ability to claim an affirmative defense for those emissions. Subject to meeting the conditions in §101.222(c)(1) - (9), the affirmative defense will continue to be available for maintenance activities that arise from sudden and reasonably unforeseeable events beyond the control of the operator, which requires the immediate corrective action to restore normal operation. Generally, these emissions include maintenance that is initiated to resolve an operational problem with a facility. Opacity events resulting from maintenance activities are also included in proposed §101.222(h) and would be treated in the same way as emissions from maintenance activities.

Section 101.223 - Actions to Reduce Excessive Emissions

The proposed amendment to §101.223(a)(1) would add the requirement to submit a corrective action plan to the local air pollution agency with jurisdiction to clarify that local air pollution agencies should receive the corrective action plan.

The commission proposes to delete §101.223(e).

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed amendments. The proposed rulemaking would modify current commission rules concerning air emissions events. State and local governments do not typically engage in the type of activities that would generate such emissions, and the proposed rulemaking would not apply to these governmental entities.

HB 2912, §5.01 and §18.14, and HB 2129 required revisions of commission rules concerning air emissions events, maintenance, startup, and shutdown activities. The revised rules for §§101.221 - 101.223 received limited SIP approval from EPA and included an expiration date of June 30, 2005. The proposed rulemaking would delete the expiration deadline of these sections and would provide specificity for implementing the statutes regarding emissions events reporting while providing specific outcomes for proving specific criteria regarding certain unauthorized emissions. The rulemaking would modify definitions, add new definitions, revise notification requirements, revise reporting requirements, revise demonstration criteria, remove protection for routinely performed scheduled maintenance activities, and change the protection for startup, shutdown, and nonroutine maintenance activities to affirmative defense. Regulated entities would be required to submit a single annual emissions report for all emissions, and they would be required to submit certain information to local air pollution programs with jurisdiction. The proposed changes to current rules and the associated SIP must be approved by EPA.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed amendments will be more specificity regarding emissions events rules and the submission of a single, annual emissions report detailing all emissions events.

The proposed rulemaking affects persons or entities that violate emissions and opacity limitations associated with certain emissions events, maintenance, startup, and shutdown activities. Since these events must currently be documented, whether or not they are submitted in a report, no significant adverse fiscal implications are anticipated for individuals or large businesses that must now prepare a single annual report.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses would be affected in the same manner as individuals or large businesses by the proposed rulemaking in that they would be required to prepare a single annual emissions report.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). 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 proposed amendments would revise the notification and reporting requirements and demonstration criteria for emissions events and scheduled maintenance, startup, and shutdown activities. The proposed amendments would also provide for an affirmative defense for certain emissions from startup, shutdown, and nonroutine maintenance activities, and would phase out the affirmative defense for emissions from routine maintenance activities. In addition, the proposed rulemaking would modify and add definitions, and would also implement HB 2129, §1. The proposed amendments 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.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an

agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the commission, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code that are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements.

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

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed amendments. The specific purpose of this rulemaking is to revise notification and reporting requirements and demonstration criteria for emissions events and scheduled maintenance, startup, and shutdown activities. The rulemaking would also provide for an affirmative defense for certain emissions from startup, shutdown, and nonroutine maintenance activities, and would phase out the affirmative defense for emissions from routine maintenance activities, and would modify and add definitions. Promulgation and enforcement of the proposed amendments would be neither a statutory nor a constitutional taking

because they do not affect private real property. Specifically, the proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed amendments do not constitute a takings 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 the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed amendments will maintain the same level of emissions control as the existing rules. 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

Sections 101.201 - 101.223 are applicable requirements under 30 TAC Chapter 122, Federal Operating Permits. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program will be required to certify compliance with amended §§101.201 - 101.223.

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled for the following dates: August 2, 2005, at 2:00 p.m., in Austin, TCEQ complex, Building C, Room 131E, 12100 Park 35 Circle; August 3, 2005, at 10:00 a.m., in Arlington, North Central Texas Council of Governments, Transportation Board Room, 3rd Floor, 616 Six Flags Drive; August 4, 2005, at 7:00 p.m., in Houston, City of Houston Council Chambers, 2nd Floor, 901 Bagby; August 5, 2005, at 1:00 p.m., in Corpus Christi, Texas A&M-Corpus Christi Campus, Natural Resources Center Building, Room 1003, 6300 Ocean Drive; and August 8, 2005, at 10:00 a.m., in Midland, UT of the Permian Basin, Center for Energy and Economic Diversification Building, 1400 North FM 1788. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A five-minute time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during each hearing;

however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after each hearing.

Persons planning to attend a hearing who have special communication or other accommodation needs should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-024-101-CE. Comments must be received no later than 5:00 p.m., on August 8, 2005. For further information, please contact Ramiro Garcia, Field Operations Division at (512) 239-4481 or Steve Ligon, Field Operations Division at (512) 239-1527.

SUBCHAPTER A: GENERAL RULES

§101.1

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's purpose to safeguard the state 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 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 air; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (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 are defined by the TCAA, the following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Account** -- For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits), all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

(2) **Acid gas flare** -- A flare used exclusively for the incineration of hydrogen sulfide and other acidic gases derived from natural gas sweetening processes.

(3) **Ambient air** -- That portion of the atmosphere, external to buildings, to which the general public has access.

(4) **Background** -- Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

(5) **Boiler** -- Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(6) [(5)] **Capture system** -- All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(7) [(6)] **Captured facility** -- A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(8) [(7)] **Carbon adsorber** -- An add-on control device that uses activated carbon to adsorb volatile organic compounds from a gas stream.

(9) [(8)] **Carbon adsorption system** -- A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(10) [(9)] **Coating** -- A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(11) [(10)] **Cold solvent cleaning** -- A batch process that uses liquid solvent to remove soils from the surfaces of metal parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(12) [(11)] **Combustion unit** -- Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(13) **Combustion turbine** -- Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft will be treated as one unit.

(14) [(12)] **Commercial hazardous waste management facility** -- Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility that disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(15) [(13)] **Commercial incinerator** -- An incinerator used to dispose of waste material from retail and wholesale trade establishments.

(16) [(14)] **Commercial medical waste incinerator** -- A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(17) [(15)] **Component** -- A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves[,] that has the potential to leak volatile organic compounds.

(18) [(16)] **Condensate** -- Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(19) [(17)] **Construction-demolition waste** -- Waste resulting from construction or demolition projects.

(20) [(18)] **Control system or control device** -- Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(21) [(19)] **Conveyorized degreasing** -- A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of metal parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(22) [(20)] **Criteria pollutant or standard** -- Any pollutant for which there is a national ambient air quality standard established under 40 Code of Federal Regulations Part 50.

(23) [(21)] **Custody transfer** -- The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(24) [(22)] **De minimis impact** -- A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source that has undergone a major modification[,] that [which] does not exceed the following specified amounts.

Figure: 30 TAC §101.1(24)

[Figure: 30 TAC §101.1(22)]

| AIR CONTAMINANT | ANNUAL | 24-HOUR | 8-HOUR | 3-HOUR | 1-HOUR |
|--|-----------------------|---------------------|-----------------------|----------------------|---------------------|
| Inhalable Particulate Matter (PM ₁₀) | 1.0 µg/m ³ | 5 µg/m ³ | | | |
| Sulfur Dioxide | 1.0 µg/m ³ | 5 µg/m ³ | | 25 µg/m ³ | |
| Nitrogen Dioxide | 1.0 µg/m ³ | | | | |
| Carbon Monoxide | | | 0.5 mg/m ³ | | 2 mg/m ³ |

(25) [(23)] **Domestic wastes** -- The garbage and rubbish normally resulting from the functions of life within a residence.

(26) [(24)] **Emissions banking** -- A system for recording emissions reduction credits so they may be used or transferred for future use.

(27) [(25)] **Emissions event** -- Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more [an] emissions points at a regulated entity [point].

(28) [(26)] **Emissions reduction credit** -- Any stationary source emissions reduction that has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(29) [(27)] **Emissions reduction credit certificate** -- The certificate issued by the executive director that indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(30) [(28)] **Emissions unit** -- Any part of a stationary source that emits, or would have the potential to emit, any pollutant subject to regulation under the Federal Clean Air Act.

(31) **Excess opacity event** -- When an opacity reading is equal to or exceeds 15 additional percentage points above an applicable opacity limit, averaged over a six-minute period.

(32) [(29)] **Exempt solvent** -- Those carbon compounds or mixtures of carbon compounds used as solvents that have been excluded from the definition of volatile organic compound.

(33) [(30)] **External floating roof** -- A cover or roof in an open top tank that rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

(34) [(31)] **Federal motor vehicle regulation** -- Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations Part 85.

(35) [(32)] **Federally enforceable** -- All limitations and conditions that are enforceable by the United States Environmental Protection Agency administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61; requirements within any applicable state implementation plan (SIP); and any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart I [1], including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(36) [(33)] **Flare** -- An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and that [which] is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(37) [(34)] **Fuel oil** -- Any oil meeting the American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01, Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(38) [(35)] **Fugitive emission** -- Any gaseous or particulate contaminant entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(39) [(36)] **Garbage** -- Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(40) [(37)] **Gasoline** -- Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater[,] that [which] is produced for use as a motor fuel, and is commonly called gasoline.

(41) [(38)] **Hazardous waste management facility** -- All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(42) [(39)] **Hazardous waste management unit** -- A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(43) [(40)] **Hazardous wastes** -- Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency [EPA] under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act [RCRA], 42 United States Code, §§6901 *et seq.*, as amended.

(44) [(41)] **Heatset (used in offset lithographic printing)** -- Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(45) [(42)] **High-bake coatings** -- Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(46) [(43)] **High-volume low-pressure spray guns** -- Equipment used to apply coatings by means of a spray gun that operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

(47) [(44)] **Incinerator** -- An enclosed combustion apparatus and attachments that is used in the process of burning wastes for the primary purpose of reducing its volume and weight by

removing the combustibles of the waste and is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is considered to be an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually is also considered to be an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any regulations within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(48) [(45)] **Industrial boiler** -- A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(49) [(46)] **Industrial furnace** -- Cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping recovery

furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and other devices the commission may list.

(50) [(47)] **Industrial solid waste** -- Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and

rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(51) [(48)] **Internal floating cover** -- A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(52) [(49)] **Leak** -- A volatile organic compound concentration greater than 10,000 parts per million by volume or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(53) [(50)] **Liquid fuel** -- A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units per pound.

(54) [(51)] **Liquid-mounted seal** -- A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(55) [(52)] **Maintenance area** -- A geographic region of the state previously designated nonattainment under the Federal Clean Air Act (FCAA) Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a. The following are the maintenance areas within the state:

(A) Victoria Ozone Maintenance Area (60 *Federal Register (FR)* [FR]12453)

-- Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421[- 55425]) - Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(56) [(53)] **Maintenance plan** -- A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(57) [(54)] **Marine vessel** -- Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(58) [(55)] **Mechanical shoe seal** -- A metal sheet that is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(59) [(56)] **Medical waste** -- Waste materials identified by the Department of State Health Services as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

(60) [(57)] **Metropolitan Planning Organization** -- That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC), §134 and 49 USC, §1607.

(61) [(58)] **Mobile emissions reduction credit** -- The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter E or F of this title (relating to Low Emission Vehicle Fleet Requirements and Vehicle Retirement and Mobile Emission Reduction Credits), and that [which] has been banked in accordance with Subchapter H, Division 1 of this chapter.

(62) [(59)] **Motor vehicle** -- A self-propelled vehicle designed for transporting persons or property on a street or highway.

(63) [(60)] **Motor vehicle fuel dispensing facility** -- Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(64) [(61)] **Municipal solid waste** -- Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(65) [(62)] **Municipal solid waste facility** -- All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(66) [(63)] **Municipal solid waste landfill** -- A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act [RCRA] Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(67) [(64)] **National ambient air quality standard** -- Those standards established under 42 United States Code, §7409, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(68) [(65)] **Net ground-level concentration** -- The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(69) [(66)] **New source** -- Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(70) [(67)] **Nonattainment area** -- A defined region within the state that is designated by the United States Environmental Protection Agency (EPA) as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of 42 United States Code, §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state for all national ambient air quality standards (NAAQS). EPA has indicated that it will revoke the one-hour ozone standard in full, including the associated designations and classifications, on June 15, 2005,

which is one year following the effective date of the designations for the eight-hour NAAQS of June 15, 2004.

(A) Carbon monoxide (CO). El Paso CO nonattainment area (56 FR 56694)--Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the City of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Reynolds Street, Reynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Reynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM₁₀). El Paso PM₁₀ nonattainment area (56 FR 56694)--Classified as a Moderate PM₁₀ nonattainment area. Portion of El Paso County that [which] comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. No designated nonattainment areas.

(D) Nitrogen dioxide. No designated nonattainment areas.

(E) Ozone (one-hour).

(i) Houston-Galveston-Brazoria (HGB) [Houston/Galveston/Brazoria]

one-hour ozone nonattainment area (56 FR 56694) - Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso one-hour ozone nonattainment area (56 FR 56694) -

Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont-Port Arthur (BPA) [Beaumont/Port Arthur] one-hour

ozone nonattainment area (69 FR 16483) - Classified as a Serious ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas-Fort Worth [Dallas/Fort Worth] one-hour ozone

nonattainment area (63 FR 8128) - Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Ozone (eight-hour).

(i) HGB [Houston/Galveston/Brazoria] eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) BPA [Beaumont/Port Arthur] eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Marginal ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iii) Dallas-Fort Worth [Dallas/Fort Worth] eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(iv) San Antonio eight-hour ozone nonattainment area (69 FR 23936) - Classified under the Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), nonattainment deferred to September 30, 2005, or as extended by EPA.

(G) Sulfur dioxide. No designated nonattainment areas.

(71) [(68)] Non-reportable emissions event -- Any emissions event that in any 24-hour period does not result in an unauthorized emission equal to or in excess of the reportable quantity [is not a reportable emissions event] as defined in this section.

(72) [(69)] **Opacity** -- The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(73) [(70)] **Open-top vapor degreasing** -- A batch solvent cleaning process that is open to the air and that uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.

(74) [(71)] **Outdoor burning** -- Any fire or smoke-producing process that is not conducted in a combustion unit.

(75) [(72)] **Particulate matter** -- Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(76) [(73)] **Particulate matter emissions** -- All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) Part 60, Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan.

(77) [(74)] **Petroleum refinery** -- Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(78) [(75)] **PM₁₀** -- Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(79) [(76)] **PM₁₀ emissions** -- Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(80) [(77)] **Polychlorinated biphenyl compound** -- A compound subject to 40 Code of Federal Regulations Part 761.

(81) [(78)] **Process or processes** -- Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of

manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(82) [(79)] **Process weight per hour** -- "Process weight" is the total weight of all materials introduced or recirculated into any specific process that may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during that the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(83) [(80)] **Property** -- All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(84) [(81)] **Reasonable further progress** -- Annual incremental reductions in emissions of the applicable air contaminant that are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan.

(85) **Regulated entity** -- All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flowlines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.

(86) [(82)] **Remote reservoir cold solvent cleaning** -- Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(87) [(83)] **Reportable emissions event** -- Any emissions event that [which,] in any 24-hour period, results in an unauthorized emission equal to or in excess of the reportable quantity as defined in this section.

(88) [(84)] **Reportable quantity (RQ)** -- Is as follows for each facility:

(A) for individual air contaminant compounds and specifically listed mixtures by name or Chemical Abstracts Service (CAS) number, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) Part 302 [§302], Table 302.4, the column “final RQ”;

(II) listed in 40 CFR Part 355 [§355], Appendix A, the column “Reportable Quantity”; or

(III) listed as follows:

(-a-) butanes (any isomer) - 5,000 pounds;

(-b-) butenes (any isomer, except 1,3-butadiene) - 5,000 pounds, except in the Houston-Galveston-Brazoria [Houston/Galveston/Brazoria] (HGB) and Beaumont-Port Arthur [Beaumont/Port Arthur] (BPA) ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [(67)(E)(i) and (iii)] of this section, where the RQ must [shall] be 100 pounds;

(-c-) ethylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [(67)(E)(i) and (iii)] of this section, where the RQ must [shall] be 100 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) pentanes (any isomer) - 5,000 pounds;

(-f-) propane - 5,000 pounds;

(-g-) propylene - 5,000 pounds, except in the HGB
and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [(67)(E)(i) and (iii)] of
this section, where the RQ must [shall] be 100 pounds;

(-h-) ethanol - 5,000 pounds;

(-i-) isopropyl alcohol - 5,000 pounds;

(-j-) mineral spirits - 5,000 pounds;

(-k-) hexanes (any isomer) - 5,000 pounds;

(-l-) octanes (any isomer) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds;

(-n-) acetaldehyde - 1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph ~~(70)(E)(i) and (iii)~~ [(67)(E)(i) and (iii)] of this section, where the RQ must [shall] be 100 pounds;

(-o-) toluene - 1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph ~~(70)(E)(i) and (iii)~~ [(67)(E)(i) and (iii)] of this section, where the RQ must [shall] be 100 pounds;

(-p-) oxides of nitrogen [oxide] - 200 [100] pounds in ozone nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County, and 5,000 pounds in all other areas of the state, which should [shall] be used instead of the RQs [RQ] for nitrogen oxide and nitrogen dioxide provided in 40 CFR Part 302 [§302], Table 302.4, the column “final RQ”; [or]

(-q-) chlorodifluoromethane (HCFC-22) - 5,000 pounds [nitrogen dioxide - 100 pounds, which shall be used instead of the RQ listed in 40 CFR §302, Table 302.4, the column “final RQ” or listed in 40 CFR §355, Appendix A, the column “Reportable Quantity”];

(-r-) trifluoromethane (HFC-23) - 5,000 pounds;

(-s-) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113) -

5,000 pounds;

(-t-) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)

- 5,000 pounds;

(-u-) chloropentafluoroethane (CFC-115) - 5,000

pounds;

(-v-) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123) -

5,000 pounds;

(-w-) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) -

5,000 pounds;

(-x-) pentafluoroethane (HFC-125) - 5,000 pounds;

(-y-) 1,1,2,2-tetrafluoroethane (HFC-134) - 5,000

pounds;

(-z-) 1,1,1,2-tetrafluoroethane (HFC-134a) - 5,000

pounds;

(-aa-) 1,1-dichloro-1-fluoroethane (HCFC-141b) -

5,000 pounds;

(-bb-) 1-chloro-1,1-difluoroethane (HCFC-142b) -

5,000 pounds;

(-cc-) 1,1,1-trifluoroethane (HFC-143a) - 5,000

pounds;

(-dd-) 1,1-difluoroethane (HFC-152a) - 5,000 pounds;

(-ee-) 3,3-dichloro-1,1,1,2,2-pentafluoropropane

(HCFC-225ca) - 5,000 pounds;

(-ff-) 1,3-dichloro-1,1,2,2,3-pentafluoropropane

(HCFC-225cb) - 5,000 pounds;

(-gg-) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC

43-10mee) - 5,000 pounds;

(-hh-) difluoromethane (HFC-32) - 5,000 pounds;

(-ii-) ethylfluoride (HFC-161) - 5,000 pounds;

5,000 pounds;

(-jj-) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa) -

5,000 pounds;

(-kk-) 1,1,2,2,3-pentafluoropropane (HFC-245ca) -

5,000 pounds;

(-ll-) 1,1,2,3,3-pentafluoropropane (HFC-245ea) -

5,000 pounds;

(-mm-) 1,1,1,2,3-pentafluoropropane (HFC-245eb) -

5,000 pounds;

(-nn-) 1,1,1,3,3-pentafluoropropane (HFC-245fa) -

5,000 pounds;

(-oo-) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea) -

5,000 pounds;

(-pp-) 1,1,1,3,3-pentafluorobutane (HFC-365mfc) -

(-qq-) chlorofluoromethane (HCFC-31) - 5,000

pounds;

(-rr-) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)

- 5,000 pounds; or

(-ss-) 1-chloro-1-fluoroethane (HCFC-151a) - 5,000

pounds;

(ii) if not listed in clause (i) of this subparagraph[, 100 pounds;];

(-I-) 100 pounds in nonattainment, maintenance, early action

compact areas, Nueces County, and San Patricio County; or

(-II-) 5,000 pounds in all other areas of the state;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound that equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture that equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding methane and ethane, or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity from boilers and combustion turbines as defined in this section fueled by natural gas, coal, lignite, wood, [or] fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, or gaseous fuels other than natural gas, provided the hazardous air pollutants or highly reactive volatile organic compound content of the fuel does not exceed 0.02% by weight, opacity that is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only RQ applicable to boilers and combustion turbines described in this paragraph; or [and]

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest regulated entity [facility] property line:

(i) less than one-half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(89) [(85)] **Rubbish** -- Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(90) [(86)] **Scheduled maintenance, startup, or shutdown activity** -- For activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity that [for which] the owner or operator of the regulated entity [facility] provides timely prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping

Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification by more than an RQ. For activities with unauthorized emissions that are not expected to, and do not, exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

(87) **Site** -- For the purposes of Subchapter F of this chapter, means shall mean all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location.]

(91) [(88)] **Sludge** -- Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(92) [(89)] **Smoke** -- Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(93) [(90)] **Solid waste** -- Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under [the] Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency [EPA] under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act [RCRA], as amended (42 United States Code, §§6901 *et seq.*).

(94) [(91)] **Sour crude** -- A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(95) [(92)] **Sour gas** -- Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(96) [(93)] **Source** -- A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(97) [(94)] **Special waste from health care related facilities** -- A solid waste that if improperly treated or handled, may serve to transmit infectious disease(s) and that [which] is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(98) [(95)] **Standard conditions** -- A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals). Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

(99) [(96)] **Standard metropolitan statistical area** -- An area consisting of a county or one or more contiguous counties that is officially so designated by the United States Bureau of the Budget.

(100) [(97)] **Submerged fill pipe** -- A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters) from the bottom or, when applied to a tank that is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(101) [(98)] **Sulfur compounds** -- All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(102) [(99)] **Sulfuric acid mist/sulfuric acid** -- Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and must [shall] include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations Part 60, Appendix A.

(103) [(100)] **Sweet crude oil and gas** -- Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(104) [(101)] **Total suspended particulate** -- Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

(105) [(102)] **Transfer efficiency** -- The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(106) [(103)] **True vapor pressure** -- The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

(107) [(104)] **Unauthorized emissions** -- Emissions of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen that exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act, §382.0518(g).

(108) [(105)] **Upset event** -- An unplanned or unanticipated occurrence or excursion of a process or operation that results in unauthorized emissions.

(109) [(106)] **Utility boiler** -- A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(110) [(107)] **Vapor combustor** -- A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device

operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system[,] that [which] can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(111) [(108)] **Vapor-mounted seal** -- A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(112) [(109)] **Vent** -- Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(113) [(110)] **Visible emissions** -- Particulate or gaseous matter that can be detected by the human eye. The radiant energy from an open flame is considered to be a visible emission under this definition.

(114) [(111)] **Volatile organic compound** -- As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on November 29, 2004 (69 FR 69290 [- 69304]).

(115) [(112)] **Volatile organic compound (VOC) water separator** -- Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box,

sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

DIVISION 1: EMISSIONS EVENTS

§101.201

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's purpose to safeguard the state 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 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 air; §382.014, concerning Emissions Inventory, which authorizes the commission to require submittal of emissions data; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; and §382.085, concerning Unauthorized Emissions

Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.0215, and 382.0216.

§101.201. Emissions Event Reporting and Recordkeeping Requirements.

(a) The following requirements for reportable emissions events [shall] apply.

(1) As soon as practicable, but not later than 24 hours after the discovery of an emissions event, the owner or operator of a regulated entity [facility] shall:

(A) determine if the event is a reportable emissions event; and

(B) notify the commission office for the region in which the regulated entity [facility] is located, and all appropriate local air pollution control agencies with jurisdiction, if the emissions event is reportable.

(2) The notification for reportable emissions events for each regulated entity [facility], except for boilers or combustion turbines referenced in the definition of reportable quantity (RQ) in

§101.1 of this title (relating to Definitions) must [shall] at a minimum, identify for each facility with emissions that exceed an RQ:

(A) the name of the owner or operator of the regulated entity [facility] experiencing an emissions event;

(B) the commission Regulated Entity Number and air account number of the regulated entity [facility] experiencing an emissions event, if a Regulated Entity Number and air [an] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

[(C) the physical location of the point at which emissions to the atmosphere occurred;]

(C) [(D)] the common name of the process unit or area, the common name of the facility that [which] incurred the emissions event, and the common name of the emission point where the unauthorized emissions were released to the atmosphere;

(D) [(E)] the date and time of the discovery of the emissions event;

(E) [(F)] the estimated duration of the emissions event;

(F) [(G)] the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title that [,which] are known through common process knowledge, past engineering analysis, or testing to have equaled or exceeded the RQ;

(G) [(H)] the estimated total quantities [and the authorized emissions limits] for those compounds or mixtures described in subparagraph (F) [G] of this paragraph[, and, if applicable, the estimated opacity and the authorized opacity limit];

(H) [(I)] the best known cause of the emissions event at the time of the notification, if known; and

(I) [(J)] the actions taken, or being taken, to correct the emissions event and minimize the emissions.

(3) The notification for reportable emissions events for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title must [shall] identify for each facility with emissions that exceed an RQ:

(A) the name of the owner or operator of the regulated entity [facility] experiencing an emissions event;

(B) the commission Regulated Entity Number and air account number of the regulated entity [facility] experiencing an emissions event, if a Regulated Entity Number and air [an] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

[(C) the physical location of the point from which the opacity occurred;]

(C) [(D)] the best known cause of the emissions event, if known at the time of notification;

(D) [(E)] the common name of the process unit or area, the common name [and the agency-established facility identification number] of the facility that experienced the emissions event, and the common name [and the agency-established emission point number] where the unauthorized emissions were released to the atmosphere[. Owners or operators of those facilities and emission points for which the agency has not established facility identification numbers or emission point numbers are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report];

(E) [(F)] the date and time of the discovery of the emissions event;

(F) [(G)] the estimated duration or expected duration of the emissions event;

(G) [(H)] the estimated opacity; and

[(I) the authorized opacity limit for the source having the emissions event;

and]

(H) [(J)] the actions taken, or being taken, to correct the emissions event and minimize the emissions.

(4) The owner or operator of a regulated entity [facility] experiencing an emissions event must provide, in writing, additional or more detailed information on the emissions event when requested by the executive director or any air pollution control agency with jurisdiction, within the time frames established in the request.

(5) The owner or operator of a regulated entity [facility] experiencing a reportable emissions event that [which] also requires an initial notification under §327.3 of this title (relating to Notification Requirements) may satisfy the initial notification requirements of this section by complying with the requirements under §327.3 of this title.

(b) The owner or operator of a regulated entity [facility] experiencing an emissions event shall create a final record of all reportable and non-reportable emissions events as soon as practicable, but no later than two weeks after the end of an emissions event. Final records must [shall] be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or

personnel of any air pollution program with jurisdiction. If a regulated entity [site] is not normally staffed, records of emissions events may be maintained at the staffed location within Texas that is responsible for the day-to-day operations of the regulated entity [site]. [Such records shall identify:]

(1) The final record of a reportable emissions event must identify for each facility:

(A) [(1)] the name of the owner or operator of the regulated entity [facility] experiencing an emissions event;

(B) [(2)] the commission Regulated Entity Number and air account number of the regulated entity [facility] experiencing an emissions event, if a Regulated Entity Number and air [the] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) [(3)] the physical location of the point at which emissions to the atmosphere occurred;

(D) [(4)] the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions event, and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points that [for which] the agency has not established facility identification numbers or

emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report.

_____ (E) [(5)] the date and time of the discovery of the emissions event;

(F) [(6)] the estimated duration of the emissions event;

(G) [(7)] the compound descriptive type of all individually listed compounds or mixtures of air contaminants[,] in the definition of RQ in §101.1 of this title, by facility, that [which] are known through common process knowledge or past engineering analysis or testing to have been released during the emissions event, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report, instead these compounds or mixtures of air contaminants may be identified together as “other”;

(H) [(8)] the estimated total quantities for those compounds or mixtures described in subparagraph (G) [paragraph (7)] of this paragraph [subsection], the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the regulated entity [facility] involved in the emissions event, authorized emissions limits for the facility involved in the emissions events, [and, if applicable, the estimated opacity and authorized opacity limit,] except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this

title which record only the authorized opacity limit and the estimated opacity during the emissions event. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as “other” under subparagraph (G) of this paragraph, are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as “other”;

(I) [(9)] the basis used for determining the quantity of air contaminants emitted, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title;

_____ (J) [(10)] the best known cause of the emissions event at the time of reporting;

_____ (K) [(11)] the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(L) [(12)] any additional information necessary to evaluate the emissions event.

(2) Records of non-reportable emissions events must identify:

(A) the name of the owner or operator of the regulated entity experiencing an emissions event;

(B) the commission Regulated Entity Number and air account number of the regulated entity experiencing an emissions event, if a Regulated Entity Number and air account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) the physical location of the point at which emissions to the atmosphere occurred;

(D) the common name of the process unit or area, the common name of the facility that experienced the emissions event, and the common name of the emission point where the unauthorized emissions were released to the atmosphere;

(E) the date and time of the discovery of the emissions event;

(F) the estimated duration of the emissions event;

(G) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, by facility, in the definition of RQ in §101.1 of this title, that are known through common process knowledge, past engineering analysis, except for boilers or combustion

turbines referenced in the definition of RQ in §101.1 of this title and that were unauthorized.

Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report, instead these compounds or mixtures of air contaminants may be identified together as “other”;

(H) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (G) of this paragraph. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as “other” under subparagraph (G) of this paragraph, are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as “other”;

(I) the best known cause of the emissions event at the time of recording; and

(J) any additional information necessary to evaluate the emissions event.

(c) For all reportable emissions events, if the information required in subsection (b) of this section differs from the information provided in the 24-hour notification under subsection (a) of this section, the owner or operator of the regulated entity [facility] shall submit a copy of the final record to

the commission office for the region in which the regulated entity [facility] is located and to appropriate local air pollution agencies with jurisdiction no later than two weeks after the end of the emissions event. If the owner or operator does not submit a record under this subsection, the information provided in the 24-hour notification under subsection (a) of this section will be the final record of the emissions event, provided the initial notification was submitted electronically in accordance with subsection (g) of this section.

(d) The owner or operator of a boiler or combustion turbine, as defined in §101.1 of this title, fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, or gaseous fuels other than natural gas, provided the hazardous air pollutants or highly reactive volatile organic compound content of the fuel does not exceed 0.02% by weight, that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emission reports by other state or federal requirements, is exempt from creating, maintaining, and submitting final records of reportable and non-reportable emissions events of the boiler or combustion turbine under subsections (b) and (c) of this section as long as the notice submitted under subsection (a) of this section contains the information required under subsection (b) of this section.

(e) [An owner or operator of a facility has an excess opacity event when it has opacity reading(s) equal to or exceeding 15 additional percentage points above the applicable opacity limit, averaged over a six-minute period.] As soon as practicable, but not later than 24 hours after the

discovery of an excess opacity event, as defined in §101.1 of this title, where the owner or operator was not already required to provide a notification under subsection (a)(2) or (3) of this section, the owner or operator shall notify the commission office for the region in which the regulated entity [facility] is located, and all appropriate local air pollution control agencies with jurisdiction. In the notification, the owner or operator shall identify:

(1) the name of the owner or operator of the regulated entity [facility] experiencing the excess opacity event;

(2) the commission Regulated Entity Number and air account number of the regulated entity [facility] experiencing an [excess] opacity event, if a Regulated Entity Number and air [an] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(3) the physical location of the excess opacity event;

(4) the common name of the process unit or area, the common name of the facility where the excess opacity event occurred, and the common name of the emission point where the excess opacity event occurred;

(5) the date and time of the discovery of the excess opacity event;

(6) the estimated duration of the excess opacity event;

(7) the estimated opacity;

(8) the authorized opacity limit for the source having the excess opacity event;

(9) the best known cause of the excess opacity event[,] at the time of the notification
[if known]; and

(10) the actions taken, or being taken, to correct the excess opacity event.

(f) The owner or operator of any regulated entity [facility] subject to the provisions of this section shall perform, upon request by the executive director or any air pollution control agency with jurisdiction, a technical evaluation of each emissions event. The evaluation must [shall] include at least an analysis of the probable causes of each emissions event and any necessary actions to prevent or minimize recurrence. The evaluation must [shall] be submitted in writing to the executive director and to the appropriate local air pollution agencies with jurisdiction within 60 days from the date of request. The 60-day period may be extended by the executive director.

(g) On and after January 1, 2003, notifications and reports required in subsections (c) and (e) of this section must [shall] be submitted electronically to the commission using the electronic forms provided by the commission. On and after January 1, 2004, notifications required in subsection (a) of

this section must [shall] be submitted electronically to the commission using electronic forms provided by the commission. Notwithstanding the requirement to report initial notifications electronically after January 1, 2004, the owner or operator of a regulated entity [facility] experiencing a reportable emissions event that [,which] also requires an initial notification under §327.3 of this title, is not required to report the event electronically under this subsection provided the owner or operator complies with the requirements under §327.3 of this title and in subsections (a) and (c) of this section. Owners and operators must report emissions events electronically by using an online form on the commission's secure Web [web] server. In the event the commission's server is unavailable due to technical failures or scheduled maintenance, events may be reported via facsimile to the appropriate regional office. The commission will provide an alternative means of notification in the event that the commission's electronic reporting system is inoperative. Electronic notification and reporting is not required for small businesses that [which] meet the small business definition in Texas Clean Air Act [TCAA], §382.0365(g)(2) and to appropriate local air pollution agencies with jurisdiction. Small businesses shall provide notifications and reporting by any viable means that [which] meet the time frames required by this section.

(h) Annual emissions event reporting: on or before March 31 of each calendar year or as directed by the executive director, each owner or operator of a regulated entity, as defined in §101.1 of this title that are subject to reporting under §101.10 of this title, and those that are not subject to reporting under §101.10 of this title, but are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experienced at least one emissions event during the calendar year shall report to the executive director, and all appropriate local air pollution

control agencies with jurisdiction, the following: [In the event the owner or operator of a facility fails to report as required by subsection (a)(2) or (3), (b), or (e) of this section, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely, unless the owner or operator knowingly or intentionally falsified the information in the report.]

(1) the number of reportable and non-reportable emissions events experienced at the regulated entity by facility;

(2) the estimated total quantities for all compounds or mixtures of air contaminants, by compound or mixture, in the definition of RQ in §101.1 of this title that, by facility, were emitted during emissions events at the regulated entity except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title, that must report only the estimated opacities during the emissions events and durations of unauthorized opacity. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than one pound in a 24-hour period, are not required to be included in the report. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized; and

(3) owners and operators of regulated entities that are not subject to reporting under §101.10 of this title must provide annual emissions event reporting electronically by using an online

form on the commission's secure Web server. The commission will provide an alternative means of reporting in the event that the commission's electronic reporting system is inoperative. If the commission's server is unavailable due to technical failures or scheduled maintenance, the annual reports may be provided through alternative means to the executive director. Annual electronic reporting is not required for small businesses that meet the small business definition in Texas Clean Air Act, §382.0365(g)(2) and to appropriate local air pollution agencies with jurisdiction. Small businesses shall provide annual reporting by any viable means that meet the time frames required by this section.

(4) owners and operators of regulated entities that are subject to reporting under §101.10 of this title must provide the information required by this subsection as part of their reporting under §101.10 of this title.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

DIVISION 2: MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

§101.211

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's purpose to safeguard the state 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 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 air; §382.014, concerning Emissions Inventory, which authorizes the commission to require submittal of emissions data; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; and §382.085, concerning Unauthorized Emissions

Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.0215, and 382.0216..

§101.211. Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.

(a) The owner or operator of a regulated entity [facility] conducting a scheduled maintenance, startup, or shutdown activity shall notify the commission office for the region in which the regulated entity [facility] is located and all appropriate local air pollution control agencies with jurisdiction at least ten days prior to any scheduled maintenance, startup, or shutdown activity that [which] is expected to cause an unauthorized emission that [which] equals or exceeds the reportable quantity (RQ) as defined in §101.1 of this title (relating to Definitions) in any 24-hour period and/or an activity where the owner or operator expects only an excess opacity event as defined in §101.1 of this title [that is subject to §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements)]. If notice cannot be given ten days prior to a scheduled maintenance, startup, or shutdown activity, notification must [shall] be given as soon as practicable prior to the scheduled activity. Maintenance, startup, or shutdown activities where the actual emissions exceed the emissions in the notification by more than an RQ or for which a notification was not submitted prior to the activity are emissions events. Excess opacity events where unauthorized emissions result are emissions

events. Owners and operators of a regulated entity with facilities that exceed the emissions or opacity estimate submitted in the notification or experience unauthorized emissions during an expected excess opacity event shall report such events as emissions events in accordance with the requirements in §101.201 of this title and §101.222 of this title (relating to Demonstrations).

(1) The notification for a scheduled maintenance, startup, or shutdown activity, except for boilers and combustion turbines referenced in the definition of RQ in §101.1 of this title, must [shall] identify:

(A) the name of the owner or operator;

(B) the commission Regulated Entity Number and air account number of the regulated entity [facility], if a Regulated Entity Number and air [an] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) the physical location of the point at which emissions from the scheduled maintenance, startup, or shutdown activity will occur;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the expected date and time of the scheduled maintenance, startup, or shutdown activity;

(F) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that will be involved in the emissions activity [experienced the emissions event], and the common name and the agency-established emission point number where the unauthorized emissions may be [were] released to the atmosphere. Owners or operators of those facilities and emission points that [for which] the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(G) the expected duration of the scheduled maintenance, startup, or shutdown activity;

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, by facility, that [which] through common process knowledge or past engineering analysis or testing are expected to equal or exceed the RQ. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report, instead these compounds or mixtures of air contaminants may be identified together as “other”;

(I) the estimated total quantities for those compounds or mixtures described in subparagraph (H) of this paragraph, the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the regulated entity [facility] involved in the activity, authorized emissions limits for the facility involved in the emissions activity, and, if applicable, the estimated opacity and the authorized opacity limit. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as “other” under subparagraph (H) of this paragraph, are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as “other”;

(J) the basis used for determining the quantity of air contaminants to be emitted; and

(K) the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(2) The notification for a scheduled maintenance, startup, or shutdown activity involving a boiler or combustion turbine referenced in the definition of RQ in §101.1 of this title, or where the owner or operator expects only an excess opacity event and the owner or operator was not already required to provide a notification under paragraph (1) of this subsection, must [shall] identify:

(A) the name of the owner or operator;

(B) the commission Regulated Entity Number and air account number of the regulated entity [facility], if a Regulated Entity Number and air [an] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) the physical location of the scheduled maintenance, startup, or shutdown activity;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the excess opacity event, and the common name and the agency-established emission point number where the excess opacity event occurred. Owners or operators of those facilities and emission points that [for which] the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(F) the expected date and time of the scheduled maintenance, startup, or shutdown activity;

(G) the estimated duration of the scheduled maintenance, startup, or shutdown activity;

(H) the estimated opacity and the authorized opacity limit; and

(I) the actions taken, or being taken, to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(b) The owner or operator of a regulated entity [facility] conducting a scheduled maintenance, startup, or shutdown activity shall create a final record of all scheduled maintenance, startup, and shutdown activities with unauthorized emissions, or with opacity exceedances from boilers and combustion turbines referenced in the definition of RQ in §101.1 of this title. The final record must [shall] be created as soon as practicable, but no later than two weeks after the end of each scheduled activity. Final records must [shall] be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a regulated entity [site] is not normally staffed, records of scheduled maintenance, startup, and shutdown activities may be maintained at the staffed location within Texas that is responsible for day-to-day operations of the regulated entity [site]. Such scheduled activity records must [shall] identify:

(1) for owners and operators of regulated entities that were required to notify under subsection (a) of this section:

(A) [(1)] the name of the owner or operator;

(B) [(2)] the commission Regulated Entity Number and air account number of the regulated entity [facility], if a Regulated Entity Number and air [an] account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) [(3)] the physical location of the scheduled point at which emissions from the maintenance, startup, or shutdown activity will occur;

(D) [(4)] the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) [(5)] the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions activity [event], and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points that [for which] the agency has not established facility identification numbers or

emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(F) [(6)] the date and time of the scheduled maintenance, startup, or shutdown activity;

(G) [(7)] the duration of the scheduled maintenance, startup, or shutdown activity;

(H) [(8)] the compound descriptive type of all individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, by facility, that [which] are known through common process knowledge or past engineering analysis or testing to have been released during the scheduled maintenance, startup, or shutdown activity, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the report instead these compounds or mixtures of air contaminants may be identified together as “other”;

(I) [(9)] the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (H) of this paragraph [paragraph (8) of this subsection], the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the regulated entity [facility] involved in the scheduled maintenance, startup, or

shutdown activity, authorized emissions limits for the facility involved in the scheduled maintenance, startup, or shutdown activity, and, if applicable, the estimated opacity and authorized opacity limit, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title that [which] record only the authorized opacity limit and the estimated opacity during the emissions event. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as “other” under subparagraph (H) of this paragraph are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as “other”;

(J) [(10)] the basis used for determining the quantity of air contaminants to be emitted, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title; and

_____ (K) [(11)] the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(2) for owners and operators of regulated entities that were not required to notify under subsection (a) of this section:

_____ (A) the name of the owner or operator;

(B) the commission Regulated Entity Number and air account number of the regulated entity if a Regulated Entity Number and air account number exists. If a Regulated Entity Number and air account number does not exist, then identify the location of the release and a contact telephone number;

(C) the physical location of the scheduled point at which emissions from the maintenance, startup, or shutdown activity will occur;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions activity, and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points that the agency has not established facility identification numbers or emission point numbers for are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(F) the date and time of the scheduled maintenance, startup, or shutdown activity;

(G) the duration of the scheduled maintenance, startup, or shutdown activity;

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, that are known through common process knowledge, past engineering analysis, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title and that were unauthorized. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than ten pounds in a 24-hour period, are not required to be specifically listed in the record instead these compounds or mixtures of air contaminants may be identified together as “other”; and

(I) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (H) of this paragraph. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized. Estimated emissions from compounds or mixtures of air contaminants that are identified as “other” under subparagraph (H) of this paragraph are not required for each individual compound or mixture of air contaminants, however, a total estimate of emissions must be provided for the category identified as “other”

(c) For any scheduled maintenance, startup, or shutdown activity for which an initial notification was submitted under subsection (a) of this section, which does not provide all [if] the

information required in subsection (b) of this section or if the information has changed from the prior notification [differs from the information provided under subsection (a) of this section], the owner or operator of the regulated entity [facility] shall submit a [copy of the] final record as required by subsection (b) of this section to the commission office for the region in which the regulated entity [facility] is located and to appropriate local air pollution agencies with jurisdiction no later than two weeks after the end of the scheduled activity. If the owner or operator does not submit a record under this subsection, the information provided under subsection (a) of this section will be the final record of the scheduled activity.

(d) The owner or operator of a boiler or combustion turbine as defined in §101.1 of this title fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, or gaseous fuels other than natural gas, provided the hazardous air pollutants or highly reactive volatile organic compound content of the fuel does not exceed 0.02% by weight, that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emissions reports by other state or federal regulations, is exempt from creating, maintaining, and submitting final records of scheduled maintenance, startup, and shutdown activities with unauthorized emissions under subsections (b) and (c) of this section, as long as the notice submitted under subsection (a) of this section contains the information required under subsection (b) of this section.

(e) The executive director may specify the amount, time, and duration of emissions that will be allowed during the scheduled maintenance, startup, or shutdown activity. The owner or operator of any source subject to the provisions of this section shall submit a technical plan for any scheduled maintenance, startup, or shutdown activity when requested by the executive director with a copy to the appropriate local air pollution agencies with jurisdiction. The plan must [shall] contain a detailed explanation of the means by which emissions will be minimized during the scheduled maintenance, startup, or shutdown activity. For those emissions that [which] must be released into the atmosphere, the plan must [shall] include the reasons such emissions cannot be reduced further.

(f) For annual scheduled maintenance, startup, and shutdown activity reporting on or before March 31 of each calendar year, or as directed by the executive director, each owner or operator of a regulated entity site, as defined in §101.1 of this title that are subject to reporting under §101.10 of this title, and those that are not subject to reporting under §101.10 of this title but are located in nonattainment, maintenance, early action compact areas, Nueces County, and San Patricio County, that experienced at least one scheduled maintenance, startup, and shutdown activity during the calendar year must report to the executive director, and all appropriate local air pollution control agencies with jurisdiction:

(1) the number of reportable and non-reportable scheduled maintenance, startup, and shutdown activities experienced at the regulated entity by facility; and

(2) the estimated total quantities for all compounds or mixtures, by compound or mixture, of air contaminants, in the definition of RQ in §101.1 of this title that, by facility, emitted during scheduled maintenance, startup, and shutdown activities at the regulated entity, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title that must report only the estimated opacities during the scheduled maintenance, startup, and shutdown activity events and durations of unauthorized opacity. Compounds or mixtures of air contaminants, that have an RQ greater than or equal to 100 pounds and the amount released is less than one pound in a 24-hour period, are not required to be included in the report. Methods of estimates for facilities with authorizations should be consistent with the methods used in the applicable permit application, rule, or order of the commission. For all other situations, good engineering practice should be utilized; and

(3) owners and operators of regulated entities that are not subject to reporting under §101.10 of this title must report annual total emissions resulting from all scheduled maintenance, startup, and shutdown activities electronically by using an online form on the commission's secure Web server. The commission will provide an alternative means of reporting in the event that the commission's electronic reporting system is inoperative. If the commission's server is unavailable due to technical failures or scheduled maintenance, the annual reports may be reported to the executive director. Annual electronic reporting is not required for small businesses that meet the small business definition in Texas Clean Air Act, §382.0365(g)(2) and to appropriate local air pollution agencies with jurisdiction. Small businesses shall provide annual reporting by any viable means that meet the time frames required by this section; and

(4) owners and operators of regulated entities that are subject to reporting under §101.10 of this title must provide the information required by this subsection as part of their reporting under §101.10 of this title.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

**DIVISION 3: OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND ACTIONS TO
REDUCE EXCESSIVE EMISSIONS**

§§101.221 - 101.223

STATUTORY AUTHORITY

The amendments are proposed 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's purpose to safeguard the state 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 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 air; §382.014, concerning Emissions Inventory, which authorizes the commission to require submittal of emissions data; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to

reduce emissions from excessive emissions events; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.0215, and 382.0216.

§101.221. Operational Requirements.

(a) All pollution emission capture equipment and abatement equipment must [shall] be maintained in good working order and operated properly during facility operations. Emission capture and abatement equipment must [shall] be considered to be in good working order and operated properly when operated in a manner such that each facility is operating within authorized emission limitations.

(b) Smoke generators and other devices used for training inspectors in the evaluation of visible emissions at a training school approved by the commission are not required to meet the allowable emission levels set by the rules and regulations, but must be located and operated such that a nuisance is not created at any time.

(c) Equipment, machines, devices, flues, and/or contrivances built or installed to be used at a domestic residence for domestic use are not required to meet the allowable emission levels set by the rules and regulations unless specifically required by a particular regulation.

(d) Sources emitting air contaminants that [which] cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules and regulations when so determined and ordered by the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements, including New Source Performance Standards (40 Code of Federal Regulations Part 60) and National Emission Standards for Hazardous Air Pollutants (40 Code of Federal Regulations Parts 61 and 63).

(e) The owner or operator of a facility has the burden of proof to demonstrate that the criteria identified in §101.222(a) and (b) of this title (relating to Demonstrations) for emissions events, or in §101.222(c) of this title for scheduled maintenance, startup, or shutdown activities are satisfied for each occurrence of unauthorized emissions. The owner or operator of a facility has the burden of proof to demonstrate that the criteria identified in §101.222(d) of this title for excess opacity events, as defined in §101.1 of this title (relating to Definitions), or in §101.222(e) of this title for excess opacity events resulting from scheduled maintenance, startup, or shutdown activities are satisfied for each excess opacity event.

(f) This section does not limit the commission's power to require corrective action as necessary to minimize emissions, or to order any action indicated by the circumstances to control a condition of air pollution.

[(g) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006.]

§101.222. Demonstrations.

(a) Excessive emissions event determinations. The executive director shall determine when emissions events are excessive. To determine whether an emissions event or emissions events are excessive, the executive director will evaluate emissions events using the following criteria:

- (1) the frequency of the facility's emissions events;
- (2) the cause of the emissions event;
- (3) the quantity and impact on human health or the environment of the emissions event;
- (4) the duration of the emissions event;
- (5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(b) Non-excessive emissions events. Emissions events that are determined not to be excessive are subject to an affirmative defense to all claims in enforcement actions brought for these events, other than claims for administrative technical orders and actions for injunctive relief, [and] for which the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements). In the event the owner or operator of a facility fails to report as required by §101.201(a)(2) or (3), (b), or (e) of this title, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply when there are minor omissions or inaccuracies that do not impair the commission's ability to review the event according to this rule, unless the owner or operator knowingly or intentionally falsified the information in the report;

(2) the unauthorized emissions were caused by a sudden breakdown of equipment or process, beyond the control of the owner or operator;

(3) the unauthorized emissions did not stem from any activity or event that could have been foreseen and avoided, and could not have been reasonably avoided by technically feasible [good] design, operation, and maintenance practices consistent with good engineering practice;

(4) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events;

(5) prompt action was taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded;

(6) the amount and duration of the unauthorized emissions and any bypass of pollution control equipment were minimized;

(7) all emission monitoring systems were kept in operation if possible;

(8) the owner or operator actions in response to the unauthorized emissions were documented by contemporaneous operation logs or other relevant evidence;

(9) the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance;

(10) the percentage of a facility's total annual operating hours during which unauthorized emissions occurred was not unreasonably high; [and]

(11) the unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution; and [.]

(12) the unauthorized emissions were not maintenance, startup, or shutdown emissions that were not reported under §101.211(a) of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but could reasonably have been reported.

(c) Scheduled [maintenance,] startup[,] or shutdown activity. Emissions from a scheduled [maintenance,] startup[,] or shutdown activity are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which [required to be included in a permit under Texas Health and Safety Code, §382.0518 or §382.0519, a standard permit under §382.05195, or a permit by rule under §382.05196 unless] the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.211 of this title [(relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements)]. Failure to report information that does not impair the commission's ability to review the activity will not result in enforcement action and loss of opportunity to claim the affirmative defense;

(2) the periods of unauthorized emissions from the [any scheduled maintenance, startup, or shutdown] activity could not have been prevented through planning and design;

(3) the unauthorized emissions from the [any scheduled maintenance, startup, or shutdown] activity were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(4) if the unauthorized emissions from the [any scheduled maintenance, startup, or shutdown] activity were caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(5) the facility and air pollution control equipment were operated in a manner consistent with good practices for minimizing emissions;

(6) the frequency and duration of operation in a scheduled [maintenance,] startup[,] or shutdown mode resulting in unauthorized emissions were minimized;

(7) all emissions monitoring systems were kept in operation if possible;

(8) the owner or operator actions during the period of unauthorized emissions from the [any scheduled maintenance, startup, or shutdown] activity were documented by contemporaneous operating logs or other relevant evidence; and

(9) unauthorized emissions did not cause or contribute to an exceedance of the NAAQS, PSD increments, or a condition of air pollution.

(d) Excess opacity events. Excess opacity events that are subject to §101.201(e) of this title, or for other opacity events where there was no emissions event, are subject to an affirmative defense to all claims in enforcement actions for these events, other than claims for administrative technical orders and actions for injunctive relief, [and] for which the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.201 of this title, Failure to report information that does not impair the commission's ability to review the event will not result in enforcement action and loss of opportunity to claim the affirmative defense;

(2) the opacity did not stem from any activity or event that could have been foreseen and avoided, and could not have been reasonably avoided by technically feasible [good] design, operation, and maintenance practices consistent with good engineering practice;

(3) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing opacity;

(4) prompt action was taken to achieve compliance once the operator knew or should have known that applicable opacity limitations were being exceeded;

(5) the amount and duration of the opacity event and any bypass of pollution control equipment were minimized;

(6) all emission monitoring systems were kept in operation if possible;

(7) the owner or operator actions in response to the opacity event were documented by contemporaneous operation logs or other relevant evidence;

(8) the opacity event was not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance; and

(9) the opacity event did not cause or contribute to a condition of air pollution.

(e) Opacity events resulting from scheduled [maintenance,] startup[,] or shutdown activity. Excess opacity events, or other opacity events where there was no emissions event, that result from a scheduled [maintenance,] startup[,] or shutdown activity are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which [the opacity requirements of §111.111(a) of this title (relating to Requirements for Specified Sources) unless] the owner or operator proves all of the following:

- (1) the owner or operator complies with the requirements of §101.211 of this title.

Failure to report information that does not impair the commission's ability to review the event will not result in enforcement action and loss of opportunity to claim the affirmative defense;

- (2) the periods of opacity could not have been prevented through planning and design;

- (3) the opacity was not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

- (4) if the opacity event was caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

- (5) the facility and air pollution control equipment were operated in a manner consistent with good practices for minimizing opacity;

- (6) the frequency and duration of operation in a [scheduled maintenance,] startup[,] or shutdown mode resulting in opacity were minimized;

- (7) all emissions monitoring systems were kept in operation if possible;

- (8) the owner or operator actions during the opacity event were documented by contemporaneous operating logs or other relevant evidence; and

(9) the opacity event did not cause or contribute to a condition of air pollution.

(f) Obligations. Subsections (c) and (e) of this section do not remove any obligations to comply with any other existing permit, rule, or order provisions that are applicable to a scheduled maintenance, startup, or shutdown activity, including complying with any federal permitting requirements.

(g) Frequent or recurring pattern. Evidence of any past event subject to subsections (b) - (e) of this section is admissible and relevant to demonstrate a frequent or recurring pattern of events, even if all of the criteria in that subsection are proven.

(h) Maintenance activity. Emissions or opacity events from a maintenance activity that have been reported or recorded in compliance with §101.211 of this title are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which the owner or operator proves all of the criteria listed in subsection (c)(1) - (9) of this section for emissions, or subsection (e)(1) - (9) of this section for opacity events except that, according to the following schedule, the affirmative defense will only apply to those emissions or opacity events from a maintenance activity that arises from sudden and reasonably unforeseeable events beyond the control of the operator that requires the immediate corrective action to restore normal operation: [This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection

Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006.]

(1) when the effective date of renewal, amendment, or issuance of any preconstruction permit associated with the facility as required by Texas Health and Safety Code, §382.0518, for which the application was submitted following the effective date of this section; or

(2) for all other facilities beginning two years after the effective date of this section.

§101.223. Actions to Reduce Excessive Emissions.

(a) The executive director will provide written notification to an owner or operator of a facility upon determination that a facility has had one or more excessive emissions events. The written notification must [shall] contain, at a minimum, a description of the emissions events that were determined to be excessive and the time period when those excessive emissions events were evaluated. Upon receipt of this notice, the owner or operator of the facility must take action to reduce emissions and shall either file a corrective action plan (CAP) or, if the emissions are sufficiently frequent, quantifiable, and predictable, in which case the owner or operator may file a letter of intent to obtain authorization from the commission for emissions from such events, in lieu of a CAP.

(1) When a CAP is required, the owner or operator must submit a CAP to the commission office for the region and local air pollution agency with jurisdiction in which the facility is

located within 60 days after receiving notification from the executive director that a facility has had one or more excessive emissions events. The 60-day period may be extended once for up to 15 days by the executive director. The CAP must [shall], at a minimum:

(A) identify the cause or causes of each excessive emissions event, including all contributing factors that led to each emissions event;

(B) specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future;

(C) identify operational changes the owner or operator will take to prevent or minimize similar emissions events in the future; and

(D) specify time frames within which the owner or operator will implement the components of the CAP.

(2) An owner or operator must obtain commission approval of a CAP no later than 120 days after the commission receives the first CAP submission from an owner or operator. If not disapproved within 45 days after initial filing, the CAP must [shall] be deemed approved. The owner or operator of a facility must respond completely and adequately, as determined by the executive director, to all written requests for information concerning its CAP within 15 days after the date of such requests, or by any other deadline specified in writing. An owner or operator of a facility may

request written approval of a CAP, in which case the commission shall take final written action to approve or disapprove the plan within 120 days from the receipt of such request. Once approved, the owner or operator must implement the CAP in accordance with the approved schedule. The implementation schedule is enforceable by the commission. The commission may require the owner or operator to revise a CAP if the commission finds the plan, after implementation begins, to be inadequate to prevent or minimize emissions or emissions events. If the CAP is disapproved, or determined to be inadequate to prevent or minimize excessive emissions events, the executive director shall identify deficiencies in the CAP and state the reasons for disapproval of the CAP in a letter to the owner or operator. If the commission finds a CAP inadequate to prevent or minimize excessive emissions events after implementation begins, an owner or operator must file an amended CAP within 60 days after written notification by the executive director.

(3) If the emissions from excessive emissions events are sufficiently frequent, quantifiable, and predictable, and an owner or operator of a facility elects to file a letter of intent to obtain authorization from the commission for the emissions from excessive emissions events, the owner or operator must file such letter within 30 days of the notification that a facility has had one or more excessive emissions events. If the commission denies the requested authorization, the owner or operator of a facility shall file a CAP in accordance with paragraph (1) of this subsection within 45 days after receiving notice of the commission denial.

(A) If the intended authorization is a permit, the owner or operator must file a permit application with the executive director within 120 days after the filing of the letter of intent.

The owner or operator of a facility must respond completely and adequately, as determined by the executive director, to all written requests for information concerning its permit application within 15 days after the date of such requests, or by any other deadline specified in writing.

(B) If the intended authorization is a permit by rule or standard permit, the owner or operator must obtain authorization within 120 days after filing of the letter of intent.

(b) The executive director, after a review of the excessive emissions events determinations made at a regulated entity [site] as defined in §101.1 of this title (relating to Definitions), may forward these determinations to the commission requesting that it issue an order finding that the regulated entity [site] has chronic excessive emissions events. Orders issued by the commission under this section will [shall] be part of the entity's compliance history as provided in Chapter 60 of this title (relating to Compliance History). The commission may issue an order finding that a regulated entity [site] has chronic excessive emissions events after considering the following factors:

- (1) the size, nature, and complexity of the regulated entity [site] operations;
- (2) the frequency of emissions events at the regulated entity [site]; and
- (3) the reason or reasons for excessive emissions event determinations at that regulated entity [site].

(c) If an emissions event recurs because an owner or operator fails to take corrective action as required and within the time specified by a CAP approved by the commission, the emissions event is excessive and the affirmative defenses in §101.222 of this title (relating to Demonstrations) do not apply.

(d) Nothing in this section will [shall] limit the commission's ability to bring enforcement actions for violations of the Texas Clean Air Act or rules promulgated thereunder, including enforcement actions to require actions to reduce emissions from excessive emissions events.

[(e) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006.]